California Court of Appeal Provides Guidance, and Creates a Split, on Critical PAGA Issues

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On November 30, 2021, the Court of Appeal, First Appellate District, issued an important opinion in Moniz v. Adecco USA, Inc., __ Cal. App. 5th __ (2021), which will impact employers facing PAGA lawsuits. Moniz clarified several critical issues employers routinely face in PAGA litigation. First, departing from Turrieta v. Lyft, Inc., 69 Cal. App. 5th 955 (2021), Moniz held that a deputized aggrieved employee challenging a PAGA settlement has appellate standing to challenge another PAGA settlement that would wipe out their ability to pursue a PAGA claim. This may affect all employers facing more than one PAGA lawsuit at a time. Second, Moniz held that claims are validly released if they relate to the same primary right as the claims listed in the PAGA letter that the aggrieved employee sends to the California Labor and Workforce Development Agency (the “LWDA”). Finally, Moniz provided guidelines to assess whether a trial court should approve a PAGA settlement.
Because Moniz departs from Turrieta, until there is clarity from the California Supreme Court, there will be a split in authority on this appellate standing issue creating risk for employers settling in the face of multiple PAGA suits.

**Background of Turrieta v. Lyft**

In September 2021, the California Court of Appeal for the Second Appellate District held in Turrieta that a PAGA representative did not have appellate standing to challenge a PAGA settlement in a similar lawsuit that would effectively wipe out the PAGA case. Turrieta explained that a PAGA representative does not possess a personal interest in the settlement of another PAGA representative’s related claim. Accordingly, without an affected individual claim, the PAGA representative does not have standing to move to vacate or appeal the judgment of the other PAGA representative’s claim.

**Background of Moniz v. Adecco USA, Inc.**

Two months after Turrieta, a different court heard the Moniz case. On February 1, 2017, the plaintiff in Moniz filed a PAGA notice with the LWDA raising various allegations that Adecco violated the Labor Code based on the company’s allegedly problematic employment agreement. The following week, Paola Correa filed another PAGA notice against Adecco, also raising Labor Code claims regarding the company’s employment agreement. Correa sought to intervene in Moniz while the case was pending in the trial court. The trial court denied Correa’s motion to intervene. After some motion practice, Moniz settled in September 2019. The LWDA and Correa both objected to the settlement. The trial court rejected the LWDA’s and Correa’s arguments, and ultimately approved the settlement in November 2019 and entered judgment in February 2020. Correa moved for a new trial and sought to vacate the Moniz settlement once again. The trial court denied both requests. On April 17, 2020, Correa filed a notice of appeal from the trial court’s orders denying her various post-trial motions.

**Moniz Strays from Turrieta on the PAGA Appellate Standing Issue**

Moniz explicitly rejected Turrieta’s conclusion—thus creating a split in authority between appellate districts. The court in Moniz reasoned that a PAGA representative serves as a proxy for the state and is enabled to prosecute Labor Code violations for the state. The court then held that because a PAGA representative is serving as a representative for the state, the representative has standing to appeal so that the representative can be an effective advocate for the state. Thus, Correa’s interest in advocating for the state in the representative PAGA lawsuit was sufficient to confer appellate standing.

**Release of Claims Not Listed in PAGA Notice**

Before filing a PAGA suit, a PAGA representative must file a notice with the LWDA identifying the facts and theories supporting the PAGA suit. Correa further argued that the settlement in Moniz was invalid because it encompassed a release of claims.
that were not listed in Moniz’s PAGA notice. The court rejected this argument. It noted that the purpose of providing the LWDA with notice before a suit is filed is to allow the LWDA and the employer aware of the alleged violations so that each may respond in an informed manner. The court explained that a PAGA notice need not include every claim that a PAGA representative releases. The court reasoned that res judicata would prevent a future PAGA representative from relitigating the “same cause of action.” Under California law, whether two cases share the “same cause of action” depends on whether they arise from the “same primary rights.” Put differently, res judicata would extend to bar claims that were brought or could have been brought together. This means that a PAGA representative could extinguish the state’s right to recover civil penalties for claims that were not specifically listed in a PAGA notice if those claims involve the same primary right.

**Settlement Fairness**

Courts have struggled to determine what standard to use to review whether a PAGA settlement is appropriate. PAGA does not provide an explicit standard of review, and no prior California appellate authority had provided any guidance. In *Moniz*, the court provided much needed clarity, holding that the “fair, reasonable, and adequate” standard applies to determine whether a PAGA settlement should be approved. This standard requires the trial court to review the PAGA settlement to promote PAGA’s purposes: to remediate present labor law violations, deter future ones, and to maximize enforcement of California’s labor laws. And while recognizing that PAGA actions and class actions are fundamentally different, the court suggests that using many of the safeguards that exist in evaluating class actions is appropriate in reviewing a PAGA settlement.

In this particular case, the Court applied this standard and found that the PAGA settlement was deficient. Although the total settlement amount was fair and reasonable, the court found the allocation of PAGA penalties was problematic. The settlement allocated 88% of the penalties to a group composed of 25% of the “aggrieved employees.” This led to this group of 25% receiving 14x as much money as the remaining 75% of the “aggrieved employees.” As such, without ruling on the issue, the *Moniz* court remanded the issue to the trial court to reconsider the allocation and to see if there was a justification for such an allocation.

**Key Takeaways**

Because there is a split between appellate districts regarding whether a PAGA representative has standing to appeal the settlement in another PAGA representative’s suit, the California Supreme Court will likely have to wade into this issue either in this case or another similar one. Putting the appellate standing issue aside, *Moniz* is an important case as it announces that a PAGA settlement can release claims not explicitly mentioned in a PAGA representative’s LWDA letter. This could also have a significant impact regarding whether res judicata bars subsequent PAGA suits. Moreover, *Moniz* provides the first California published appellate authority to announce the standard for trial courts to review PAGA settlements: that settlements should be “fair, reasonable, and adequate.”

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