Employers Litigating PAGA Actions Take Hit From California Supreme Court

Insights
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In a unanimous decision, the California Supreme Court ruled late last week that plaintiffs in lawsuits brought pursuant to the California Private Attorneys General Act (PAGA) can seek the contact information for their fellow "aggrieved employees" at the outset of their lawsuit, without a showing of good cause for the potentially private information. As any employer who has faced a PAGA action knows, a list of contact information for all employees can be a treasure trove of information that should be protected from disclosure at all costs, so this decision could have serious repercussions.

The court's decision paves the way for litigation costs in PAGA litigation to grow exponentially at the outset of a case. Specifically, the Supreme Court noted that nothing in the characteristics of a PAGA action "affords a basis for restricting discovery more narrowly" than in non-PAGA class actions. This decision will likely embolden plaintiffs (and their attorneys) to make aggressive discovery demands on employers without making any factual showing that the employer has a companywide policy or practice that violated, or likely violated, the Labor Code (*Williams v. Superior Court (Marshalls)*).

Brief Background On PAGA
A source of great frustration for employers, PAGA authorizes "aggrieved employees" to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California, for labor law violations. Enacted in 2004, PAGA allows plaintiffs to skirt the otherwise rigorous requirements for class action litigation to seek penalties on behalf of themselves and all other employees that may be similarly situated. This has led to unending conflict among parties in litigation over (1) the manageability of a PAGA action, (2) the definition of the "aggrieved employee" group, and, subject of the *Williams* case, (3) the procedures and scope of discovery.

Facts Of The Case
Plaintiff Michael Williams was an employee at a retail store operated by Marshalls of California in Costa Mesa. After a little more than one year of employment, Williams brought an action under PAGA, alleging Marshalls – on a companywide basis – failed to provide its employees with meal and rest breaks or premium pay in lieu thereof, did not provide accurate wage statements, neglected to reimburse employees for necessary business-related expenses, and did not pay all earned wages during employment.

11 months after filing his complaint, Williams served discovery seeking production of the names and contact information of all nonexempt Marshalls employees in California who had worked for the

company since the date of the lawsuit filing. Marshalls objected that it was irrelevant, overbroad, unduly burdensome, and implicated the privacy rights of its employees. Williams offered to use a procedure used in most class action cases, known as "*Belaire-West* notice," wherein employees are provided an opportunity to prevent their information from being shared with the plaintiffs' attorneys, but Marshalls refused.

Williams then moved the court to compel production of this information, arguing that contact information was routinely discoverable and vital to the claims, and Marshalls opposed the motion. The trial court granted Williams' motion in part, compelling Marshalls to produce contact information for the employees only at its Costa Mesa store and denying production of the contact information of employees at the 128 other Marshalls stores in California.

On appeal, the California Court of Appeal, Second Appellate District, held that discovery of Marshalls' employees' contact information statewide was "premature," and a party seeking to compel such discovery must set forth "good cause" justifying the discovery sought. The court reasoned that Williams' allegations only addressed the Costa Mesa store at which he worked, but Williams provided no other indication that he had knowledge of unlawful practices at any other store or facts that would lead a reasonable person to believe he knew whether Marshalls had a uniform statewide policy. Due to these factors, the court stated that Williams needed to show support for his own local claims first before broadening his discovery requests to determine whether some statewide issues exist.

Williams appealed to the California Supreme Court seeking a determination as to whether a plaintiff in a PAGA action is entitled to discovery of the contact information of other "aggrieved employees" at the beginning of the proceeding or must a plaintiff first be required to show good cause to have access to that information. He also asked the court to render a decision on whether trial courts should first determine whether employees have a protectable privacy interest and, if so, whether they needed to balance that privacy interest against competing or countervailing interests, or whether a protectable privacy interest is assumed.

The Decision: Court Holds Plaintiffs May Seek Statewide Contact Information

In its July 13 ruling, the California Supreme Court noted that Williams' complaint sought relief on behalf of Williams and other "aggrieved employees" defined as "current or former employees" of Marshalls subject to one or more Labor Code violations described in the complaint. Further, the complaint alleged Marshalls committed these violations against Williams and its nonexempt employees in California pursuant to "systematic companywide policies." Based on prior class action precedent, the court held that the contact information sought by Williams is within the scope of discovery permitted under the Code of Civil Procedure.

The court ruled that nothing in the law indicates that PAGA imparts a requirement that the facts and theories put forth by a plaintiff must satisfy a particular threshold beyond that of a normal lawsuit. The court also recognized the broad statutory language of PAGA, which allows a plaintiff to bring

suit on behalf of any "aggrieved employee," defined by statute as "any person who was employed by the *alleged* violator and against whom one or more of the *alleged* violations was committed" (citing PAGA). The court reasoned this language also did not imply a heightened evidentiary or pleading requirement.

The court rejected Marshalls' argument that the procedural differences between a PAGA action and a traditional class action (e.g., PAGA aggrieved employees are not parties or clients of plaintiff's counsel, and PAGA does not impose express fiduciary obligations on a plaintiff or counsel) impose a restriction on discovery rights in PAGA actions. Rather, similar to a class action, PAGA aggrieved employees are likely to be percipient witnesses, plaintiffs have the burden to show Labor Code violations, and absent employees will be bound by the outcome of the litigation as would employees in a class action. Ultimately, the court looked at both practical considerations and the statutory framework to hold that the lower courts had no discretion to deny access to statewide employee contact information.

Regarding the privacy concern issue raised on appeal, the court looked to class litigation precedent and legal framework to resolve the issue. That typical framework establishes that the party seeking to protect information on the basis of privacy must establish: (1) a legally protected privacy interest, (2) an objectively reasonable expectation of privacy in the given circumstances, and (3) that a threatened intrusion is serious. The party seeking the information may then raise whatever legitimate and important countervailing interests are sought through disclosure, while the party seeking protection may identify less intrusive alternatives that would diminish the loss of privacy while still serving the same interests.

The court determined that, even though the lower court erred by automatically conditioned disclosure of employee contact information following the *Belaire-West* process, there was a chance that the privacy argument would carry the day. However, that chance was soon dashed because, applying the framework above, Marshalls established a legally protected privacy interest but failed to establish the remaining two elements.

The court believed that Marshalls employees would, at a minimum, have no reason to expect their information would be categorically withheld, without even an opportunity to opt in to or opt out of disclosure. Nor did the court find a serious invasion of privacy. Williams was willing to share costs to protect privacy interests through the *Belaire-West* process for the Costa Mesa store employees, which could similarly be used to protect the privacy interests of all of Marshalls' California employees.

Because Marshalls could not meet the threshold requirements, there was no need for the court to review a balancing of interests between employee privacy and competing or countervailing interests. However, the court nonetheless stated that future courts should be mindful of complete bans on disclosure like those sought by Marshalls, and should instead seek alternative solutions that might accommodate the competing interests at stake.

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In general, this opinion opens the door to discovery at all of an employer's California worksite locations without any showing by plaintiffs that their experience was actually representative of other employees' experience. Going forward, this could make it much harder for employers to limit exposure or keep litigation and discovery costs manageable in PAGA actions.

That said, judges still retain broad discretion on discovery matters. It will be important to seek legal counsel to determine whether relief from burdensome and intrusive discovery requests of this nature may be obtained in any particular case. In any event, this case makes it even more important for employers to ensure compliance with the law with respect to pay practices, meal and rest break practices, and other similar Labor Code issues.

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