

# California PAGA Claims Are NOT Subject to Arbitration and Remain Available for Class Action Lawsuits

## Labor & Employment Law Update

By Jeffrey Risch and Sara Zorich on July 18, 2023

On July 17, 2023 in *Adolph v. Uber Techs., Inc.*, No. S274671, 2023 WL 4553702 (Cal. July 17, 2023), the California Supreme Court held that an individual can maintain a class action in court under the Private Attorneys General Act (PAGA) even when that individual's California Labor Code claims are sent to arbitration. This decision breaks away from the ruling set forth in the Supreme Court Case – *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. [142 S.Ct. 1906], 213 L.Ed.2d 179.

As background, PAGA authorizes “an aggrieved employee,” acting as a proxy or agent of the state Labor and Workforce Development Agency (LWDA), to bring a civil action against an employer “on behalf of himself or herself and other current or former employees” to recover civil penalties for Labor Code violations they have sustained. (§ 2699, subd. (a)). To have standing under PAGA, the individual must be an “an aggrieved employee” which the statute defines as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” (§ 2699, subd. (c).)

The central question before the California Supreme Court was whether an employee --- who must litigate their individual California Labor Code claims through arbitration --- can separately maintain a class action in state court under PAGA. The California Supreme Court answered affirmatively that the individual could. The court reasoned that an employee's standing to litigate under PAGA on behalf of fellow employees is triggered upon sustaining a Labor Code violation by his/her employer and nothing further is required.

The California Supreme Court also noted that practically speaking to recover under PAGA the individual will need to prove they were aggrieved. They explained that this could be done by a trial court staying the PAGA class claims pending the outcome of the individual's arbitration. Thus, if the arbitration confirmed the individual suffered a Labor Code violation they would continue to have standing to move forward with the PAGA suit, and if the arbitration found they did not suffer a violation then they would not.

A ballot initiative to modify or rescind PAGA did not make the 2022 ballot but may move forward in 2024. Until then, employers may see an uptick in PAGA filings based on *Adolph* and could encounter defending claims both for an individual's arbitration and in court based on the same individual's PAGA class claim.

**The Bottom Line:** While valid employment arbitration agreements remain highly valuable for private employers, California employers should be aware that PAGA specific claims can proceed forward in the class action arena once the plaintiff prevails on Labor Code violations in the underlying arbitration proceeding.

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