

California Supreme Court Breaks from Federal Precedent on PAGA

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The California Supreme Court issued a much-anticipated Private Attorneys General Act (PAGA) decision in *Adolph v. Uber Technologies, Inc.* in July 2023, departing from the US Supreme Court's 2022 ruling in *Viking River Cruises v. Moriana* and holding that non-individual PAGA standing does not disappear after a plaintiff is compelled to arbitrate his or her individual PAGA claims. This plaintiff-friendly decision definitively answers this question of California law and may encourage an increase in PAGA claims going forward.

PAGA permits an “aggrieved employee” to bring representative claims on behalf of him or herself and other workers subject to the same alleged violations of law. In *Viking River Cruises*, the US Supreme Court—acknowledging that California courts would have the final say on California law—held that if a plaintiff is compelled to arbitrate individual claims because of an arbitration agreement, the remaining non-individual claims must be dismissed for lack of standing. While California state law provides PAGA actions cannot be divided into individual and non-individual claims due to an agreement to arbitrate individual claims, the US Supreme Court found that the Federal Arbitration Act (FAA) preempted that state law.

The California Supreme Court disagreed, finding no conflict between the FAA and California's PAGA framework. On that basis, the Court held that a plaintiff does not lose standing in court simply because he or she is compelled to arbitrate individual claims.

The Court did not determine whether non-individual claims should be stayed pending the outcome of arbitration of individual claims, but it left open the possibility that courts “may” decide to pause proceedings during that interim period. Nevertheless, regardless of the new law stated in *Adolph*, the California Court of Appeal's decision in *Rocha v. U-Haul Co.* earlier this year still provides a useful tool for employers to end a PAGA suit altogether once an employer can prevail against the named plaintiff.

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