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Arbitration Agreements - A Potential Salvo for PAGA Claims, by Katherine Catlos, Esq. and Kartikey Pradhan, Esq., 2-22-2024

The use of arbitration clauses in employment agreements continue to be a hot button issue amid persistent class action lawsuits and representative claims brought under the Private Attorneys General Act (PAGA).

Enacted in 2004, PAGA allows aggrieved employees to bring civil claims on behalf of themselves and other current or former employees against employers for alleged Labor Code violations. Before PAGA, only the state could recover these civil penalties.

In the wake of PAGA, lawsuits continue to roll in with employers reportedly paying more than $8-billion in settlements since 2016. Consider, in a PAGA case, 75% of any judgment goes to the state's Labor and Workforce Development Agency and the other 25% is awarded to the aggrieved employees.

**Among the latest legal developments, a California state appellate court partially reversed a trial court's decision and ruled that a former employee's individual PAGA claim against Yamaha Motor Corp. regarding wage discrepancies should be arbitrated. Of note, the court also held that claims brought on behalf of other workers should continue through the courts after the ex-employee's arbitration concludes. In essence, two actions in two separate forums, with the court matter stayed while the arbitration proceeds. (*Piran v. Yamaha Motor Corp., et al.,No. G062198, 2024 WL 484845 (Cal. Ct. App. Feb. 8, 2024) (unpub.))*

Separately, the U.S. Court of Appeals for the Ninth Circuit issued a similar ruling in regards to a former Lowe's Home Centers workers PAGA claims on behalf of other aggrieved employees. (Johnson v. Lowe's Home Centers, LLC, D.C. No. 2:21-cv-00087-TLN-JDP, No. 22-16486, 9th Cir., Feb. 12, 2024 (WL 542830))

These decisions were in line with last year's Adolph v. Uber Technologies California Supreme Court ruling, a departure from the previous U.S. Supreme Court decision in Viking River Cruises v. Moriana. In Adolph vs. Uber, the court ruled that an employee can pursue a non-individual action on behalf of other employees in court even if their individual claims are subject to arbitration. (Adolph v. Uber Techs., Inc., (2023) 532 P.3d 682) (Viking River Cruises, Inc. v. Moriana, (2022) 142 S. Ct. 1906, reh'g denied)

These latest rulings only create more uncertainty for employers defending against PAGA lawsuits.

Given the current climate, employers should carefully review their arbitration agreements with employment counsel to determine if any updates are needed. They should also consider reviewing their policies and procedures to help mitigate any potential labor code violations in common target areas including meal and rest breaks and overtime. Said arbitration agreements might be revised as follows:

- *That the arbitration agreement covers an employee's individual PAGA claims, and;*
- *That the employee will agree to stay any representative PAGA claims while their individual claims are arbitrated.*

Kaufman Dolowich Can Help

In light of the recent rulings and ongoing litigation, employers need to tread carefully to mitigate risk from rising PAGA claims. Kaufman Dolowich's team of skilled labor and employment attorneys can assist with navigating the complexities of PAGA.

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