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Labor & Employment Alert

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California Supreme Court holds PAGA plaintiffs may pursue in-court lawsuits after arbitration in some circumstances

By Robert H. Pepple

Adolph v. Uber holds PAGA plaintiffs do not automatically lose standing by being sent to individual arbitration.



What's the Impact

- / The California Supreme Court resolved the open question left by *Viking River Cruises v. Moriana* regarding the interplay between the Federal Arbitration Act and PAGA standing.
- / Employers in California should still seek to enforce arbitration agreements with representative action waivers when they think they have facts to prove that a potential PAGA plaintiff was not aggrieved in any way.

The long-awaited *Adolph v. Uber* decision came down on July 17, 2023, which deals with the question: "What happens to an employee's representative (i.e., on behalf of others) PAGA claim after being compelled to individual arbitration under *Viking River*?"

Due to complexities created by the interplay of both in-court and arbitration forums, the above question breaks down into two separate questions – the first deals with “standing” and the second deals with “order of operations”.

Question (Standing): What happens if the arbitrator determines that a plaintiff is not an “aggrieved employee” under PAGA?

Answer: *The arbitrator’s determination is binding—provided it is reduced to a final judgment and the court confirms the arbitration award. In the words of the California Supreme Court:*

Following the arbitrator’s decision, any party may petition the court to confirm or vacate the arbitration award under section 1285 of the Code of Civil Procedure. If the arbitrator determines that Adolph is an aggrieved employee in the process of adjudicating his individual PAGA claim, that determination, if confirmed and reduced to a final judgment (Code Civ. Proc., § 1287.4), would be binding on the court, and Adolph would continue to have standing to litigate his non-individual claims.

[. . .]

If the arbitrator determines that Adolph is not an aggrieved employee and the court confirms that determination and reduces it to a final judgment, the court will give effect to that finding, and Adolph could no longer prosecute his non-individual claims due to lack of standing.]

(See Op. @ 17.)

Question (Order of Operations): What happens to the in-court PAGA lawsuit (i.e., the group of employees) while either the fight to enforce, or the arbitration itself, is unfolding?

Answer: *“The trial court may exercise its discretion to stay the non-individual claims pending the outcome of the arbitration pursuant to section 1281.4 of the Code of Civil Procedure.”*
(See Op. @ 17.)

While the California Supreme Court did not mandate that trial courts should stay the “representative” (i.e., in-court group the plaintiff hopes to represent), it was clear that trial courts should not run afoul of the U.S. Supreme Court’s rule in *Viking River* that, “in cases where the FAA applies, no such relitigating [of standing] may occur.” (See Op. @ 17.)

Practical Implications for California Employers

Adolph v. Uber is the latest, and perhaps penultimate, case in a long line of California state and federal Supreme Court decisions regarding the interplay between the Federal Arbitration Act and California's Private Attorney Generals Act.

While not the best outcome for employers, *Adolph* leaves open the door for employers with good policies, practices, and workplace cultures (i.e., good facts) to defeat would-be PAGA representative actions (which are often cost-prohibitive to defend) through vigorous enforcement of well-drafted arbitration agreements and the thorough and aggressive pursuit of a "not aggrieved" finding in arbitration—even if that it is the (often) heavy haul of proving that the employee suffered absolutely no violations.

Conclusion

Nixon Peabody attorneys have extensive experience enforcing arbitration agreements, litigating PAGA lawsuits in court and arbitral forums, as well as how to comply with California's extensive patchwork of obligations that can lead to these kinds of claims.

If you have questions about the *Adolph* decision, an arbitration agreement, or an anticipated or existing PAGA lawsuit (or arbitration), please reach out to the authors of this article for more information.

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