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EMPLOYMENT LAW UPDATE

JUDICIAL

California

Meal and Rest Break Violations Can Trigger Derivative Penalties and Prejudgment Interest at Seven Percent

In *Naranjo v. Spectrum Security Services, Inc*., the California Supreme Court held that unpaid meal and rest break premiums are wages that can be the basis of derivative claims for waiting time penalties and wage statement penalties. The Court also ruled that the applicable rate of prejudgment interest for amounts due for the failure to provide meal and rest breaks is seven percent.

This important decision stemmed from a class action lawsuit filed in 2007 by Gustavo Naranjo (the "Employee"), a security guard, against his former employer, Spectrum Security Services ("the Employer"), for alleged violations of California's meal break requirements. The Employee's lawsuit, brought on behalf of the Employer's nonexempt employees, alleged that the Employer failed to report meal break premiums on employee wage statements and failed to timely pay such premiums to nonexempt employees upon discharge or resignation. The core issue before the Court was whether meal and rest break premium payments constitute "wages" that, pursuant to California law, employers must report on wage statements and pay upon termination of employment. The Court found that meal and rest break premium payments can be both a penalty for a legal violation and a wage for labor performed when the employee should have been relieved of duty. As a wage, the Supreme Court concluded, the premium payment is "subject to the same timing and reporting rules as other forms of compensation for work," and the derivative penalties for waiting time and inaccurate wage statements therefore apply. Moreover, the Supreme Court also resolved a dispute over the appropriate rate of prejudgment interest that applies to amounts due for failure to provide meal and rest breaks and concluded that the seven percent default rate set by the California Constitution was proper.

This decision significantly increases exposure for meal period and rest break violations, particularly in both pending and future class action lawsuits and PAGA claims. Employers should continue to monitor compliance with California's meal period and rest break requirements as well as ensure wage statements include payments for meal period and rest break violations.

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Wood v. Kaiser Foundation Hospitals Deems Sick Leave Violations Deserving of PAGA Litigation

In *Wood v. Kaiser Foundation Hospitals*, the Fourth District Court of Appeal further expanded the reach of the Private Attorneys General Act of 2004 ("PAGA") by finding that plaintiffs may pursue penalties under PAGA for alleged violations of California's sick pay statute.

Ana Wood ("Wood") was a non-exempt employee of Kaiser Foundation Hospitals ("Kaiser"). In February 2021, Wood filed a PAGA action, claiming that Kaiser violated California's Heathy Workplaces, Healthy Families Act of 2014 ("The Act") (Labor Code §245) by not paying sick leave at the appropriate rate. Kaiser demurred, arguing that PAGA does not authorize PAGA actions for civil penalties of that nature. The trial court sided with Kaiser and sustained the demurrer, giving rise to the instant appeal.

The appellate court was particularly asked to decide whether Labor Code Section 248.5(e) ("Section 248.5(e)") was meant to include actions by aggrieved employees for civil penalties under the PAGA or whether it was only referencing the Unfair Competition Law ("UCL") (Bus. Prof. Code § 17200). In most pertinent part, Section 248.5(e) provides: "any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief[.]

While this issue was novel for the Fourth District, it had previously been addressed by the federal courts, each of which ruled that a plaintiff could *not* recover penalties because, by bringing a PAGA action, the plaintiff would be acting "on behalf of the public as provided for under applicable state law" and therefore would "be entitled only to equitable, or restitutionary relief."

The state appellate court arrived at a different conclusion, however, conducting its own analysis and focusing on the legislative history of PAGA, UCL, and Section 248.5. The court observed that, when drafting Section 248.5, the legislature considered, but later deleted the right to a private right of action, noting the deletion was not intended to '"diminish, alter, or negate" any existing rights or procedures available to an 'aggrieved person.'" Thus, the court found that it "pointed to the same direction:" there was an existing need for mandating a minimum paid sick leave and traditional government institutions would not be able to assure compliance.

Based on the above logic, the court reasoned that "it seem[ed] invoiceable that the legislature intended to prohibit PAGA actions to enforce the act." A contrary finding "would essentially leave *only* the Labor Commissioner and the Attorney General to litigate violations—and the Legislature had already determined a decade earlier that these agencies were flatly incapable of adequately enforcing labor laws"—a reality that gave rise to the creation of PAGA in the first place.

The appellate court therefore concluded that the statute's limitation on remedies was only intended to apply to claims brought under the UCL, as the legislature wished to ensure that plaintiffs seeking to enforce Section 248.5 under

the UCL, "on behalf of the public" be limited to UCL remedies—i.e. restitution and injunctive relief. This indicated the legislature's intent to not expand UCL remedies while also assuring that "UCL plaintiffs successfully enforcing the Act the right to seek attorney's fees"—a right not provided under the UCL.

The decision in *Wood*, while not entirely surprising in light of similar cases offering a broad scope to the applicability of PAGA, allows for yet another mechanism by which litigants can pursue representative recovery. California employers should take this opportunity to review applicable policies and ensure compliance, lest they run an increased risk of PAGA exposure.

California Court of Appeal Permits Prosecution of Non-Individual PAGA Claims in Court Even If Individual PAGA Claims Were Ordered to Arbitration

In response to the US Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, the California Court of Appeal – Fifth Appellate District took a tack different than that of the nation's highest court, ruling in *Galarsa v. Dolgen California LLC* that a plaintiff asserting individual claims for civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") can maintain an action in court to pursue non-individual PAGA penalties on behalf of other employees.

