

US Supreme Court Places Limits on California's PAGA Law

This week, in an 8-1 decision, the U.S. Supreme Court ruled in the case of *Moriana v. Viking River Cruises, Inc.*, that the Federal Arbitration Act (FAA) overrules, in part, California Supreme Court authority limiting the application of arbitration agreements to representative actions brought under California's Private Attorney General Act (PAGA). This decision will be welcome news for many California employers, as the Court has signaled that businesses may once again utilize arbitration agreements as a strong line of defense against expensive, time-consuming, and procedurally complex PAGA lawsuits. However, to the extent the Court's analysis relied on its interpretation of PAGA standing requirements – as to which California courts (and, potentially, the California legislature) will have the last word – uncertainty remains as to just how much relief the Court's decision will actually provide California employers.

In its opinion, the Court examined two key questions relating to the application of the FAA to arbitration agreements seeking to limit PAGA claims: whether the FAA preempts language in the PAGA itself that would prohibit pre-dispute waivers of PAGA claims and whether PAGA actions may be split via an arbitration agreement between claims brought on behalf of the individual representative plaintiff and the claims of those allegedly aggrieved employees that plaintiff would seek to represent.

As to the first of those questions, the Court was clear that the FAA does not preempt the PAGA's prohibition on pre-dispute waivers of PAGA claims. In other words, employers cannot simply roll out arbitration agreements in which employees would agree not to bring claims via the PAGA.

As to the second question, the Court held that the FAA does preempt California authority, as set forth in the California Supreme Court's 2014 opinion in *Iskanian v. CLS Transp. Los Angeles LLC*, finding that arbitration agreements may not split the representative plaintiff's individual PAGA claims apart from the non-individual claims of the allegedly aggrieved employees the plaintiff seeks to represent. In rejecting the California Supreme Court's analysis, the Court held that an employee can be compelled via a valid agreement to arbitrate their individual PAGA claim and that a valid arbitration agreement providing for individual resolution of disputes would mean that other absent employee claims under PAGA could not be joined into that arbitration.

The Court went on to explain that, consistent with its understanding of California law, an employee litigating an individual PAGA claim in arbitration would appear to lack standing to maintain a PAGA claim in court, and the remaining non-individual PAGA claims should be dismissed. This portion of the ruling is certain to be challenged, and it is possible that the employee-friendly California state courts will find that a representative plaintiff does still retain standing to represent other aggrieved employees in a PAGA action despite their individual PAGA claim being handled in arbitration. Justice Sonia Sotomayor addressed this ongoing ambiguity in her concurring opinion, writing:

Of course, if this Court's understanding of state law is wrong, California courts, in an appropriate case, will have the last word. Alternately, if this Court's understanding is right, the California Legislature is free to modify the scope of statutory standing under PAGA within state and federal constitutional limits.

Key Takeaways

- Wholesale pre-dispute waivers of an employee's right to bring PAGA claims will not be enforced.
- A pre-dispute agreement between an employee and an employer stating that all disputes between them are to be decided on an individual basis in binding arbitration may now compel a representative plaintiff's PAGA claim to arbitration and claims of



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other absent employees will not be joined into that arbitration proceeding.

- It is unclear whether the PAGA representative's claims proceeding in arbitration on an individual basis would preclude non-individual claims alleged by that representative from proceeding in court.
 - Employers should carefully review their arbitration agreements and seek knowledgeable counsel as to whether any updates are advisable in light of the *Viking River Cruises* decision.
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