SUPREME COURT RULES CALIFORNIA ARBITRATION AGREEMENTS BETWEEN EMPLOYERS AND EMPLOYEES ARE ENFORCEABLE AS TO EMPLOYEES' INDIVIDUAL PAGA CLAIMS

By Melanie Kim

On June 15, 2022, the United States Supreme Court issued its decision in *Viking River Cruises, Inc. v. Moriana*, a closely watched case regarding the Federal Arbitration Act ("FAA") and the California Labor Code Private Attorneys General Act of 2004 ("PAGA"). PAGA allows aggrieved employees to sue over alleged Labor Code violations on behalf of themselves and other employees to recover civil penalties.

In *Viking River Cruises*, a sales representative accused her employer of violating the California Labor Code and filed a PAGA action in court. But the employer sought to enforce an arbitration agreement they had signed, which contained a class action waiver (waiving the right to litigate PAGA actions in court) and a severability clause (specifying that if the waiver was found invalid the dispute would be litigated in court, but any valid portion of the waiver would be enforced in arbitration). The California Court of Appeal applied the California Supreme Court's 2014 decision in *Iskanian v. CLS Transportation Los Angeles, LLC*, to hold that PAGA claims cannot be divided into arbitrable "individual" claims (claims based on PAGA violations sustained by the plaintiff) and nonarbitrable "representative" claims (claims based on events involving other employees), and so the parties must litigate the entire action in court.

In a 8-to-1 decision, the Supreme Court overturned *Iskanian* and held that a PAGA plaintiff's individual and representative claims can be divided, and that individual claims can be committed to arbitration via contractual agreement. The Court found that California case law "present[ed] unwilling parties with an unacceptable choice between being compelled to arbitrate using [class arbitration] procedures and forgoing arbitration all together."

The Court did not overrule *Iskanian*'s primary holding prohibiting waivers of representative PAGA claims. However, in this case, the parties' arbitration agreement contained a severability clause that allowed the waiver of individual PAGA claims to be enforced in arbitration, so only the representative claims remained in court. The Court concluded that "when an employee's own dispute is pared away from a PAGA action, the employee is no different from a member of the general public, and PAGA does not allow such persons to maintain suit." To that end, the Court dismissed the representative claim.

In sum, businesses with employees in California should review their existing arbitration agreements with employees for enforceability under this new rule, and to mitigate the risks of PAGA class action litigation. There are two important points to keep in mind: (1) The FAA does not always apply to all California arbitration agreements,[1] and (2) the California Legislature may, in response to this decision, revise PAGA so that representative claims may be litigated in court even where the employee's individual claims have been committed to arbitration.

There may other legal hurdles to ensure the FAA applies to an arbitration agreement, and

overrides conflicting state case law. If you have any questions regarding this topic or need any other assistance, please do not hesitate to reach out to us. Donahue Fitzgerald's Employment Attorneys are committed to providing your business with our best guidance.

[1] See, e.g., Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 469 (1989) (allowing a California Arbitration Act provision allowing a court to stay arbitration to apply despite a directly conflicting FAA provision because the parties agreed that their arbitration agreement would be governed by California law)

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