In March 2016, Plaintiff Tricia Galarsa ("Galarsa") began working for Dolgen California LLC ("Dollar General") and signed an arbitration agreement containing a waiver of class, collective, and representative action claims, as well as a severability clause. After Galarsa's employment ended, she filed a 2018 lawsuit, asserting a cause of action for civil penalties pursuant to PAGA for alleged violations of the Labor Code. When Dollar General moved to compel arbitration of Plaintiff's PAGA claim and stay the action pending completion of arbitration, the trial court denied the motion on the grounds that: (1) an employee's right to bring a PAGA action could not be waived; (2) the rule against waivers was not preempted by the Federal Arbitration Act; and (3) a PAGA claim could not be split into individual PAGA claims for alleged Labor Code violations suffered by the plaintiff, and non-individual PAGA claims for alleged Labor Code violations suffered by other employees. The Court of Appeal affirmed the trial court's decision, and the California Supreme Court denied Dollar General's petition for review.

In June 2022, the US Supreme Court ruled in *Viking River* that, where an employee signs an arbitration agreement with a representative action waiver, the employer can compel the employee's individual PAGA claims to arbitration and dismiss the non-individual PAGA claims for lack of standing. The Court of Appeal in *Galarsa* disagreed that a representative action waiver should also apply to non-individual claims. As a result, Galarsa was free to maintain an action for non-individual PAGA claims because she was an employee of Dollar General and she suffered at least one of the Labor Code violations alleged in her complaint.

While certainly a victory for employees, the *Galarsa* decision will not be the final word on this subject. The California Supreme Court has granted review in *Adolph v. Uber Technologies, Inc.* to consider whether the US Supreme

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Court's interpretation of PAGA's standing requirement in *Viking River* compelled dismissal of non-individual PAGA claims when the employee-plaintiff signed an arbitration agreement with a representative action waiver. Oral arguments will likely take place this summer, with a decision to follow (relatively) soon after. Until the California Supreme Court issues a decision in *Adolph*, employers can expect plaintiff-employees to cite *Galarsa* to avoid, or at least as grounds to request a stay, of dismissal of non-individual PAGA claims.

California Court of Appeals Compels Arbitration of Plaintiff's Individual PAGA Claims But Allows Representative Claim to Proceed

In *Piplack v. In-N-Out* (2023) 88 Cal.App.5th 1281, the California Court of Appeals granted employer's motion to compel arbitration of plaintiff's individual wage and hour claims while allowing plaintiff's representative claim under the Private Attorneys General Act of 2004 ("PAGA") to proceed in litigation.

Plaintiffs Tom Piplack ("Piplack") and Donovon Sherrod ("Sherrod" and, collectively with Piplack, "Plaintiffs") are former employees of In-N-Out, a restaurant chain. During their employment, Plaintiffs signed arbitration agreements that contained both a PAGA waiver and (two different) severability clauses.

In late 2019, Plaintiffs sued In-N-Out, asserting PAGA claims based on In-N-Out's alleged practice of requiring employees to purchase, wear, and maintain uniforms without reimbursement. After engaging in preliminary motion work with regard to the scope of the pleadings and initial discovery, in February 2022, In-N-Out filed a motion to compel arbitration, explaining the late filing was due to the pending United States Supreme Court case, *Viking River Cruise v. Moriana* (2022) 596 U.S. ___ (213 L. Ed. 2d 179, 142 S.Ct. 1906)(*Viking*). The trial court denied the motion and In-N-Out appealed.

Relying on *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73 (*Kim*), the appellate court held that plaintiff's individual PAGA Claims, based on alleged Labor Code violations affecting plaintiff, must be arbitrated. However, representative PAGA claims affecting only employees other than plaintiff are not subject to arbitration, and litigants do not lose standing to bring representative claims even though their own individual claims may be compelled to arbitration. The court also noted that the U.S. Supreme Court's ruling in *Viking* is not binding to the extent it relates to questions of state law and is not reconcilable with the California Supreme Court's ruling in *Kim.*

The appellate court therefore concluded that Plaintiffs' arbitration agreements required individual PAGA claims to be arbitrated and In-N-Out did not waive its right to compel arbitration. As to Piplack, his individual PAGA claims must be arbitrated. As to Sherrod, the court remanded the matter for the trial court to consider his argument that he was a minor, under the age of 18, at the time he signed the agreement, and he disaffirmed it after turning 18 years old.

The *Piplack* decision marks another defeat for California employers hoping to avoid PAGA litigation. While the final word has not yet been issued,

particularly as the decision in *Adolph v. Uber Technologies, Inc.* remains pending, suffice to say that the *Viking River Cruise* "victory" continues to appear to be pyrrhic in nature.

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This is Pettit Kohn Ingrassia Lutz & Dolin PC's employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Ryan Nell, Shannon Finley, Rio Schwarting, Christine Dixon, Jessica O'Malley, Nicole Allen, Haley Murphy, Noah Diamant, Celeste Leung, or Michelle Perez-Yanez at (858) 755-8500; or Grant Waterkotte, Tristan Mullis, Rachel Albert, or Enoch Cheung at (310) 649-5772.