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Supreme Court Rules California Employee Is Bound By Arbitration Agreement She Signed and Thus, Lacks Standing to Bring Non-individual PAGA Claims Against Her Employer

On May 15, 2022, the U.S. Supreme Court issued the much-anticipated and employer-favorable ruling in *Viking River Cruises v. Moriana*, holding, in an 8-1 decision, that the Federal Arbitration Act (FAA) preempts the California Private Attorneys General Act (PAGA). The Court's decision means employees who signed arbitration agreements may not avoid arbitration of their individual PAGA claims. Further, once an employee's PAGA claim is in arbitration, they have no standing to bring PAGA claims on behalf of other employees in court.

While many employers were hoping *Viking River* would end PAGA claims altogether. The Court left the door open for legislative amendments to the PAGA statute to allow an employee to bring a PAGA claim in Court.

Following this ruling, employers who do not have arbitration agreements should seriously reconsider. Employers who have arbitration agreements should have legal counsel review them to ensure compliance with the *Viking River* ruling.

Case Facts

Moriana was employed as a sales representative for Viking. She signed an agreement to arbitrate any dispute arising out of her employment. The agreement included a "Class Action Waiver" providing that in arbitration, the parties could not bring any dispute as a class, collective, or representative PAGA action. A severability clause in the agreement provided that if the waiver was found invalid, any class, collective, representative, or PAGA action would presumptively be litigated in court, but if any "portion" of the waiver remained valid, it would be "enforced in arbitration."

Moriana filed a PAGA action against Viking in a California court alleging Viking's failure to provide her with final wages. Her complaint asserted various wage and hour violations allegedly sustained by other Viking employees, such as minimum wage, overtime, meal periods, rest periods, timing of pay, and pay statement claims.

In response, Viking moved to compel arbitration of Moriana's "individual" PAGA claim, and to dismiss the PAGA claims allegedly sustained by other employees. The trial court denied arbitration, and the California Court of Appeal affirmed, holding that waivers of PAGA standing are contrary to state policy, and that PAGA claims cannot be split into arbitrable individual claims and nonarbitrable "representative" claims.

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Court's Ruling

Reversing the lower court decisions, the Supreme Court noted that the FAA, itself enacted to address judicial hostility toward arbitration, renders arbitration agreements “valid, irrevocable, and enforceable,” unless grounds exist at law or in equity for revocation of any contract (i.e., fraud, unconscionability). The FAA “preempt[s] any state rule discriminating on its face against arbitration—for example, a law ‘prohibit[ing] outright the arbitration of a particular type of claim.’” (Citations). The right to arbitrate would not be a true right if a state law could be used “to transform ‘traditiona[l] individualized . . . arbitration’ into the ‘litigation it was meant to displace’ through the imposition of procedures at odds with arbitration’s informal nature”, or if generally applicable law could be used “to coercively impose arbitration in contravention of the ‘first principle’ of our FAA jurisprudence” that “[a]rbitration is strictly ‘a matter of consent.’” Consequently, the Court has held that “a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so.”

The Court found that a conflict existed between PAGA’s procedural structure and the FAA, deriving from PAGA’s mechanism of claim joinder allowing aggrieved employees to use the violations they personally suffered to join other claims that could have been brought by the LWDA in an enforcement action. The Court explained that this “prohibition on contractual division of PAGA actions into constituent claims unduly circumscribes the freedom of parties to determine ‘the issues subject to arbitration’ and ‘the rules by which they will arbitrate,’” and “does so in a way that violates the fundamental principle that ‘arbitration is a matter of consent.’” In other words, California state law “cannot condition the enforceability of an arbitration agreement on the availability of a procedural mechanism that would permit a party to expand the scope of the arbitration by introducing claims that the parties did not jointly agree to arbitrate.”

The Court concluded that a state rule “imposing an expansive rule of joinder in the arbitral context would defeat the ability of parties to control which claims are subject to arbitration. ... Requiring arbitration procedures to include a joinder rule of that kind compels parties to either go along with an arbitration in which the range of issues under consideration is determined by coercion rather than consent, or else forgo arbitration altogether. Either way, the parties are coerced into giving up a right they enjoy under the FAA.” The Court concluded that PAGA’s compulsory joinder rule did exactly that because “[t]he only way for parties to agree to arbitrate one of an employee’s PAGA claims is to also ‘agree’ to arbitrate *all other* PAGA claims in the same arbitral proceeding.” The Court added, “[a]rbitration is poorly suited to the higher stakes” of massive-scale disputes of this kind.

The Court held that the FAA preempts the earlier rule of *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, to the extent that case precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.” The arbitration agreement between Viking and Moriana purported to waive “representative” PAGA claims and under *Iskanian*, that provision was “invalid if construed as a wholesale waiver of PAGA claims.” That aspect of *Iskanian* is not preempted by the FAA, so the Court found the agreement remains invalid if interpreted that way. However, a severability clause in the agreement provided that if the waiver provision is invalid, any portion of the waiver that remains valid must still be “enforced in arbitration”; thus, Viking was entitled to enforce the agreement to the extent it mandated arbitration of Moriana’s individual PAGA claim. Though the lower courts refused to do that based on the rule that PAGA actions cannot be divided into individual and non-individual claims, the Court held that rule to be preempted, thus allowing Viking to compel arbitration of Moriana’s individual claim.

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As to Moriana's non-individual claims, the Court held that they may not be dismissed simply because they are "representative." However, PAGA provides no mechanism for a court to adjudicate non-individual PAGA claims. The Court reasoned that a plaintiff could maintain non-individual PAGA claims in an action only by virtue of also maintaining an individual claim. Consequently, when the employee's own dispute is "pared away from a PAGA action," she lacks statutory standing to continue to maintain her non-individual claims in court, and the correct course is to dismiss them.

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