

California's Supreme Court Broadly Interprets "Standing" to Assert Representative PAGA Claims

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Many employers who adopted arbitration programs for employment-related claims hoped that those programs would help limit exposure in litigation under the state's Private Attorneys General Act (PAGA). Those slim hopes have just been dashed by California's Supreme Court. As expected, the Court rejected the U.S. Supreme Court's interpretation of California law limiting "standing" to assert *non-individual, representative* PAGA claims. The decision is another disappointment for California employers increasingly frustrated by the explosion of costly PAGA litigation.

PAGA, enacted in 2004, permits an employee who has suffered a violation of the Labor Code to act as the agent of the state – deputized, in effect, to enforce the Labor Code on the state's behalf. If the employee satisfies certain administrative requirements, the employee can pursue claims for penalties for violations the employee personally suffered (the "individual" claims) as well as for violations suffered by other "aggrieved" employees (the "representative" claims). Employers who adopted mandatory arbitration programs sought to use those programs to block a claimant from pursuing representative PAGA claims in court as to other employees once the claimant was required to arbitrate the claimant's individual claims. The theory was that the employee, now in arbitration, no longer had PAGA standing to pursue representative claims.

Last year, the U.S. Supreme Court held in *Viking River Cruises v. Moriana* that the Federal Arbitration Act (FAA) preempts state law to the extent that it would prohibit "division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." The Court held that the FAA permits parties to agree to resolve individual claims through arbitration "even if bifurcated proceedings are an inevitable result." That raised the question: where parties agreed to resolve individual PAGA claims through arbitration, what happens to the representative PAGA claims? The U.S. Supreme Court suggested that "PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed" to arbitration. *Viking River* held that the employee "lacks standing" to litigate the non-individual claims, which therefore should be dismissed.

Employers rejoiced! But *Viking River's* ruling about PAGA standing was based on the Court's interpretation of California law. As Justice Sotomayor wrote in her concurring opinion, "if this Court's understanding of state law is wrong, California courts, in an appropriate case, will have the last word." Now, the California Supreme Court has indeed had that last word. In *Adolph v. Uber Technologies Inc.*, the California Supreme Court explained that "[s]tanding under PAGA is not affected by enforcement of an agreement to adjudicate a plaintiff's individual claim in another forum. Arbitrating a PAGA plaintiff's individual claim does not ... extinguish the plaintiff's status as an aggrieved employee" under the statute.

Under California law, standing is determined by reference to statutes – in this case, the language of PAGA itself. To have standing to assert representative claims, a PAGA plaintiff only needs to show that the plaintiff was employed by the alleged wrongdoer and suffered at least one alleged violation of the Labor Code. In other words, a worker "becomes" an appropriate PAGA plaintiff "upon sustaining a Labor Code violation committed by his or her employer." An order "compelling arbitration of individual claims does not strip the plaintiff of standing to litigate non-individual claims in court."

After *Adolph*, there's no doubt: representative claims are unlikely to be dismissed outright merely because there's an agreement to arbitrate individual claims. Still, *Adolph* offers a faint glimmer of hope – the court suggested that a trial court might "stay the non-individual claims pending the outcome of the arbitration"; and further, that if a trial court confirms an arbitrator's award finding that the employee did not suffer a violation, the trial court "would give effect to that finding, and



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[the plaintiff] could no longer prosecute his non-individual claims due to lack of standing." The stakes are now higher for arbitration of individual claims.

Issues concerning abusive PAGA litigation should be addressed by the Legislature, California's top court said. California employers will be more motivated than ever to support the November 2024 ballot initiative to repeal and replace PAGA, in part so that "small businesses that follow the law [would] be protected from shakedown lawsuits."

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