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Is the California Supreme Court Going to Throw Employers a Bone on PAGA?

California Employment Law Update on **November 8, 2023**

On November 8, 2023, the California Supreme Court heard oral argument in *Estrada v. Royalty Carpet Mills, Inc.*, a case that could have profound implications for the future of Private Attorneys General Act (PAGA) litigation. The Court granted review in order to decide whether courts have the power to strike or limit PAGA claims that would prove to be unmanageable at trial.

A prior case, *Wesson v. Staples the Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), held that trial courts have inherent authority to strike or limit PAGA claims that could not otherwise be made manageable. Just a few months later, the Court of Appeal in *Estrada* disagreed, concluding that while a court could limit the presentation of evidence to ensure a manageable trial (which could make it difficult for the plaintiff to prove widespread violations), courts had no authority to strike or limit PAGA claims before trial. *Estrada v. Royalty Carpet Mills, Inc.*, 76 Cal. App. 5th 685 (2022).

When the California Supreme Court granted review in *Estrada*, court watchers would be forgiven for assuming that a total victory for the plaintiffs was a foregone conclusion. For over a decade, the Supreme Court cases that have largely defined PAGA jurisprudence—*Adolph*, *Kim*, *Williams*, *Iskanian*, and *Arias*—have almost uniformly been decided in the plaintiffs' favor.

To be sure, the Court does appear poised to rule that trial courts lack the authority to *strike* PAGA claims based on manageability concerns. Multiple justices asked questions indicating skepticism about the purported source of this authority, and they suggested that less drastic measures could protect defendants' due process rights and ensure the proper functioning of courts. Indeed, defense counsel conceded that striking a claim may be a remedy reserved for "rare" cases, such as where the plaintiff refuses to engage in the process of determining a manageable trial plan.

However, several justices seemed to have serious reservations about denying trial courts the ability to *limit* PAGA claims to ensure manageability. As Justice Groban stated pointedly, "Some of us are concerned" about a situation where (in his example) multiple Labor Code violations are alleged, hundreds or thousands of employees are at issue, and different work sites and different types of employees are at issue (everyone from janitors to accountants). Justice Groban asked why, in that case, the court could not say, "We can't have the janitors and accountants in one trial. I'm going to limit it to the accountants."

Other justices raised similar concerns. Even Justice Liu—who authored the *Iskanian* and *Adolph* decisions and has been perhaps the Court's most vocal critic of employers' positions in PAGA cases—seemed to acknowledge that in extreme cases, courts may need recourse if manageability concerns threaten to overwhelm the proper functioning of the judiciary.

Estrada may not be the end of the story, because a decision that trial courts may limit (but not strike) PAGA claims will likely just raise additional questions to be further hashed out in the lower courts. One obvious question that appears outside the scope of review in *Estrada* is what test trial courts should apply when determining whether a case requires judicial intervention in order to be made "manageable." Other questions may include when in the proceedings trial courts may decide a case is unmanageable as pled, and what demands trial courts should make on PAGA plaintiffs to demonstrate manageability (such as presenting a written trial plan).

The Court must issue its decision within 90 days (i.e., by February 2024), but could choose to rule sooner. Employers will need to keep their fingers crossed in the meantime, and of course, could still be disappointed. However, Wednesday's argument should provide employers some hope that they have at least fought plaintiffs to a draw on the manageability issue.

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