

# Now & Next

## Labor & Employment Alert

July 28, 2025

### Unpacking California's circuit split on headless PAGA actions

By Alejandro "Alex" Castro and Lauren Kim

California Supreme Court to decide if "headless" PAGA actions are valid, which could impact arbitration agreements and employer strategies statewide.



#### What's the impact?

- California Supreme Court will clarify conflicting appellate decisions that have created uncertainty for employers facing PAGA claims.
- Employers should review and update arbitration agreements to address both individual and representative PAGA claims.

The California Supreme Court is poised to resolve a growing split among California Courts of Appeal regarding the validity of "headless" claims under the Private Attorneys General Act (PAGA)—i.e., actions that are brought solely in a representative capacity, and do not assert an individual PAGA claim.

## ***Leeper v. Shipt* establishes individual claim requirement**

In *Leeper v. Shipt*, 107 Cal.App.5th 1001 (2024), the Second Appellate District held that every PAGA action must *necessarily* include an individual claim. Based on that premise, the court in *Leeper* concluded that an employee's individual PAGA claim may be compelled to arbitration, while the representative portion of the claim is stayed.

## ***Rodriguez* decision reinforces strict pleading requirement**

By contrast, in *Rodriguez v. Packers Sanitation Services Ltd., LLC*, 109 Cal.App.5th 69 (2025), the Fourth Appellate District held that a court must look at the face of the complaint to determine whether there is an individual PAGA claim instead of reading in a claim that was not pled as the court did in *Leeper*.

## **“Headless” PAGA actions under judicial microscope**

To resolve these conflicting decisions, the California Supreme Court has granted review in *Leeper* and directed the parties to address two key questions: (1) whether a PAGA action includes both individual and non-individual PAGA claims, regardless of whether the complaint specifically alleges individual claims; and (2) whether a plaintiff may elect to bring only a non-individual (i.e., purely representative) PAGA action.

The California Supreme Court's forthcoming decision will provide long-awaited clarity on whether plaintiffs may pursue purely representative, or headless, PAGA actions. If plaintiffs are permitted to pursue headless, California may potentially close the door on employers' efforts to compel portions of PAGA claims to arbitration.

## **Implications for arbitration agreements**

As the California Supreme Court considers the viability of headless PAGA actions, employers should proactively collaborate with their Human Resources and legal counsel to:

- / Ensure arbitration agreements clearly distinguish between individual and representative PAGA claims.
- / Stay informed and monitor ongoing legal developments to preserve the enforceability of arbitration provisions.

Mitigating risk in a shifting PAGA landscapeThe emerging circuit split among California Courts of Appeal and the California Supreme Court's effort to resolve the split emphasizes the importance of a strategic, informed approach in drafting arbitration agreements. To navigate the evolving legal landscape surrounding PAGA, employers should ensure their arbitration agreements are clear, well-drafted, and aligned with the current law. Regularly reviewing and updating these

workplace policies and agreements can help mitigate legal risk and challenges as case law continues to develop.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

**Alejandro “Alex” Castro**

213.358.6236

[acastro@nixonpeabody.com](mailto:acastro@nixonpeabody.com)

**Lauren Kim**

213.629.6158

[lkim@nixonpeabody.com](mailto:lkim@nixonpeabody.com)