

Law.com, "Why Class and PAGA Waivers Matter More Than Ever: Lessons from 'Stoker v. Blue Origin,' by Katherine Catlos, Esq., 5-6-2026

Kaufman Dolowich's Katherine Catlos, San Francisco Partner, authored an informative article in Law.com on why class and PAGA waivers matter more than ever, drawing lessons from the Stoker v. Blue Origin decision.

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[Why Class and PAGA Waivers Matter More Than Ever: Lessons from 'Stoker v. Blue Origin'](#)

The decision offers a timely and practical roadmap for employers, particularly as Private Attorney Generals Act (PAGA) filings remain high and continue to drive representative litigation risk.

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A practical roadmap for employers: the litigation climate driving waiver strategy, the two-step enforceability analysis courts apply, and the drafting defects that doomed Blue Origin's agreement.

In April, the California Court of Appeals, Second District, ruled in Stoker v. Blue Origin (Cal. Ct. App., 2d Dist., Div. 3, Apr. 24, 2026), affirming the denial of a motion to compel arbitration, finding the agreement both procedurally and substantively unconscionable, and declining to sever multiple defective provisions. The decision offers a timely and practical roadmap for employers, particularly as Private Attorney Generals Act (PAGA) filings remain high and continue to drive representative litigation risk.

Background

For California employers, the "collective action" problem is no longer theoretical, it is operational. PAGA notices have increased tremendously among all industries and have become just as mainstream as discrimination and harassment claims.

In this environment, PAGA and class waivers and properly structured arbitration programs are an essential risk-management tool, not because they eliminate meritorious claims, but because they can prevent claims from being aggregated into a class-wide basis.

California courts continue to police the line between (i) enforceable agreements that channel individual claims into arbitration and (ii) overreaching provisions which California law treats as contrary to public policy.

As a side-note, employers may consider implementing a class action waiver only and exclude PAGA waivers because ultimately the employer may then be litigating PAGA claims on two fronts, but that is a discussion for another article.

The Two-Step Review Courts Apply to Employment Arbitration Agreements

California courts generally evaluate enforceability challenges to employment arbitration agreements through a two-step unconscionability framework: (1) procedural unconscionability (how the contract was formed) and, only if that threshold is met, (2) substantive unconscionability (whether the terms are overly harsh or one-sided).

Step 1: Procedural unconscionability (formation). This step examines oppression or surprise arising from unequal bargaining power. Most commonly, this is whether the agreement is a contract of adhesion offered on a take-it-or-leave-it basis as a condition of

employment. In *Stoker*, the court treated the agreement as adhesive where the employee was told he “had to sign” it, and that the terms were “standard” and effectively nonnegotiable.

Step 2: Substantive unconscionability (terms). In this step, the court explores whether the agreement’s actual provisions are unreasonably favorable to the stronger party (for example, overbroad scope, lack of mutuality, or illegal waivers). Courts apply a “sliding scale”: the more substantively oppressive the terms, the less procedural unconscionability is required (and vice versa). If the agreement contains multiple defects that reflect a systematic one-sided design, courts may refuse to enforce the agreement rather than sever isolated terms, especially where the remaining problems would require rewriting the contract.

In this case, *Stoker*, a former senior director of Blue Origin, sued the employer for multiple employment claims, including Fair Employment and Housing Act (FEHA) harassment/discrimination and retaliation, and Blue Origin moved to compel arbitration under an employee agreement governed by the Federal Arbitration Act (FAA). The appellate court affirmed denial of the motion, finding the arbitration provisions were procedurally and substantively unconscionable and could not be cured by severance.

The court found procedural unconscionability because the agreement was presented as a mandatory, standardized condition of employment. Critically, the employer offered no evidence that the employee had an opportunity to negotiate the arbitration terms. In the employment context, that adhesive setup supplies at least a “low degree” of procedural unconscionability, and thus triggered close scrutiny of the agreement’s substance.

