

A Win for Employers: California Court of Appeal Rules That Agreement to Arbitrate All Individual Claims Arising From an Employment Includes Individual Claims Under the Labor Code Private Attorney General's Act of 2004 (PAGA)

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

Employers often attempt to require that employee claims be arbitrated. One issue that has arisen in regard to employee claims involves claims that are asserted by an employee under the Labor Code Private Attorney General's Act of 2004 (PAGA), *see* Labor Code § 2698, et seq. Some background in regard to PAGA claims is in order. Before 2004, the California Labor and Workforce Development Agency (LWDA) was responsible for collecting civil penalties for labor law violations. That changed with the new "PAGA" Act, which permits individuals to assert PAGA claims, with 75 percent of the penalties recovered going to the LWDA, with the remainder being disbursed to the aggrieved employees, plus reasonable attorney's fees. Only an "aggrieved" employee has standing to prosecute a PAGA action, 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." In PAGA parlance, Labor Code violations suffered by a Plaintiff are the Plaintiff's "individual claims," but, in addition to that, the PAGA statute allows an aggrieved employee to join claims for offenses against fellow employees, which are called "non-individual" PAGA claims.

Going back to the issue at hand, the California Supreme Court ruled in Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal. 4th 348 (Iskanian) that a pre-dispute agreement to arbitrate PAGA claims is unenforceable. However, in 2022, the United States Supreme Court decided Viking River Cruises, Inc. v. Moriana (Viking River Cruises) (2022) 142 S.Ct. 1906, where it held that the Federal Arbitration Act preempted Iskanian in part. The issue now is whether either individual or non-individual PAGA claims may be subject to a binding arbitration clause (assuming the arbitration clause is otherwise enforceable).

In the case of Nickson v. Shemran, Inc. (2023) Westlaw 2820860 (Nickson case), the Trial Court denied a petition to compel arbitration of a former employee's PAGA claim, citing to Iskanian. During the pendency of the appeal of the Trial Court's Order, the United States Supreme Court decided the Viking River Cruises case. On appeal, and taking into account the holding in Viking River Cruises, the Court of Appeal ruled that an individual PAGA claim by a former employee is subject to arbitration, but that the non-individual claims asserted by the Plaintiff and other aggrieved employees, is not.

This is a complicated situation. However, if the employer has an enforceable, binding arbitration agreement with an employee, the employee's "individual" PAGA claims will be subject to arbitration.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at morrisonlawgroup.com.

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Jim Van Dusen at The Morrison Law Group at 213 356-5504 .

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.