The California Supreme Court has weighed in on who is an aggrieved employee under the Private Attorneys General Act (PAGA) in *Kim v. Reins International California, Inc.* The issue before the court was, does an employee bringing an action under PAGA lose standing to pursue representative claims as an “aggrieved employee” by settling and dismissing his or her individual claims against the employer?

Under the PAGA, an “aggrieved employee” may bring a representative action on behalf of him or herself and other “aggrieved employees” for any violation of the California Labor Code. Cal. Labor Code §§ 2698, *et seq.* Since the law was first enacted in 2004, many California employers have been hit with PAGA actions, in which employees can seek substantial civil penalties previously only recoverable by
the State of California. PAGA cases have become increasingly favored by plaintiffs’ attorneys for several reasons, including the fact that PAGA-claims cannot be compelled into arbitration.

In oral arguments in January, counsel for the employee argued that the appellate ruling caused the plaintiff-employee and the State of California (which deputized him to prosecute PAGA claims) to be in conflict. He argued a plaintiff-employee could potentially face choosing between his own settlement or proceeding with protecting the representative action. In the underlying case, Plaintiff Kim was served with an offer to compromise to resolve his individual claims under Code of Civil Procedure section 998. If Kim had not accepted the offer to compromise and failed to obtain a larger judgment on his individual claims under Section 998, Kim may not have had a right to recover court costs as the prevailing party and may have had to pay Reins International’s costs.

The Court agreed with Kim. The Court stated, “[a] PAGA claim is legally and conceptually different from an employee’s own suit for damages and statutory penalties. An employee suing under PAGA “does so as the proxy or agent of the state’s labor law enforcement agencies. … Moreover, the civil penalties a PAGA plaintiff may recover on the state’s behalf are distinct from the statutory damages or penalties that may be available to employees suing for individual violations.”

The Court clarified that not every private citizen can serve as the state’s representative under PAGA, only an aggrieved employee has PAGA standing. The opinion points back to the PAGA definition of aggrieved employee as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Though as seen in Kim, even an employee who has settled their claims with their employer, can still serve as an aggrieved employee. As the Court explained, “Employees who were subjected to at least one unlawful practice have standing to serve as PAGA representatives even if they did not personally experience each and every alleged violation.”

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