The courts also determined the provisions were substantively unconscionable because the provisions made the agreement one-sided in that it had:

- **Overbroad scope (not limited to employment disputes).** The agreement required arbitration of “any and all” disputes between the employee and the company, broadly defined to include affiliates and current/former employees, meaning it could sweep in claims wholly unrelated to employment. In fact, the court used examples like a future car accident with an employee or damage from rocket debris. The court held this breadth itself rendered the agreement substantively unconscionable because the employer could have drafted a narrower, employment-related scope but did not.
- **Lack of mutuality via employer-friendly carveouts.** While the agreement routed the employee’s typical statutory claims into arbitration, it carved out for court the types of claims employers are most likely to bring (e.g., trade secret, confidentiality, non-solicitation and similar equitable-relief claims). That asymmetry where employee claims are heard in arbitration, yet the employer claims heard in court was treated as an unfair “one-sided carveout.”
- **Predispute jury-trial waiver for claims that end up in court.** The subject agreement purported to waive jury trial not only for arbitrable disputes, but also for claims excluded from arbitration or found nonarbitrable, thus mandating a bench trial. The court held this was contrary to California public policy and substantively unconscionable.
- **Representative-action waiver reaching PAGA.** The agreement required all claims, whether in arbitration or court, to proceed only on an individual basis, and expressly waived “representative” actions. The court held this ran afoul of California’s rule that a predispute categorical waiver of representative PAGA claims is unenforceable, making the clause substantively unconscionable.

Why Severance Did Not Save the Agreement

Even though the agreement contained a severability clause, the court refused to “blue pencil” its way to enforceability. The overbreadth problem (arbitrating virtually any dispute with a broad set of company-related parties) could be fixed only by *adding limiting language, that is essentially rewriting the contract, which courts will not do. And because the agreement contained multiple unconscionable provisions, the court viewed the defects as reflecting a systematic effort to secure an employer-advantage forum rather than a fair alternative to litigation rendering severance inappropriate “in the interests of justice.”*

Practical Drafting Takeaways:

Stoker reaffirms the need for employers to ensure their arbitration agreements are within the confines of the law, and not overreaching, by:

- **Constraining their scope.** Limit arbitration to disputes “arising out of or relating to employment, compensation, or termination,” and avoid definitions of “Company” that pull in unrelated affiliates and every current/former employee with no time scope. *Stoker* treated “any and all claims” breadth as a stand-alone substantive defect.
- **Drafting mutuality—then double-checking it.** If the employer includes a carve out for IP/trade secret or equitable-relief claims, consider whether parallel employee-initiated claims are also excluded, or whether the carveout is justified and narrowly tailored. As *Stoker* illustrates, employer-only carveouts are a recurring path to invalidation.
- **Using class waivers strategically, but not overstating them.** Class/collective waivers remain a core lever to reduce aggregated exposure, particularly in wage-and-hour matters where top settlements reach hundreds of millions annually.
- **Handling PAGA with precision (no categorical representative waiver).** Avoid drafting that can be read as waiving the right to bring a representative PAGA claim at all; courts treat categorical representative PAGA waivers as unenforceable and, in *Stoker*, as substantively unconscionable. Instead, draft to (i) compel arbitration of the employee’s individual PAGA component where permitted, and (ii) address stay mechanics for any remaining representative component.
- **Not including a pre-dispute bench-trial clause for non-arbitrable claims.** If a claim ends up in court, the agreement should not attempt to preemptively waive jury trial. *Stoker* flags this as an invalid, one-sided term.
- **Reducing procedural risk.** Consider an opt-out window, plain-language disclosures, and evidence of meaningful review time, all aimed at diminishing the “adhesion” narrative that triggers strict scrutiny.

Conclusion

As PAGA filings and high-dollar employment class settlements continue to climb, employers increasingly need arbitration programs that actually survive judicial review. *Stoker v. Blue Origin* is a reminder that courts will enforce arbitration, and many class waivers, but will not enforce overbroad, employer-favoring, or illegal provisions. Moreover, courts may refuse severance when the draft reflects a systematic tilt in favor of the employer. The lesson is not to abandon waivers; it is to draft them narrowly, mutually, and with California’s nonwaivable PAGA rules squarely in view.

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