

New Path Forward for Employers in PAGA Suits

Publications

May 2023

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The California Private Attorneys General Act (“PAGA”) allows aggrieved employees to file lawsuits to recover civil penalties for Labor Code violations on behalf of themselves, other employees, and the state of California. Recoverable civil penalties can be significant. For example, for violations of Labor Code provisions that do not specify a penalty amount, PAGA provides default civil penalties at \$100 for each aggrieved employee per pay period for the first violation, and \$200 for each violation thereafter. Because separate penalties may be assessed for each Labor Code violation in the same pay period, PAGA penalty exposure can grow exponentially.

Recently, the California Court of Appeal handed down a decision in *Rocha v. U-Haul Co. of California*, 88 Cal. App. 5th 65 (2023), that offers employers a potential path to limit PAGA penalty exposure. In *Rocha*, the plaintiffs brought individual retaliation claims and eventually sought leave to add PAGA claims based on the same conduct, which the court denied. The plaintiffs’ individual claims were compelled to arbitration, and the arbitrator subsequently determined that the defendant was not liable for retaliation.

On appeal, the plaintiffs challenged the trial court’s decision to deny their request for leave to add their PAGA claims. The Court of Appeal affirmed the trial court’s decision, holding that, based on the doctrine of issue preclusion, the plaintiffs “[could not] establish PAGA standing to bring a claim based on Labor Code violations by U-Haul already alleged in the [] complaint, because the arbitrator found no such violations occurred, and that finding has issue preclusive effect. It would thus have been futile to allow the [plaintiffs] to allege such a PAGA claim.” Put differently, “the arbitrator’s finding that the [plaintiffs] did not suffer a section 1102.5 violation as alleged in the [] complaint precludes them from qualifying as ‘aggrieved employees’ based on that same alleged [Labor Code] violation.” This means that if a PAGA plaintiff loses the merits of the case, then standing to sue on behalf of aggrieved employees disappears.

The California Supreme Court is currently reviewing another PAGA case, *Adolph v. Uber Technologies, Inc.*, Case No. S274671, to determine whether plaintiffs continue to have standing to bring PAGA claims on behalf of a group of aggrieved employees even after their individual claims are

resolved. Nevertheless, regardless of the outcome of *Adolph, Rocha* provides a useful tool for employers to end a PAGA suit altogether once an employer can prevail against the named plaintiff.

This article is available in the Jenner & Block Japan Newsletter. / この記事はJenner & Blockニュースレターに掲載されています。

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