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For At Least One Employer, Reliance on an Outdated Arbitration Agreement Proved to be a Losing Gamble

California Employment Law Update on **April 1, 2025**

As we have reported time and again, California courts have applied extra scrutiny to employee arbitration agreements in recent years, and have not hesitated to deny arbitration where there is a reasonable basis for doing so. This trend demands that employers be vigilant and update arbitration agreements when developments in the law implicate them. In the recent case of *Ford v. The Silver F, Inc.*, Cal. Ct. App. 3rd Dist., No. C099133, a casino operator learned the hard way the consequence of rolling the dice with an outdated agreement.

In the wake of *Viking River Cruises, Inc. v. Moriana,* 596 U.S. 639 (2022), which ruled that employers may compel the "individual" component of a Private Attorneys General Act (PAGA) claim to arbitration under the Federal Arbitration Act, it has become commonplace for trial courts to compel individual PAGA claims to arbitration and stay the non-individual PAGA claims in the meantime. That was precisely what the employer, Parkwest, attempted to do in *Ford*. Unfortunately for Parkwest, the relevant arbitration agreement was clearly written in a pre-*Viking River* world and did not contemplate how the law might develop.

Specifically, the Parkwest arbitration agreement stated that it "does not apply" to "claims for workers' compensation or unemployment compensation, specified administrative complaints, Employment Retirement Income Security Act (ERISA) claims, or, as relevant here, "***representative claims under [PAGA]***."

The Court of Appeal affirmed the trial court's denial of Parkwest's motion to compel arbitration. It rejected Parkwest's argument that the agreement should be read as excluding only "non-individual" PAGA claims, holding the carveout for "representative claims under [PAGA]" plainly referred to ***all*** PAGA claims—especially considering that the case law distinguishing between "individual" and "non-individual" claims actions did not develop until after the agreement was drafted.

While this decision is unpublished and noncitable, it serves as a critical reminder to employers to be vigilant about keeping their arbitration agreements up to date. If we've said it once, we've said it a thousand times: an arbitration agreement is not something to be gambled with.

View original.

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