



California Employers May Want to Take a Seat: A Settling Plaintiff Can Still Sue

Insights

3.16.20

The California Supreme Court issued a long-awaited decision last week that makes clear that a plaintiff who settles and/or dismisses their individual claims does not lose standing to pursue an action under the Labor Code Private Attorneys General Act of 2004 (PAGA).

Background

In the underlying case, Justin Kim sued his employer, a restaurant operator, for various wage and hour claims, including exempt misclassification claims. He alleged individual claims, class action claims, and claims under PAGA. Since Kim had signed an arbitration agreement, his class claims were dismissed, his individual claims were sent to arbitration, and his PAGA claims were stayed. Before the arbitration concluded, Kim accepted a settlement of his individual claims and dismissed his individual claims.

Kim then proceeded to pursue his PAGA claims. The employer asked the court to throw out his PAGA action on the basis that his rights had been completely redressed thus he was no longer an “aggrieved employee.” The trial court agreed with the employer that an employee who brings both individual claims and PAGA and then settles and dismisses the individual causes of action with prejudice is no longer an “aggrieved employee” under PAGA and no longer maintains standing under PAGA. The Court of Appeal affirmed and the California Supreme Court granted review.

California’s Supreme Court reversed on March 12, concluding that settlement of a plaintiff’s individual claims did not strip him of the ability to pursue PAGA.

Opinion Highlights

To answer the question of whether Kim still had standing to pursue PAGA, the Court looked to the statutory language of Labor Code section 2699(c) which has only two requirements for PAGA standing: the plaintiff must be an “aggrieved employee” (i.e., someone “who was employed by the alleged violator”) and “against whom one or more of the alleged violations was committed” (§ 2699(c)). The Court found that Kim was employed by the employer and personally suffered at least one Labor Code violation on which the PAGA claim is based.

The Court made clear that remedying a Labor Code violation, through settlement or other means, is distinct from the violation itself, stating:

“The statutory language reflects that the Legislature did not intend to link PAGA standing to the maintenance of individual claims when such claims have been alleged. An employee has PAGA standing if “one or more of the alleged violations was committed” against him. (§ 2699(c), italics added.) This language indicates that PAGA standing is not inextricably linked to the plaintiff’s own injury. Employees who were subjected to at least one unlawful practice have standing to serve as PAGA representatives even if they did not personally experience each and every alleged violation. (§ 2699(c).) This expansive approach to standing serves the state’s interest in vigorous enforcement.”

Impact On Employers

- An individual settlement will not prohibit an employee from pursuing a PAGA claim.
- You must be vigilant in preventing Labor Code violations because the takeaway that PAGA claims can be pursued regardless of whether a violation has been remedied or not leaves employers exposed to PAGA claims even when you have corrected or resolved certain Labor Code violations.
- Unless you can achieve perfection when it comes to the Labor Code, we will likely see PAGA claims continue to be on the rise.
- You should closely review policies and procedures with employment law counsel to ensure compliance.

You can stay updated on the latest news at our [California Employers Blog](#) and through [our legal alert system](#). If you have any questions about this decision, or how it may affect your business, contact your Fisher Phillips attorney or one of our attorneys in [our California offices](#).

- Irvine: 949.851.2424
- Los Angeles: 213.330.4500
- Sacramento: 916.210.0400
- San Diego: 858.597.9600
- San Francisco: 415.490.9000

This alert provides an overview of a specific state court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Copyright ©2020 Fisher Phillips LLP. All rights reserved.

Related People





Hannah Sweiss
Partner
818.230.4255
Email

Service Focus

Wage and Hour

Related Offices

Irvine

Los Angeles

Sacramento

San Diego

San Francisco

Woodland Hills