

# CALIFORNIA SUPREME COURT BOOSTS PAGA CLAIMANTS' RIGHTS IN HIGHLY ANTICIPATED DECISION: 5-STEP ACTION PLAN FOR EMPLOYERS

Insights  
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The California Supreme Court ignored guidance from the U.S. Supreme Court yesterday when it ruled that employees can still proceed with parts of their lawsuits against employers even if the PAGA portions of their claims are compelled to arbitration. The highly anticipated decision will inevitably lead to more headaches for California employers – who already have their hands full with one of the nation’s most complex statutory schemes that permits employees to sue on behalf of themselves, other workers, and the state for alleged workplace law violations. By virtue of yesterday’s ruling, there is yet another avenue of concern for California businesses struggling with compliance responsibilities – and yet another reason for businesses to ensure they do their best to maintain compliance with the state’s many workplace laws. But could this surprising ruling actually lead to the dismantling of the PAGA structure through a 2024 ballot measure? Read on to learn what you need to know about the ruling, and discover your five-step plan in the immediate aftermath.

## What a Long Strange Trip It’s Been: A Brief Summary of How We Got Here

Eric Adolph, a delivery driver for Uber Eats, filed a lawsuit against the company in 2019 alleging that he had been misclassified as an independent contractor rather than an employee. At the time he was retained as a driver, however, he signed an arbitration agreement with a “PAGA waiver” that not only forced all workplace-related claims into arbitration but also required him to agree not to bring a

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representative action under PAGA in any court – or in arbitration.

For those unfamiliar, PAGA is the Private Attorneys General Act, a state law that allows workers to sue businesses on behalf of themselves, other workers, and the state itself when they believe there has been a violation of the law.

At the time he signed away his rights to bring such a representative PAGA claim, a storm had been brewing in state and federal courts about whether such agreements to waive away employment-related rights are legal. More importantly, a fight was underway about whether a PAGA plaintiff loses standing to pursue a representative PAGA claim in civil court when their individual PAGA claim is compelled to arbitration.

Adolph eventually amended his complaint to eliminate his individual and class action claims and retain only his PAGA claim for civil penalties, but Uber moved to compel arbitration of these claims under the terms of the arbitration agreement.

Both the trial court and the Court of Appeal ruled not only that PAGA claims are not subject to arbitration but that “PAGA waivers” are unenforceable. Uber appealed to the California Supreme Court, but in the meantime the U.S. Supreme Court issued a ruling that seemingly helped employers in the battle.

[The June 2022 ruling in \*Viking River Cruises, Inc. v. Moriana\*](#) held that PAGA actions could be split into individual and non-individual claims through arbitration agreement, but the claims could not be simultaneously arbitrated and litigated in courts. The Court held that PAGA permits a plaintiff to maintain non-individual PAGA claims *only if* they also maintain an individual claim *in the same action*. In the Court’s view, PAGA’s statutory scheme provides no mechanism for a court to adjudicate representative PAGA claims when the individual claim is relegated to a separate proceeding. Consequently, while plaintiff’s individual PAGA claim could be arbitrated, the non-individual claims must be dismissed for lack of statutory standing.

Though *Viking River* appeared to be a victory for employers, the issue of standing under PAGA remained unsettled. And, in fact, a concurring opinion by Justice Sotomayor kept



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hope alive that California courts should have the last word on this issue. Which, yesterday, they did.

## What Did the Court Say?

The Court framed the issue before it as generally a straightforward one: does a PAGA plaintiff who has been compelled to arbitrate individual Labor Code claims maintain standing to pursue non-individual PAGA claims arising out of event involving other employees?

The Court said it would have the final word on this issue and stated unanimously and unequivocally:

In sum, where a plaintiff has filed a PAGA action comprised of individual and non-individual claims, an order compelling arbitration of individual claims does not strip the plaintiff of standing to litigate non-individual claims in court. This is the interpretation of PAGA that best effectuates the statute's purpose, which is 'to ensure effective code enforcement.'

