Today, the California Supreme Court issued its long-awaited opinion in *Kim v. Reins Int’l Cal., Inc.*, holding that an employee’s settlement and dismissal of underlying Labor Code claims does not deprive the individual of the ability to later assert a representative action under the Labor Code Private Attorneys General Act (“PAGA”)—even if it involves the same underlying conduct.

First enacted in 2004, the oft-maligned Labor Code “bounty hunter” law permits so-called “aggrieved employees” to file non-class, representative actions to recover civil penalties for Labor Code violations that previously were only recoverable by the California Labor Commissioner. As the *Reins* opinion notes, when it enacted PAGA, the Legislature intended to provide an alternative mechanism for enforcement of the State’s wage and hour laws in light of limited government resources. Yet, despite the Legislature’s apparent good intentions, over the years, PAGA has engendered mounting criticism for spawning thousands of costly and frivolous lawsuits—often, for technical violations that involve little or no actual injury to any current or former employees. Further, since 75% of any recovery goes to the State of California—not the allegedly “aggrieved employees”—the primary beneficiaries of the law have been plaintiffs’ lawyers, whose attorneys’ fees can and often do dwarf the amounts received by their clients.

In *Reins*, the plaintiff filed a class action, seeking unpaid wages and statutory penalties (e.g., for missed meal and rest breaks, etc.); he also included a PAGA claim...
in his complaint. The employer successfully moved to compel the non-PAGA claims to arbitration (PAGA claims are, says the Supreme Court, immune from arbitration), resulting in the court staying the PAGA claims pending resolution of the arbitration proceeding. Thereafter, the parties settled the case, resulting in a dismissal of the employee’s individual claims. The trial court later granted the employer’s motion for summary adjudication of the plaintiff’s remaining PAGA claim, reasoning that he lacked standing to continue to prosecute the PAGA claim in light of the earlier settlement and dismissal of his underlying Labor Code claims. The Court of Appeal agreed; the California Supreme Court, however, did not. Noting that PAGA’s definition of an “aggrieved employee” encompasses employees who already have been otherwise compensated for their purported injury, the Court focused on PAGA’s enforcement purpose.

The real winners here are the plaintiffs’ lawyers who will be further emboldened in bringing often frivolous PAGA suits—even in situations where the allegedly “aggrieved employees” already have been made whole. The decision is likely to result in even more lawyers searching for “aggrieved” parties where none exist in order to extricate costly settlements from unsuspecting employers who thought an earlier settlement and release provided finality.

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