



California's Private Attorneys General Act (PAGA) authorizes current and former employees to bring a representative action for civil penalties on behalf of the state against an employer for Labor Code violations committed against the employee and other current and former employees. Questions regarding the application of class action waivers and arbitration agreements to PAGA claims have remained a source of litigation for years.

In 2014, in *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348 (2014), the California Supreme Court held that employers cannot enter predispute agreements with employees that purport to waive PAGA claims. *Iskanian* has also been cited for the proposition that employers cannot use arbitration agreements to require employees to split PAGA claims into individual and nonindividual components.

## *Viking River Cruises*

In June 2022, in *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022) (discussed in detail [here](#)), the U.S. Supreme Court held that the Federal Arbitration Act preempts *Iskanian* to the extent that it precludes division of a PAGA action, by virtue of an arbitration agreement, into individual and nonindividual claims. In *Viking River*, the Court also found that because the plaintiff's individual claims should proceed in arbitration, PAGA did not authorize standing for the nonindividual claims to remain in court. According to the Supreme Court, the "correct course" was to dismiss the nonindividual claims.

Following *Viking River*, employers and employees have continued to litigate the Supreme Court's holding, and specifically, whether a court should dismiss representative PAGA claims when an arbitration agreement requires arbitration of individual PAGA claims.

## *Adolph v. Uber Technologies, Inc.*

On July 17, 2023, the California Supreme Court, in [Adolph v. Uber Technologies, Inc.](#), addressed the standing question and deviated from the Supreme Court's decision in *Viking River*. Specifically, the California Supreme Court held, "Where a plaintiff has brought a PAGA action comprising individual and nonindividual claims, an order compelling arbitration of the individual claims does not strip the plaintiff of standing as an aggrieved employee to litigate claims on behalf of other employees under PAGA."

To reach this conclusion, the California Supreme Court endorsed a broad view of standing under PAGA, which turns on the aggrieved employee suffering a violation of the California Labor Code. The court in *Adolph* stated, "Standing under PAGA is not affected by enforcement of an agreement to adjudicate a plaintiff's individual claim in another forum. 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[.]"

## **What Should Employers Do Going Forward?**

The practical impact of *Adolph* is that PAGA representative claims will remain in court well into the future—pending a further change to the law by the legislature or an unexpected intervention by the U.S. Supreme Court. Employers currently defending PAGA cases or threatened PAGA claims should work with counsel to decide how *Adolph* impacts current and future litigation strategy.

In addition, employers should review any current arbitration agreements they have for California employees and work with counsel to decide whether revisions to the arbitration agreements are warranted.

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