



## Glimmers of Hope? Pair of Recent PAGA Cases Provide Rare Procedural Victories for California Employers

Insights

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If you're a California employer, perhaps no single law strikes fear into your heart quite as much as the Labor Code Private Attorneys General Act of 2004 (PAGA). PAGA allows individual "aggrieved employees" to bring representative actions on behalf of themselves and other aggrieved employees to recover civil penalties for Labor Code violations, sometimes extracting staggering amounts from employers. However, a pair of recent appellate court cases in California granted significant procedural "wins" to employers in PAGA cases. While these are limited victories, California employers should celebrate any good news on the PAGA front.

### Defective PAGA Letter May Invalidate PAGA Claims

Under PAGA, an employee is required to provide written notice to the employer and the Labor and Workforce Development Agency (LWDA) before filing a lawsuit. The purpose of this notice requirement is to afford the LWDA with the opportunity to decide whether to investigate a case before an employee may file a civil lawsuit on their own.

A recent case underscored the importance of accuracy in these written PAGA letters. In *Khan v. Dunn-Edwards Corporation, Cal. Ct. App., January 4, 2018*, a former employee alleged that his employer failed to pay final wages immediately upon termination, and that his final paystub was inaccurate. However, his PAGA notice to LWDA and to the employer referred *only* to his individual claims and made no mention of any other Labor Code violations; moreover, it did not reference any other current or former employees besides himself. The trial court granted summary judgment to the employer on the grounds that the employee's PAGA notice was insufficient, dismissing the case.

Earlier this month, the Court of Appeal upheld this decision. "Because his notice expressly applied only to him," the court said, "it failed to give the LWDA an adequate opportunity to decide whether to allocate resources to investigate Khan's representative action. Because Khan referred only to himself, the agency may have determined that no investigation was warranted. Additionally, the notice failed to provide the employer with an adequate opportunity to respond to the agency since the notice suggested only an individual violation."

While this case may represent a unique set of facts, it does highlight the importance of carefully reviewing PAGA notices for this kind of accuracy. Recently, some courts have been strictly applying the PAGA notice requirements set forth in the statute as a mandatory procedural prerequisite.

Employers (and their counsel) should carefully check any PAGA letters to see whether any similar inadequacies may potentially invalidate PAGA claims.

### **PAGA Claims May Fail Following Individual Settlement**

In another recent case, the court determined that a plaintiff who settled his individual claims against his employer was barred from subsequently continuing with claims under PAGA. In *Kim v. Reins International California, Inc., Cal. Ct. App., December 29, 2017*, the plaintiff alleged a number of violations against his employer, including overtime exemption misclassification claims. The plaintiff alleged individual claims, class action claims, and claims under PAGA for these alleged violations.

Because the employee had signed an arbitration agreement, his individual claims were sent to arbitration and his PAGA claims were put on hold until the conclusion of the arbitration. During the arbitration, the plaintiff settled his individual claims for \$20,000 plus attorney's fees. As part of the settlement agreement, he dismissed his individual and class claims, leaving only the PAGA claims intact.

The employer filed a motion for summary adjudication of the PAGA claims, arguing that there could no longer be a representative cause of action under PAGA once the plaintiff settled all of his individual claims. The trial court agreed and the Court of Appeal affirmed, stating, "We hold that where an employee has brought both individual claims and a PAGA claim in a single lawsuit, and then settles and dismisses the individual employment causes of action with prejudice, the employee is no longer an 'aggrieved employee' as that term is defined in the PAGA, and therefore that particular plaintiff no longer maintains standing under PAGA."

Again, this case reflects a rather unique set of facts. And the court was careful to point out that the dismissal of the lawsuit only affected the plaintiff's standing as the PAGA representative. Another "aggrieved employee" in a position substantially similar to the plaintiff could assert such PAGA claims.

The case is also likely to be appealed to the California Supreme Court. However, in the meantime, California employers should take note of this decision as a welcome development. This decision also features an in-depth discussion of PAGA's standing requirements, which may be useful in future cases or litigation.

### **Conclusion**

PAGA is a sore subject for many California employers. These recent decisions, while limited in application, represent a rare glimmer of hope that California courts are beginning to grapple with some of the procedural issues around PAGA in a light favorable to employers. One can only hope that this is the beginning of a trend that may afford much-needed and long-overdue PAGA relief for California employers. Much more needs to be done and, ideally, the state legislature will step in to clean up the PAGA mess. But, in the meantime, California employers should celebrate some rare good news on the PAGA front.

## ***Related People***

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