No Individual Claim, No Problem? The California Supreme Court Takes on Circuit Split on Headless PAGA Claims

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The Private Attorneys General Act of 2004 (PAGA) grants private individuals the authority to sue on behalf of the state of California for employer violations of the California Labor Code. The primary purpose of PAGA is not to compensate an individual, but to deter employers from violating California wage and labor laws by broadly delegating enforcement opportunity to California's workforce. However, an aggrieved employee who previously consented to mandated arbitration—often a clause embedded in employment agreements—may face a number of difficulties pursuing PAGA litigation in court.

In *Viking River Cruises, Inc. v. Moriana*, the Supreme Court of the United States held that a plaintiff-employee must litigate an individual PAGA claim according to any applicable arbitration agreements between the plaintiff and the employer. There, the plaintiff, who had signed an arbitration agreement, initiated a PAGA action against the employer alleging, among other claims, overtime, minimum wage, meal break, and rest period violations. The employer moved to compel arbitration. The Court granted a motion to compel arbitration of the plaintiff's individual claims, and dismissed the PAGA claims.

Following *Viking River*, the California Supreme Court held plaintiffs still have standing to pursue non-individual PAGA claims in court even after their individual claims are sent to arbitration.

Thereafter, some plaintiffs began bringing "headless" PAGA actions—where a plaintiff seeks to avoid arbitration by asserting only a representative PAGA claim.

In early 2024, the Second Appellate District Court held in *Balderas v. Fresh Start Harvesting, Inc.* that standing in a PAGA action is satisfied when: (1) a plaintiff was employed by the alleged violator and (2) one or more of the violations was allegedly committed against the plaintiff. However, the court declined to answer the question of whether such a headless PAGA claim is subject to arbitration agreements entered into by the plaintiff. In December 2024, the Second Appellate District held in *Leeper v. Shipt, Inc.* that because all PAGA actions inherently contain an individual PAGA claim, it is impossible for a headless PAGA claim to exist. Accordingly, the Court ordered the trial court to grant the employer's motion to compel arbitration.

Just a few months later, the Fourth Appellate District created a circuit split when it held in *Parra Rodriguez v. Packers Sanitation, Inc* that the plaintiff's headless PAGA action did not assert claims

that fell within the parties' arbitration agreement and denied the employer's motion to compel arbitration.

Recently, the California Supreme Court denied a request to de-publish the *Leeper* decision and ordered review of the decision despite that neither party in *Leeper* filed an appeal.

What Should Employers Do?

We are watching for further updates, so continue to check in with LaborDaysBlog.com for future developments. In the meantime, it is important to note that neither circuits have directly upheld the viability of headless PAGA actions. In ordering the review, the California Supreme Court instructed the parties to brief on whether every PAGA action necessarily include individual PAGA claims. We expect the California Supreme Court to not only resolve the circuit split, but also address questions surrounding the viability of headless PAGA claims.

If you have any questions on best practices relating to employment arbitration agreements and their potential effect on PAGA-related litigation, please contact a member of the Kelley Drye Labor and Employment team.