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You Can't Spell "Aggrieved Employees" Without an "I": PAGA Claims Cannot be Headless

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In such cases, the plaintiff seeks civil penalties for all allegedly aggrieved employees *except* themself. Thus, these actions seek to circumvent the obligation to arbitrate an employee's individual PAGA claim by abandoning it in favor of the representative claims that represent the real bounty. However, on December 30, 2024, the Court of Appeal for the Second Appellate District gave employers a belated holiday gift. In *Leeper v. Shipt, Inc.*, the court concluded that "every PAGA action necessarily includes an individual PAGA claim" – *i.e.*, a representative PAGA claim cannot exist without its individual companion.

On March 19, 2019, Plaintiff Christina Leeper ("Leeper") entered into an independent contractor agreement with Shipt, Inc. ("Shipt"), a subsidiary of Target Corporation ("Target"), as well as an arbitration agreement that required her to arbitrate any personal/individual claims. On March 14, 2024, Leeper filed a purported "representative" lawsuit against Shipt and Target (collectively, "Appellants"), alleging a single cause of action for a purported non-individual PAGA claim—i.e., seeking *only* representative PAGA penalties stemming from violations experienced by others, but not Leeper herself. On May 14, 2024, Appellants filed a motion to compel arbitration, which Leeper opposed, arguing that she had not alleged any individual claims and, therefore, her PAGA claim could not be compelled to arbitration. The trial court agreed and denied the motion.

However, on appeal, the Second Appellate District reversed, finding that "the unambiguous language in [Labor Code] section 2699, subdivision (a), [states that] any PAGA action necessarily includes both an individual PAGA claim ***and*** a representative PAGA claim." (emphasis added). Further supporting its interpretation, the court looked to the statute's legislative history, noting that "the Legislature deliberately chose the word 'and'" and rejected the word 'or' in the statutory description of a PAGA action," and had rejected a prior version of the bill that phrased the language in the disjunctive. Accordingly the court directed the trial court to grant Appellants' motion to compel arbitration, and stay any representative component of the PAGA claim pending the outcome of the arbitration. As noted above, Leeper was part of a larger recent trend of so-called headless PAGA claims. Fortunately, the decision makes clear that there is no such thing as a representative-only, arbitration-proof PAGA action.

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