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U.S. Supreme Court Holds PAGA Claims Are Arbitrable Under the FAA

On June 15, 2022, the U.S. Supreme Court held in *Viking River Cruises v. Moriana* that California employers may require arbitration of employees' individual labor claims under the state's Private Attorneys General Act ("PAGA"). Under PAGA, any "aggrieved employee" may file suit against an employer for labor violations on their own behalf, and on behalf of other current or former employees, to enforce civil penalties for violations of the state's labor code. Although the employee must exhaust administrative remedies before filing suit, PAGA allows the individual plaintiff to recover 25% of the award, while the remainder belongs to the state. California courts generally have characterized PAGA claims as a "representative action" where the employee acts as an "agent or proxy" of the state, and the state "is always the real party in interest." Because the state is not subject to arbitration agreements between an employer and employees, California courts previously held employers cannot compel arbitration of PAGA claims.

In *Viking River Cruises*, Angie Moriana was hired by Viking as a sales representative, and her PAGA complaint alleged Viking did not pay her final wages within 72 hours as required under California law. Moriana's complaint also asserted various other labor code violations allegedly sustained by others, including minimum wage, overtime, meal and rest period, timing of pay and pay statement violations. Moriana had signed an arbitration agreement upon hiring requiring arbitration of any dispute arising out of her employment. The arbitration agreement included a "class action waiver," prohibiting class, collective or representative PAGA actions. The agreement also contained a severability clause, providing that if any portion of the class action waiver was valid, it would be enforced in arbitration.

In response to Moriana's PAGA complaint, Viking moved to compel arbitration of Moriana's individual claims. The trial court denied that motion, and the appellate court affirmed, holding "categorical waivers of PAGA standing are contrary to state policy" and could not be split into "arbitrable individual claims and nonarbitrable 'representative claims.'"

In reversing the lower courts, the Supreme Court looked at the applicability of the Federal Arbitration Act ("FAA") and prior precedent that held a party cannot be forced into class action arbitration unless the party expressly agreed to do so. Viking argued this precedent required enforcement of the PAGA waiver plaintiff had executed because PAGA creates a class or collective action. For her part, Moriana argued no conflict existed between the precedent and the FAA because PAGA creates a substantive cause of action.

The U.S. Supreme Court disagreed with both parties' interpretations of PAGA. Moriana was correct in that the FAA does not require enforcement of the class action waiver because the arbitration agreement and the FAA only change how those claims will be processed. Viking, however, was also correct in that PAGA does not create a substantive cause of action, but instead allows employees to assert the claims as a representative of the state.

The Court held its previous decision regarding class action arbitration was not applicable here because PAGA claims are not class actions. Although they are similar, PAGA claims do not involve the same procedural requirements as class actions, such as class certification. In addition, PAGA plaintiffs do not represent other employees, and rulings are not binding on other nonparty employees.

The Court compared PAGA actions to other representative lawsuits, like shareholder-derivative suits, wrongful death actions, trustee actions and suits filed on behalf of individuals who cannot represent themselves. These types of representative lawsuits are common in arbitration, and no Supreme Court authority bans arbitration of such suits without prior consent, unlike with class actions.

The Court held the FAA preempts California precedent so far as it precluded California courts from splitting the individual and representative PAGA claims. Although Moriana was permitted to continue with her own labor violation claims in arbitration, she did not have standing to pursue the representative claims on behalf of other employees. In other words, the Court found that once Moriana was compelled to arbitrate her individual claims, PAGA lacked any procedural mechanism to allow the adjudication of the representative claims and thus those claims should be dismissed.

Although this case is a huge win for California employers seeking to arbitrate PAGA claims, as Justice Sotomayor pointed out in her dissent, California courts have the final word on interpretation of California law. As such, if California courts disagree with the Supreme Court's interpretation of PAGA, they may attempt to find a way to reach a different conclusion. Alternatively, the California legislature may modify the standing requirements under PAGA to ensure employees remain able to assert claims on behalf of other employees in arbitration.

We will continue to monitor developments relating to the enforcement of arbitration agreements in California. In the meantime, if you have any questions about the U.S. Supreme Court's ruling, or how it might impact your organizations' practices, please contact your Kutak Rock attorney or a member of the firm's National Employment Law Group. You may also visit us at www.KutakRock.com.