California Supreme Court Expands PAGA Standing

On March 12, 2020, the California Supreme Court broadened the scope of who can bring a representative action claiming penalties under the 2004 Private Attorneys General Act (PAGA). (Kim v. Reins International California, Inc.) By way of background, in a PAGA action the named plaintiff must be an “aggrieved” employee or former employee who alleges that the defendant committed one or more California Labor Code violations against him or her. This permits the employee to bring a “representative” PAGA claim against the defendant on behalf of other “aggrieved” employees for other alleged Labor Code violations. In its ruling, the Supreme Court held that an employee who settles his or her own individual claims against their employer may still bring a PAGA action on behalf of other “aggrieved” employees.

Until recently, an employee who settled their individual claim(s) against the employer could no longer maintain a PAGA action on behalf of other “aggrieved” employees. The courts reasoned, prior to the instant decision, that because the plaintiff was made whole he or she was no longer “aggrieved.” With the Kim decision, however, the Supreme Court stated that “[t]he statutory language reflects that the Legislature did not intend to link PAGA standing to the maintenance of individual claims... .” Rather, the Court ruled that independent of any individual settlement an employee has PAGA standing if “...one or more of the alleged
violations was committed against him [or her]... ."

The Court’s decision that an employee’s individual claims are no longer linked to PAGA standing will affect the strategies employers utilize in litigating PAGA actions. For example, companies with arbitration agreements may be unable, and may not want to, arbitrate named plaintiffs’ individual claims. This is because even if the employer is successful in its arbitration against an employee on his or her individual claims, the employee may still bring a separate PAGA action. Moreover, employers will need to consider PAGA exposure when settling wage and hour claims with employees on an individual basis.

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