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EMPLOYMENT LAW UPDATE

Relationship-Driven Results | *February 2024*

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JUDICIAL

California

The California Supreme Court Rejects Unmanageable PAGA Claims

In *Estrada v. Royalty Carpet Mills, Inc*., the California Supreme Court addressed the split in the California appellate courts regarding whether trial courts have inherent authority to strike a Private Attorney General Act ("PAGA") claim on the basis that the claim is unmanageable. The California Supreme Court held that while trial courts may use methods to efficiently manage PAGA claims, striking such claims due to manageability concerns is not a step to implement.

In *Estrada*, former employees filed a lawsuit against Royalty Carpet Mills and alleged, among other things, that Royalty Carpet Mills failed to provide meal and rest periods during their employment. The former employees sought to pursue a class action as well as a PAGA claim. A subclass of employees was certified to determine whether "class members were provided timely first meal periods and/or deprived of second meal periods." The trial court presided over a bench trial on the former employees' claims. The former employees presented live testimony from 12 of the 13 named plaintiffs, deposition testimony from four different managers and officers of Royalty, live testimony from two of Royalty's human resource employees, and live testimony from an expert witness. Royalty offered testimony from two former employees and one expert witness. Following the bench trial, the court decertified the meal period subclass because there were "too many individualized issues to support class treatment." In the same order, the court dismissed the representative PAGA claim for meal period-related penalties as "being unmanageable." The former employees appealed. The Court of Appeal reversed the trial court's order and directed the trial court to hold a new trial.

The California Supreme Court granted Royalty's petition for review to resolve the split of appellate authority as to whether trial courts have inherent authority to strike a PAGA claim on the grounds of manageability. The Supreme Court rejected the trial court's ruling that a lack of predominance for class claims meant that the PAGA claim was unmanageable and should be dismissed. Ultimately, the Supreme Court held that trial courts cannot strike a PAGA claim solely on manageability grounds. However, the Supreme Court noted that trial courts have inherent authority to dismiss claims in limited circumstances. Here, the Supreme Court affirmed that trial courts can formulate rules of procedure to facilitate trial on the merits and to devise a procedure to adjudicate certain

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claims. Such authority to formulate rules and procedures stops short of permitting a trial court to strike or dismiss a PAGA claim.

The Supreme Court also reaffirmed its proposition in *Williams v. Superior Court* that a plaintiff should ensure that the trial of a PAGA claim is manageable. The Supreme Court stated that "it behooves the PAGA plaintiff to ensure the trial of the action is manageable." The Supreme Court held that for PAGA claims to be "effectively tried," trial courts can limit the type of evidence a plaintiff may present, or otherwise limit the scope of the PAGA claim, which includes limiting witness testimony and other forms of evidence when determining the number of violations that occurred and the amount of penalties to assess. The Supreme Court also stated that trial courts can issue rulings on demurrer or summary judgment to effectively manage claims which are overbroad and unspecific.

The Supreme Court further opined that employers have a due process right to present affirmative defenses. As such, an employer must still be permitted to "introduce its own evidence, both to challenge the plaintiffs' showing and to reduce overall damages" and if plaintiffs seek to use a statistical model to prove their claims, defendants "must be given a chance to impeach that model or otherwise show that its liability is reduced." However, because the trial court did not preclude Royalty from calling witnesses or otherwise presenting evidence (i.e. infringing upon Royalty's due process rights), the Supreme Court explicitly left open the question as to whether a PAGA claim can be stricken to preserve an employer's due process rights.

Employers still can urge trial courts to use the case management tools the California Supreme Court noted can be implemented to efficiently manage PAGA trials. For example, employers should continue to advocate that plaintiffs provide trial plans and proper statistical sampling methodology to demonstrate that any PAGA trial can be effectively managed, while preserving the due process rights of the employer to present its defenses.

As a result of *Estrada*, manageability arguments cannot solely serve as the basis for dismissal of a PAGA claim. Nonetheless, manageability is still a rationale to reduce the scope of a PAGA claim. In addition, the California Supreme Court left open whether due process concerns regarding an employer's right to present affirmative defenses for each alleged aggrieved employee could provide grounds for a trial court to dismiss a PAGA claim.

PAGA's Impact on Arbitration Waivers

DeMarinis v. Heritage Bank of Commerce highlights the interplay between the Private Attorneys General Act ("PAGA") and arbitration agreements containing a waiver. *DeMarinis* involved employees of Heritage Bank of Commerce ("Heritage Bank") who, upon being hired, agreed to resolve any employment-related disputes through arbitration. A specific portion of the agreement, the "Waiver of Right to File Class, Collective, or Representative Actions," restricted both Heritage Bank and its employees from filing claims in a class or representative capacity. The agreement included a non-severability

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clause which stated that if any portion of the waiver provision was found to be unenforceable, the entire agreement would be rendered null and void.

Nicole DeMarinis and Kelly Patire (the "Employees") filed a putative class action and a PAGA claim against Heritage Bank for alleged wage and hour violations. Heritage Bank unsuccessfully moved to compel arbitration of the Employees' individual PAGA claims pursuant to the representative action waiver in the arbitration agreement. Heritage Bank argued, based primarily on the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana,* that the trial court erred in denying arbitration, contending that the waiver provision was not an unenforceable "wholesale" waiver of PAGA, but rather a valid waiver applicable to the Employees' non-individual PAGA claims. The trial court sided with the Employees and found the waiver unenforceable. As such, the entire agreement was null and void.

On appeal, Heritage Bank argued that its use of the term "representative" in its arbitration agreement only referred to non-individual PAGA claims. The Court of Appeal rejected this argument and held that the term must be interpreted broadly to encompass both individual and non-individual PAGA claims. Using this broad interpretation of "representative," the appellate court found that Heritage Bank's arbitration agreement required employees to bring claims only in their individual capacity. As such, Heritage Bank's waiver provision was an unenforceable wholesale waiver of an employee's right to bring representative PAGA actions. Given the arbitration agreement's inclusion of a non-severability clause, the appellate court concluded that Heritage Bank's entire arbitration contract was unenforceable.

LEGISLATIVE

California

California's Ban on Noncompete Agreements – February 14, 2024 Deadline

California Business and Professional Code sections 16600 - 16607 already renders void and unenforceable agreements that restrain California employees from engaging in any lawful profession, trade, or business, subject to very limited exceptions (generally in connection with the sale of a business). Effective January 1, 2024, employers are expressly prohibited, pursuant to AB 1076, from entering into non-competition agreements with California employees that are void under California law and, pursuant to SB 699, from attempting to enforce any non-competition agreement that is void under California law, regardless of whether the agreement was signed in connection with employment maintained outside of California. SB 699 also bars enforcement of non-competition agreements entered between parties located outside of California if the employee has since then relocated to California or is otherwise seeking employment with a California company.

Importantly, AB 1076 requires employers, by no later than February 14, 2024, to send individualized notices to current employees and former employees

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(if they were employed after January 1, 2022) who entered into an agreement with a non-compete clause that is void under California law.

Employers located in California, as well as employers located outside of California that currently have, or previously had, employees in California, should prepare for the February 14th deadline by reviewing their employee agreements with non-compete provisions to: (1) determine permissibility under California law and (2) prepare a list of current and affected former employees who must receive notice.