

U.S. Supreme Court Hears Oral Arguments on Waiver of PAGA Claims in Arbitration Agreements

Article By:

Mia Farber

Scott P. Jang

In December 2021, the [U.S. Supreme Court agreed to hear arguments in *Viking River Cruises v. Moriana* \(Viking\)](#). The question presented in *Viking* is whether the Federal Arbitration Act (FAA) requires enforcement of a bilateral arbitration agreement providing that an employee cannot raise representative claims, including representative claims under California's [Private Attorneys General Act \(PAGA\)](#).

This case arose out of an action in California state court in which an employee had previously signed an arbitration agreement with her employer, Viking River Cruises, that included a waiver to bring or participate in representative actions including under PAGA. Plaintiff filed suit in state court, and both the state court and the California Court of Appeal relied on the California Supreme Court's decision in *Iskanian v. CLS Transportation Los Angeles LLC*, to decline to enforce the representative action waiver and deny compelling individual arbitration of the PAGA claim. The California Supreme Court declined to consider the case.

On March 30, 2022, the U.S. Supreme Court heard oral arguments in *Viking*. Viking River Cruises' arguments focused on U.S. Supreme Court precedent establishing the foundational principle that when parties agree to resolve their disputes by bilateral arbitration those agreements are fully enforceable under the FAA and preclude class or collective actions. Viking River Cruises argued that PAGA actions have many of the same attributes as class actions and collective actions, particularly the notion that the plaintiff seeks to amass and adjudicate alleged violations of the California Labor Code of a large number of *other* employees. Viking River Cruises argued that such actions are inconsistent with the parties' agreement to arbitrate claims bilaterally on an individual basis, thereby triggering preemption under the FAA.

Viking River Cruises faced the most resistance from Justices Breyer, Kagan, and Sotomayor, who asked the bulk of the questions during arguments. These Justices seemed troubled that by agreeing to bilateral arbitration a plaintiff would be excluded not only from arbitrating a PAGA claim but also from bringing it to court. Justices Kagan and Sotomayor specifically inquired whether this would effectively eliminate the State of California's chosen mechanism for enforcing compliance with its Labor Code.

Where the U.S. Supreme Court ultimately lands on this issue will have important consequences on employers in California. As Viking River Cruises noted in its closing remarks during oral argument, an average of “17 PAGA complaints are filed every day.” A decision is expected by July 2022.

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