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Adolph Parts With Viking River, Opening Path for Arbitration-Bound Plaintiffs to Pursue PAGA Claims in Court

California Employment Law Update on **July 20, 2023**

On July 17, 2023, approximately one year after the U.S. Supreme Court's landmark decision in *Viking River Cruises*, the California Supreme Court issued its highly-anticipated decision in *Adolph v. Uber Technologies*. The Court answered the critical question of whether a Private Attorneys General Act (PAGA) plaintiff retains their standing to pursue non-individual claims after their individual claims are compelled to arbitration. As many had predicted it would, the Court held that the answer is yes.

In *Viking River Cruises*, the U.S. Supreme Court held that a plaintiff may be compelled to submit an "individual" PAGA claim to arbitration—the portion of a PAGA claim seeking penalties for violations committed against the plaintiff—if the agreement is covered by the Federal Arbitration Act. The Court found that once the plaintiff's individual PAGA claim is compelled to arbitration and severed from the non-individual PAGA claims, state law deprives the plaintiff of standing to pursue the non-individual claims in court. However, as Justice Sotomayor observed in concurrence, state courts would "have the last word" on the meaning of state law. Since *Viking River*, the majority of California courts have rejected the Supreme Court's interpretation of PAGA standing, instead choosing to stay the non-individual PAGA claim when a plaintiff's individual claim is compelled to arbitration.

In *Adolph,* the Court analyzed the history and purpose of PAGA in concluding that a PAGA plaintiff does not lose their standing to pursue a non-individual claim when their individual claim is compelled to arbitration. The Court reasoned that denying a PAGA plaintiff standing to pursue the non-individual PAGA claims was inconsistent with PAGA's purpose because it would undermine the State's ability to deputize private plaintiffs to enforce the Labor Code, reduce state revenues, and increase state costs of enforcement.

Although the decision is a welcome development for the plaintiffs' bar, there are also silver linings for employers. In rejecting the defendant's argument that its holding would lead to duplicative litigation, the Court cited Adolph's notable concessions that (1) the trial court may stay the court action pending arbitration, and (2) following arbitration, the arbitration award may be confirmed in court, at which point the arbitrator's findings would bind the parties in the court action. We previously observed that, as a practical matter, this procedure would mean that a complete victory for the employer would end the case: a plaintiff could not lose their individual claim in arbitration and then proceed to litigate the non-individual claims in court as if nothing had happened.

Moreover, in some cases, the arbitration process may advance the employer's defense of the court action even if the arbitrator ultimately finds the plaintiff was aggrieved. For example, in cases alleging violations in spite of a lawful policy, a PAGA plaintiff might prove liability in arbitration only by resorting to highly individualized evidence, such as disputed testimony about what the plaintiff was instructed by individual managers. If the arbitration of a single alleged Labor Code violation proves burdensome, that could be a powerful demonstration that a trial involving the claims of hundreds or thousands of individuals would be unmanageable.

The future of PAGA litigation depends in large part on how the California Supreme Court will resolve such questions of manageability. In *Estrada v. Royalty Carpet Mills, Inc.*, the Court is poised to decide whether courts have authority before trial to strike or limit PAGA claims as unmanageable—a question that has split Courts of Appeal. But even *Estrada*, which held trial courts have found no such authority, stipulated that courts have inherent authority to limit the presentation of evidence *at trial*, which could make it difficult as a practical matter to prove an unmanageable claim.

With *Adolph* in the books, employers facing PAGA claims should carefully consider the potential benefits and drawbacks of arbitration and consult with counsel experienced in the area to ensure their rights are adequately protected.

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