Are Arbitration Agreements Mounting a Comeback in California?

Labor & Employment Law Update

By Julie Proscia on June 21, 2022

On June 15, 2022, the United States Supreme Court held that the Federal Arbitration Act (FAA) partially preempts a rule of California law that invalidates contractual waivers of the right to assert representative claims under California's Labor Code Private Attorneys General Act of 2004 (PAGA) in *Viking River Cruises, Inc. v. Moriana*, U.S., No. 20-1573, 6/15/22.

So what does this mean? First you have to start off with what is PAGA. PAGA is a relatively unique California law that enlists employees as private attorneys general to enforce California labor law. By its terms, PAGA authorizes any 'aggrieved employee' to initiate an action against a former employer 'on behalf of himself or herself and other current or former employees' to obtain civil penalties that previously could have been recovered only by the state in an enforcement action brought by California's Labor and Workforce Development Agency (LWDA)." *Moriana at 1.*

In this case, the Respondent Angie Moriana worked at Viking River Cruises as a sales representative. Moriana's employment agreement contained a mandatory arbitration clause for both individual actions, as well as a "Class Action Waiver" that prohibited her from bringing any dispute as a class, collective, or representative action under PAGA. In addition to the waiver, there was a severability clause that stated if any portion of the waiver was found to be invalid, the rest of the matters would still be subject to arbitration. In 2018, Moriana filed an action against Viking River Cruises on behalf of herself and hundreds of employees, citing various violations of California's Labor Code. Viking tried unsuccessfully to move the matter to arbitration. Both the trial and appellate courts denied the request citing PAGA and reasoning that under PAGA, arbitration agreements were unenforceable if they infringed on the right to bring representative actions.

The Supreme Court found that the FAA preempts PAGA insofar as that rule precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate. Under the Court's reasoning, the prohibition on wholesale waivers of PAGA claims is not preempted by the FAA -- but the rule that PAGA actions cannot be divided into individual and non-individual claims is preempted. Consequently, Viking was entitled to compel arbitration of Moriana's

individual claim.

This ruling does not give employers *carte blanche* to implement sweeping arbitration clauses or even invalidate PAGA – rather, it may give employers an opening to mandate arbitration in different arenas than were available before the ruling. As such, it is even more important to ensure that the language utilized in employment agreements is nuanced to walk the fine line between PAGA and FAA to avoid class action litigation to the extent greatest possible.

Employers everywhere, including those operating in California, should carefully review and consider implementing arbitration agreements with their workforce when and where possible.

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