

## Strike That! PAGA Claims Must be Manageable

Article By:

Charles S. Birenbaum

Tayanah C. Miller

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On Sept. 9, 2021, the California Court of Appeal in *Wesson v. Staples The Office Superstore, LLC*, supported what employers have been arguing since Private Attorneys General Act (PAGA) claims became the norm in wage and hour litigation: courts can and should strike PAGA actions if they are unmanageable.

### Summary of the case:

The facts underlying the decision sound like those of many wage and hour cases. In this case, a former employee sued his employer alleging that, among other things, the employer was liable for penalties under PAGA stemming from the employer's misclassification of him—and others similarly aggrieved—as an employee exempt from certain wage and hour laws. In the trial court, after defeating plaintiff's motion for class certification, the employer moved to strike the plaintiff's PAGA claim on the grounds that it would be unmanageable at trial given the employer's affirmative defenses. The plaintiff countered by arguing that: (1) the court lacked authority to ensure that PAGA actions were manageable and; (2) even if the court had such authority, his case was manageable. The trial court ultimately agreed with the employer, but not before the court allowed the plaintiff to submit a trial plan to support that his claims were manageable. At a hearing on plaintiff's proposed trial plan, the parties estimated they would need a total of six trial days per individual employee, which would have led to a trial lasting eight years. Following that hearing, the court granted the employer's motion to strike, commenting that even if one were to cut the parties' estimate in half, "[a] four-year trial involving witnesses and documents individually pertaining to each of the 346 General Managers does not meet any definition of manageability."

Plaintiff appealed. The Court of Appeal affirmed. It held that courts have the inherent authority to manage the proceedings before them and, through this authority, may ensure that PAGA claims will be manageable at trial. The Court of Appeal reasoned that courts were not "powerless to address the challenges presented by large and complex PAGA actions [nor] bound to hold dozens, hundreds, or thousands of minitrials involving diverse questions, depending on the breadth of the plaintiff's claims." The appellate court also noted that in *Williams*, the California Supreme Court acknowledged the potential for manageability difficulties in PAGA actions. The court then went one step further by stating if PAGA claims cannot be efficiently managed at trial, courts *should* preclude plaintiffs from

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using the representative action procedure.

This may be welcome news for employers, but it is moderated by the Court of Appeal's dicta on ensuring manageability. The Court of Appeal made clear that "ensuring the manageability of claims is not tantamount to discarding them on an employer's mere objection." Further, "[a] trial court's finding that a claim is unmanageable as presented will not always result in striking the claim." Instead, "if possible, the court should work with the parties to render a PAGA claim manageable by adopting a feasible trial plan or limiting the claim's scope."

### **Open issues:**

The court left undecided which party—a plaintiff employee or defendant employer—bears the burden to prove manageability.

### **Key takeaways:**

Employers now have PAGA-specific authority to support their arguments that a plaintiff's PAGA claims should be manageable. This will be a powerful tool to attack unwieldy PAGA claims and may ward off the common plaintiff tactic to continue to pursue PAGA claims with respect to claims for which class certification has been denied. The decision also confirms that a motion to strike, supported by evidence, is the appropriate procedural device to attack manageability.

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