## What You Need to Know About the Ruling

- The California Supreme Court has finally provided employers and employees with a clear framework for how PAGA actions should function: arbitrate, stay, then dismiss if the plaintiff loses arbitration.
- In a nutshell, PAGA plaintiffs do not lose standing to pursue non-individual PAGA claims if their individual PAGA claim is compelled to arbitration.
- The California Supreme Court also suggested that it is appropriate to stay the non-individual PAGA claim in state court, at the court's discretion, pending the outcome of the individual PAGA claim in arbitration. This would seem to make sense especially in situations where such an outcome could impact the non-individual PAGA claim going forward. Although the stay of the action is left to the court's discretion, a failure to stay that action would arguably result in waste of court resources, as litigating the issue of whether the particular PAGA plaintiff is in fact aggrieved would have to be litigated twice both in state court and in arbitration.
- Unfortunately, however, yesterday's ruling makes clear that employers will likely still have to face the prospect of



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non-individual PAGA lawsuits, even if individual PAGA claims are sent to arbitration.

- The silver lining of this decision is that the California Supreme Court indicated that a finding by the arbitrator that the individual did not suffer any wage and hour violation can provide the concluding word that should be followed by a court regarding whether the PAGA plaintiff is in fact “aggrieved.” In other words, the PAGA plaintiff will lose the ability to pursue the non-individual claim in court as the individual would not be considered an “aggrieved employee” and would lose standing to proceed with the non-individual action.

### **Could This Ruling Actually Be the Beginning of the End of PAGA?**

Because this decision contravenes the U.S. Supreme Court, all eyes may now turn to a proposed ballot measure that has qualified for the November 2024 general election. The “California Fair Pay and Employer Accountability Act of 2024” would eliminate PAGA and replace it with increased DLSE enforcement.

For employers, after many years of unsuccessfully trying to convince California courts to see the light on PAGA, efforts may now heat up to simply repeal the whole thing entirely. In that regard, yesterday’s *Adolph v. Uber Technologies* Court noted that it was up to the Legislature to narrow the statute’s standing requirements in order to curb PAGA abuses.

### **What Does the Ruling Mean for Employers?**

In the meantime, however, it is more important than ever to review your wage and hour compliance and arbitration agreements. Staying vigilant with compliance in the face of a PAGA claim could save you from an employee being able to pursue a non-individual PAGA claim.

In other words, if your employees are unable to prove an individual labor violation, they may not be able to proceed with a representative PAGA claim. It is further important that if you have a pending case in which the representative PAGA claim is either stayed pending *Adolph v. Uber Technologies* decision and/or stayed pending the arbitration of the individual PAGA claim, you review closely whether your case against the individual claim is strong enough to render that

individual not “aggrieved” and thus strip them of standing to pursue the non-individual PAGA claim stayed in state court.

Additionally, in light of this decision, it is important to review your arbitration agreement to ensure it has the appropriate language regarding PAGA and arbitration.

### **What You Should Do Next: Your 5-Step Plan**

1. Review your arbitration agreement to ensure it comports with the principles of *Viking River* and *Adolph v. Uber Technologies*.
2. Consider revising arbitration agreements to specifically provide that the parties to the agreement will have any representative claim pursuant to PAGA stayed pending the outcome of the arbitration of their individual PAGA claim.
3. Evaluate implementing arbitration if you currently do not have arbitration agreements in place.
4. Review your wage and hour compliance (e.g., overtime, timekeeping, pay, meal and rest break policies, premium pay, practices, etc.) and train employees and managers on your policies and practices – and dedicate a team to answer questions regarding your wage and hour policies.
5. Review your active litigation and determine whether you should proceed with arbitrating the individual claim to work toward stripping the PAGA plaintiff of standing to pursue a non-individual PAGA claim.

### **Conclusion**

We will continue to monitor developments in this area, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions regarding the drafting or interpretation of an arbitration agreement currently in place, please contact your Fisher Phillips attorney, the authors of this alert, or any attorney in [our California offices](#).