The San Diego Union-Tribune

Three recent rulings show why it matters PAGA plaintiff is stand-in for the state

By **Dan Eaton**
March 29, 2021 | 6:00 AM PT

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Under the Private Attorneys General Act of 2004 ("PAGA"), an "aggrieved" employee may sue his employer as a surrogate for state labor officials to collect penalties for labor code violations to which the plaintiff-employee was subject. If violations are found, the employee gets 25 percent of the recovery and the state gets the rest. The employee also recovers his attorneys' fees. The California Legislature enacted PAGA to boost the enforcement of labor laws.

The PAGA plaintiff's role as a stand-in for state officials was key to three important recent rulings.

Individual settlement no bar to PAGA action

Late last year, the California Supreme Court ruled in *Kim v. Reins Int'l, Inc.* that an employee who settles his individual claim of labor law violations with his employer may pursue a PAGA claim against the employer as an "aggrieved employee." To have standing to bring a PAGA claim, a plaintiff need only have been: (1) employed by the alleged violator; and (2) victimized by at least one of the alleged violations. "The Legislature defined PAGA standing in terms of violations, not injury. [Plaintiff] became an aggrieved employee, and had PAGA standing, when one or more Labor Code violations were committed against him. Settlement did not nullify these violations."

Allowing a plaintiff who settled his individual claims to continue to pursue PAGA claims is consistent with PAGA's purpose, said the court: "The Legislature's sole purpose in enacting PAGA was to augment the limited enforcement capability of the [Labor & Workforce Development Agency] by empowering employees to enforce the Labor Code as representatives of the Agency. Accordingly, a PAGA claim is an enforcement action between the LWDA and the employer, with the PAGA plaintiff acting on behalf of the government. The state can deputize anyone it likes to pursue its claim, including a plaintiff who has suffered no actual injury."

Employer can't send question of whether PAGA plaintiff was independent contractor, and not "aggrieved employee," to arbitration

In 2014, the California Supreme Court ruled that an employer could not compel an employee suing under PAGA to arbitrate the claim, even where the employee agreed when hired to arbitrate all employment-related disputes. That is because, said the court, a PAGA claim seeking penalties for labor violations is "a dispute between an employer and the state," not the employer and the employee.

Earlier this month, in *Contreras v. Superior Court*, the California Court of Appeal extended that holding to prohibit mandatory arbitration of any part of a PAGA claim, even one whose core contention is that the worker was misclassified as an independent contractor and the company insists the worker was not an employee — aggrieved or not — at all.

Key again was that the state is the owner of the claim for penalties, not the employee. The worker, not the state, agreed to pre-dispute arbitration. Therefore, no issue related to the PAGA claim may be sent to arbitration without the state's consent, no matter how the company tries to slice it. If an arbitrator rules the workers are not "aggrieved employees," the PAGA claim is extinguished. "By virtue of an arbitration to which it did not consent, the state will have lost one of its weapons in the enforcement of California's labor laws."

PAGA action may be brought anywhere employer operates

A PAGA plaintiff may not only not be required to arbitrate any part of his claim, he also is not limited to bringing that claim in a county where he worked. In *Crestwood Behavioral Health, Inc. v. Superior Court*, the court concluded that since a former employee acts on behalf of the state in bringing a PAGA claim, the plaintiff may bring the action in any county the employer operates and engaged in the alleged labor law violations, even a county in which the employee did no work.

"We see no reason why the Legislature would restrict the proper venue to the location of an individual employee when she is suing on behalf of all aggrieved employees, not herself, and she has no individual claims." The defendant-employer operated a chain of treatment centers and employed aggrieved employees throughout the state. The employer did not identify any "practical problems" in defending the case in a county in which it operates.

The PAGA-plaintiff's status as a proxy for the state drove the outcome in each of these cases, as it will in future cases.

Dan Eaton is a partner with the San Diego law firm of Seltzer Caplan McMahon Vitek where his practice focuses on defending and advising employers. He also is an instructor at the San Diego State University Fowler College of Business where he teaches classes in business ethics and employment law. He may be reached at **eaton@scmv.com**. His Twitter handle is **@DanEatonlaw**.