

## California Court of Appeal Confirms Trial Courts' Inherent Power to Strike or Limit Unmanageable PAGA Lawsuits

Article By:

Alexander M. Chemers

David Swarczstejn

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On September 9, 2021, a California Court of Appeal issued its ruling in [\*Wesson v. Staples the Office Superstore, LLC\*](#), delivering a welcome victory to employers battling representative actions under the Private Attorneys General Act (PAGA). Under the 2004 law, an “aggrieved employee” is empowered to commence a PAGA representative action on behalf of all other “aggrieved employees” to seek civil penalties for alleged violations of the California Labor Code. Acknowledging that the fundamental nature of PAGA lawsuits imposes an enormous burden on both employers and trial courts, the Court of Appeal of the State of California, Second Appellate District, held in *Wesson* that “(1) courts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable; [and] (2) as a matter of due process, defendants are entitled to a fair opportunity to litigate available affirmative defenses, and a court’s manageability assessment should account for them.”

The question of whether a court could dismiss or limit PAGA claims based on manageability concerns had for years been hotly contested by employers and employees embroiled in PAGA disputes, but no appellate court had squarely addressed the issue. The Supreme Court of California previously acknowledged that PAGA lawsuits might raise manageability difficulties in its 2017 ruling in the seminal [\*Williams v. Superior Court\*](#) decision. In *Williams*, the supreme court examined a lower court’s ruling that discovery in a PAGA action could be made contingent on a PAGA plaintiff’s ability to demonstrate that a uniform companywide policy gave rise to alleged violations of the California Labor Code. After rejecting the lower court’s ruling, the supreme court acknowledged that “proof of a uniform policy is one way a plaintiff might seek to render trial of the action manageable.” But the supreme court did not discuss what should happen if a trial court deemed a PAGA lawsuit unmanageable.

*Wesson* answers the question left open by *Williams* in two significant ways. First, the appellate court’s decision confirms that a trial court can preclude a PAGA claim from proceeding to trial, in whole or in part, when it cannot be tried fairly and efficiently due to its scope or the nature of the legal issues. This can be the case, for example, when the trial would require individualized evidence and the claims cover a large number of employees. Second, the Court of Appeal made clear that the assessment of whether a PAGA lawsuit is too unmanageable to proceed to trial extends not only to a

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plaintiff's proof of its prima facie claims but also to a defendant's affirmative defenses.

## Key Takeaways

The *Wesson* decision comes at a time when both employers and the state's trial courts find themselves burdened by an explosion of PAGA lawsuits. Most recently, an increase in both the number of PAGA lawsuits and the number of claims they have asserted has been fueled by the *Williams* decision's approval of broad discovery in PAGA cases and other rulings that make it harder for defendants to limit their scope.

In this context, the *Wesson* decision should serve to sharply curtail the extent to which far-reaching and unwieldy PAGA actions actually proceed to trial. Employers engaged in PAGA litigation may want to evaluate the prospect for a manageability defense early in litigation, develop a discovery and evidentiary plan that would support the defense, and seek in the case management process to have the trial court set as early a timeframe as practicable to address manageability.

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