

WEBINAR

The State of PAGA Actions in California Has Been on a Wild Ride

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What is PAGA and LWDA?

- The Private Attorneys General Act of 2004 (**PAGA**) is a California statute that authorizes aggrieved employees to bring actions for civil penalties on behalf of themselves, other employees, and the State of California against their employers for California Labor Code violations.
- Labor and Workforce Development Agency (**LWDA**) is the state agency that enforces California labor laws. Prior to filing a PAGA lawsuit, an aggrieved employee must notify LWDA. If, LWDA elects not to pursue its own action against the employer, the aggrieved employee can file a PAGA lawsuit.

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Purpose of PAGA

The purpose of PAGA is to allow aggrieved employees to act as private attorneys general and enforce the Labor Code. PAGA authorizes employees to recover two separate types of civil penalties (see California Labor Code § 2699):

- (1) Penalties for violating Labor Code sections that themselves provide for civil penalties;
- (2) Penalties for violating Labor Code sections that do not themselves specify penalties for their violation. For this second type of penalty, PAGA mandates that an employer's initial Labor Code violation incurs a civil penalty of \$100 per aggrieved employee per pay period, and each subsequent violation incurs a civil penalty of \$200 per employee per pay period.

Successful PAGA claimants can also recover attorneys' fees.

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PAGA Civil Penalties

- PAGA civil penalties are typically alleged in Wage and Hour Class Actions, thus increasing the potential value of the case.
- Alternatively, a PAGA lawsuit can be filed on its own, without any class action claims. A lawsuit making only PAGA claims avoids the sometimes unpredictable and onerous class certification process and simplifies the task of proving up damages. Because a PAGA lawsuit is only concerned with civil penalties for technical violations of the *Labor Code*, no proof of actual damages is required.

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What are the implications of *Viking River Cruises, Inc. v. Moriana* for California's Private Attorney General Act?

- In *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906, the United States Supreme Court overruled the California Supreme Court's decision in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, to the extent that it precluded division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.
- According to *Viking River Cruises*, "Iskanian's indivisibility rule effectively coerces parties to opt for a judicial forum rather than to "forgo the procedural rigor and appellate review of the courts to realize the benefits of private dispute resolution."

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U.S. Supreme Court Held no Standing for PAGA Claims

Applying this holding, the *Viking River Cruises* court gave its opinion as to what should happen to the PAGA representative claim after the employee's PAGA claim is compelled into individual arbitration, as follows:

"PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding. Under PAGA's standing requirement, a plaintiff can maintain non-individual PAGA claims in an action only by virtue of also maintaining an individual claim in that action. When an employee's own dispute is pared away from a PAGA action, the employee is no different from a member of the general public, and PAGA does not allow such persons to maintain suit."

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State of California – How they Responded

- California courts have refused to rely on this *dicta* to dismiss the unresolved PAGA representative claims. After compelling individual arbitration, California trial courts will now generally stay the representative PAGA claims, without deciding how these claims will ultimately be resolved.
- California Supreme Court has interpreted the standing issue in PAGA cases, California trial courts have uniformly refused to rely on *Viking River Cruises* to dismiss the unresolved representative PAGA claims.

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California is Much More Forgiving to Lead Plaintiffs in PAGA Claims

- Under existing California law, it does not appear to matter whether a PAGA plaintiff still has a viable personal claim.
- If an employee was employed by the defendant employer and it is alleged that he personally suffered at least one Labor Code violation on which the PAGA claim was based, he is qualified to pursue a PAGA representative claim on the state's behalf.

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Gavriiloglou v. Prime Healthcare Management, Inc. Case

- In *Gavriiloglou v. Prime Healthcare Management, Inc.* (August 26, 2022) 83 Cal.App.5th 595, the court held that an arbitrator's decision in favor of the employer did not have any preclusive effect on that employee's representative PAGA claim.
- The *Gavriiloglou* court reasoned that the employee "was litigating her own individual right to damages for Labor Code violations, whereas in the present PAGA action, she is litigating the state's right to statutory penalties for Labor Code violations. It follows that the arbitrator's findings cannot have preclusive effect." "For purposes of both issue preclusion and claim preclusion, '[i]dentity of parties means not only that they must be identical in person, but that the capacity in which they appear must be the same.' A judgment for or against a party in one right or capacity cannot affect him when acting in another right or capacity."

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Case Studies: *Adolph v. Uber*

- On July 17, 2023, in *Adolph v. Uber*, the California Supreme Court ruled that a plaintiff compelled to arbitrate individual claims brought under the PAGA retains standing to pursue representative (non-individual) PAGA claims in court.
- According to *Adolph*, there are only two requirements for standing under PAGA—a plaintiff must have the following:
 - (1) Been employed by the alleged violator.
 - (2) Suffered at least one Labor Code violation.

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Case Studies: *Adolph v. Uber*

According to the California Supreme Court in *Adolph*:

“Arbitrating a PAGA plaintiff’s individual claim does not nullify the fact of the violation or extinguish the plaintiff’s status as an aggrieved employee.”

- Contrary to the majority’s holding in *Viking River Cruises*, an order compelling individual arbitration does not require dismissal of the plaintiff’s non-individual PAGA claims.

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What are the implications of *Viking River Cruises, Inc. v. Moriana* for California's Private Attorney General Act?

- After compelling arbitration, trial courts have discretion to stay the non-individual claims pending the outcome of the arbitration. If the arbitrator determines the plaintiff is an aggrieved employee, that determination “would be binding on the court, and [the plaintiff] would continue to have standing to litigate his nonindividual claims.”
- However, if the arbitrator determines the plaintiff is not an aggrieved employee, “the court would give effect to that finding, and [the plaintiff] could no longer prosecute his nonindividual claims due to lack of standing.”

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