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In Viking River Cruises, US Supreme Court Sides With Employers: Individual PAGA Claims Are Arbitrable – For Now

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In a victory for California employers, the U.S. Supreme Court held in *Viking River Cruises, Inc. v. Moriana* that the Federal Arbitration Act (FAA) requires enforcement of arbitration agreements that waive an employee's right to bring a Private Attorneys General Act (PAGA) claim on a representative basis – requiring such claims be brought on an individual basis in arbitration. The Court further held that "PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate [individual arbitration] proceeding." As a result, an employee "lacks statutory standing to maintain her non-individual claims in court, and the correct course [i]s to dismiss her remaining claims."

Facts of the Case

Angie Moriana, a former sales representative for Viking River Cruises, quit her job and filed a PAGA complaint in California state court. She claimed she had not received her final paycheck within 72 hours of her separation (what the Court characterized as her individual claim) as well as a wide array of other Labor Code violations other Viking employees allegedly suffered (i.e., non-individual claims).

Viking moved to compel arbitration of Moriana's individual claim and to dismiss her non-individual claims. The company argued that since Moriana had signed a mandatory arbitration agreement when she was hired, she was required to arbitrate her individual claims. The mandatory arbitration agreement also included a Class and Representative Action Waiver, pursuant to which Moriana had agreed she "could not bring any dispute as a class, collective, or representative action under PAGA."

The trial court, relying on *Iskanian v. CLS Transportation Los Angeles*, denied Viking's motion to compel, and a California court of appeal affirmed. In doing so the appellate court held that categorical waivers of PAGA standing are contrary to state policy.

U.S. Supreme Court Decision

The Supreme Court granted certiorari and held the FAA preempts the California Supreme Court's *Iskanian* holding.

First, the Supreme Court held that Viking could compel arbitration of Moriana's individual PAGA claim. The Court reasoned that because Moriana had willingly consented to arbitrate her individual claims, the FAA required arbitration of her individual claims. Second, as to the non-individual claims, the Court reasoned that — based on current PAGA standing requirements — a plaintiff could not maintain a non-individual PAGA claim unless the plaintiff also maintained an individual PAGA claim in that action. Because Moriana had agreed to arbitrate her individual PAGA claim, she lacked standing to proceed in court, and the Supreme Court ordered her remaining non-individual PAGA claims dismissed.

Practical Implications

This decision may dramatically change how parties litigate PAGA lawsuits in California. Employers who do not have arbitration programs that include class and representative action waivers may wish to implement such programs. Employers who do have arbitration programs may consider confirming they include representative action waivers that comply with *Viking*. In addition, California employers currently litigating PAGA claims in court may be able to compel arbitration based on previously signed arbitration agreements that contain representative action waivers.

In her concurrence, Justice Sotomayor commented that in reaching its conclusion, the Court relied on the fact that California currently has "no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding." The plaintiffs' bar may rely on that point if it appeals to the California legislature for a fix.

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