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PAGA plaintiff may represent claims of other employees in court, even if required to arbitrate own claims

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The California Private Attorneys General Act of 2004 (PAGA) authorizes any "aggrieved employee" to seek civil penalties against an employer for a range of Labor Code violations, including wage-related violations, plus attorneys' fees, on behalf of the plaintiff-employee and on behalf of all other aggrieved employees. In those cases, 75 percent of any recovery goes to the Labor and Workforce Development Agency and the other 25 percent goes to the plaintiff and the other aggrieved employees.

Employees sometimes agree in writing to arbitrate employment-related disputes privately, including those related to wage violations, rather than pursing those claims in court. Those agreements sometimes also prohibit employees from bringing any PAGA or other employment claims on behalf of any other employees.

U.S. Supreme Court rules federal law makes agreement to arbitrate employee's individual PAGA claims enforceable, California law requires dismissal of employee's PAGA claims on others' behalf

In 2014, the California Supreme Court ruled that neither an employee's individual PAGA claims nor those of other aggrieved employees the employee sought to represent could be forced into arbitration. The California Supreme Court reached that result because, among other things, the employee brings a PAGA claim on behalf of the state to enforce penalties and the state is not a party to an employer-employee arbitration agreement.

Last year, the U.S. Supreme Court ruled in Viking River Cruises, Inc. v. Moriana that an employee who agreed to arbitrate disputes with an employer could be required to arbitrate their individual PAGA claims. That is because the Federal Arbitration Act invalidates any state law or rule disfavoring arbitration agreements.

The high court further ruled, however, that an employer could not require an employee to arbitrate or relinquish altogether PAGA claims the employee asserted as a representative of other aggrieved employees. Nonetheless, added the court, because an employee who has agreed to arbitrate their disputes with their employer may not maintain the employee's own claims in court, the employee cannot maintain an action on behalf of others in court.

The Supreme Court concluded a PAGA plaintiff whose individual claims are sent to arbitration becomes no different, for purposes of maintaining a PAGA action in court on behalf of other employees, from a member of the general public who, by definition, cannot assert such claims. The high court predicted therefore the California Supreme Court — the final authority on California law — would hold that once an employee's individual PAGA claims were sent to arbitration, those PAGA claims the employee asserted on behalf of other employees in court must be dismissed.

California courts of appeal reject U.S. Supreme Court interpretation of PAGA

Two California Courts of Appeal recently ruled that the U.S. Supreme Court's prediction was wrong that the California Supreme Court would deprive an individual employee required to arbitrate their individual PAGA claims of standing to pursue PAGA claims on behalf of other aggrieved employees in court.

In Galarsa v. Dolgen California, LLC and Piplack v. In-n-Out Burger, state courts of appeal based in Fresno and Santa Ana considered written agreements that required private arbitration of the employee's individual PAGA claims and precluded the employee from arbitrating the claims of other employees. Both courts of appeal relied on a 2020 California Supreme Court ruling which held that, to have standing to assert claims on behalf of other aggrieved employees, a PAGA plaintiff need only be: (1) someone who is or was an employee of the alleged employer-violator and (2) the victim of one or more of the alleged violations.

These appellate courts concluded a PAGA plaintiff who satisfies these two requirements retains standing to pursue PAGA claims on behalf of other employees in court, even after the employee's individual PAGA claims are moved to arbitration. Each plaintiff in those cases was both a former employee of the alleged employer-violator and was the victim of at least one of the alleged violations. The appellate courts held they were required to arbitrate their individual PAGA claims, but also were allowed to continue the PAGA claims of other aggrieved employees in court.

Both the Galarsa and Piplack courts published their rulings, even though the California Supreme Court will address this question in the pending case of Adolph v. Uber Technologies, Inc. Publishing the decisions made them binding precedent on state trial courts until the California Supreme Court decides Adolph, which the Galarsa court predicted would be no sooner than late summer.

Barring action by the California Supreme Court stripping these rulings of binding effect, or a ruling from another state appellate court reaching the opposite conclusion, state (though not federal) trial courts will be bound by them until Adolph is decided.

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