



Insights: Alerts

California High Court Rules on Non-Individual PAGA Standing

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On July 17, 2023, the California Supreme Court issued its long-anticipated decision in *Adolph v. Uber Technologies, Inc.* and held that an employee who has been compelled to arbitrate “individual” claims under the California Private Attorneys General Act (“PAGA”) still has standing to pursue “non-individual” representative PAGA claims in court.

Briefly, California’s PAGA legislation allows employees to act as proxies for the California Labor and Workforce Development Agency to sue their employers on the state’s behalf and recover penalties for violations of the California Labor Code. Seventy-five percent of the penalties recovered are paid to the state. Employees may bring actions in the name of the state on behalf of themselves for violations resulting in harm to them (“individual” PAGA claims) and on behalf of other current or former aggrieved employees for violations resulting in harm to those employees (“non-individual” PAGA claims).

In June 2022, the United States Supreme Court issued another PAGA decision in [*Viking River Cruises, Inc. v. Moriana*](#), in which the Court held that employers could enforce agreements to arbitrate “individual” PAGA claims and compel such claims to arbitration, even if the non-individual PAGA claims (which would not be subject to the employee’s arbitration agreement) would be litigated in court. Previously, California courts prohibited splitting the two “types” of PAGA claims and thus prohibited arbitration of PAGA claims altogether. The United States Supreme Court rejected this rule and held that the individual and representative claims could be split into different venues. However, the Court opined that once an individual claim was submitted to arbitration, the plaintiff would no longer have statutory standing to pursue non-individual claims in court. In a concurring opinion, Justice Sotomayor noted that the California courts could disagree with this interpretation of the law and would ultimately need to resolve the statutory standing question. Because of this, there was still some uncertainty regarding whether a plaintiff has standing to pursue representative PAGA claims in court once their individual claims are ordered to arbitration.

Shortly after the United States Supreme Court issued its *Viking River Cruises* decision, the California Supreme Court granted review in *Adolph v. Uber Technologies, Inc.* to answer that question. In the meantime, Courts and litigants were left in a state of uncertainty following the *Viking River Cruises* decision because the courts were unsure how to dispose of non-individual PAGA claims once the individual PAGA claims were compelled to arbitration. With the knowledge that the California Supreme Court’s opinion in *Adolph* would likely resolve the

dispute, many California state courts stayed non-individual proceedings pending the outcome of *Adolph* while allowing individual claims to proceed to arbitration. Other courts dismissed the representative claims outright.

Importantly, in *Adolph*, the California Supreme Court clarified that compelling an individual claim to arbitration does not sever it from the non-individual claims; instead, they remain part of the same litigation. Thus, courts retain jurisdiction over the representative claims and must stay the non-individual claims pending the outcome of the arbitration. The Court also suggested a path forward for the representative claims to proceed in court following the arbitration. Specifically, in both individual and representative PAGA actions, as an initial matter, a plaintiff must be “aggrieved” within the meaning of the statute to have standing to bring their claim. Put differently, whether the plaintiff is aggrieved is a necessary determination for both individual and non-individual claims. The *Adolph* opinion indicates that the arbitrator’s determination concerning the employee’s standing in the individual action would therefore have a preclusive effect on subsequent litigation of non-representative claims. Thus, the parties would not need to re-litigate this issue in court following the arbitration.

Thus, while employers cannot avoid arbitrating an employee’s individual PAGA claims and subsequently litigating non-individual PAGA claims in court, the *Adolph* case offers a solution to avoid simultaneously litigating parallel issues. Employers can be confident that the PAGA landscape will continue to develop rapidly as courts are asked to address the many cases that have been stayed awaiting the resolution of *Adolph*.

Employers should also look ahead to the 2024 statewide election cycle, which may bring additional PAGA changes after voters are allowed to vote on a ballot initiative known as the California Fair Pay and Employer Accountability Act. If passed, the act would repeal PAGA and replace it with legislation that would return enforcement authority for Labor Code violations to the Labor and Workforce Development Agency while enabling employees to recover one hundred (rather than twenty-five) percent of the penalties sought for Labor Code violations in cases where violations are found.

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