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## **FAA Preempts California Prohibition on PAGA Arbitration Waiver**

Employers finally get some relief from the PAGA claims ravaging California agriculture by way of today's pivotal long-awaited opinion by the United States Supreme Court in *Viking River Cruises, Inc., v. Moriana*. The Court took up the question of whether the Federal Arbitration Act ("FAA") preempts a California Supreme Court decision which says that you cannot force employees to arbitrate PAGA claims. The answer from the US Supreme Court is **yes**, the California rule of law is preempted, and thus no longer applicable, to the extent that the waiver precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.

The case before the Court involved Viking River Cruises, Inc., which is a company that offers cruises around the world. The Plaintiff in that case, Angie Moriana was a sales representative for Viking Cruises. At the time of hire, Moriana executed an arbitration agreement to arbitrate any disputes arising out of her employment. Specifically, the arbitration agreement contained a Class Action Waiver waiving Moriana's right to bring class, collective, or representative PAGA actions. After her employment ended, Moriana filed a PAGA action in California state court alleging that Viking had violated various wage and hour laws, i.e., meal period violations, minimum wages violations, overtime violations, time of pay violations, etc. Viking moved to compel arbitration of her individual claims and to dismiss her PAGA claims. The trial court denied the motion and the Court of Appeal affirmed, holding that the "categorical waivers of PAGA standing are contrary to state policy and that PAGA claims cannot be split into arbitrable individual claims and nonarbitrable 'representative' claims."

The California rule came from *Iskanian v. CLS Transp. Los Angeles, LLC*, (2014) 59 Cal. 4th 348, 382 where the California Supreme Court held that "pre-dispute agreements to waive the right to bring 'representative' PAGA claims are invalid as a matter of public policy." In its analysis of the *Iskanian* opinion, the Court recognized a distinguishable difference between a plaintiff's "individual PAGA claim" meaning the violations suffered by the plaintiff and a representative claim, acting as the representative of the State or a representative claim acting as a representative of all other purportedly aggrieved employees. The Court opined that *Iskanian* prohibits waivers of an individual's representative standing to bring PAGA claims and the ability to resolve the employee's individual violations through arbitration. The Court has traditionally held that "States cannot coerce individuals into forgoing arbitration by taking the individualized and informal procedures characteristic of traditional arbitration off the table." Thus, the Court held that *Iskanian*'s prohibition on the division of PAGA claims is incompatible with the FAA as it coerces parties to proceed with the case in civil court rather than arbitration. However, the Court was clear to limit its decision by indicating that the rule of law from *Iskanian* which precludes wholesale waivers of PAGA claims was not preempted by the FAA.

The Court went on to clarify the process for disposing of the PAGA representative claims after the individual claims have been addressed through arbitration:

Under PAGA's standing requirement, a plaintiff can maintain non-individual PAGA claims in an action only by virtue of also maintaining an individual claim in that action. 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.

### **What This Means for Employers:**

We are all familiar with the PAGA claims being filed all over the California agriculture industry due to the quickly accumulating penalty rate and the excessive attorney fees available to plaintiff's counsel in PAGA actions. Fully executed effective arbitration agreements may now save employers the time and expense of litigating PAGA claims.

This decision is a victory for employers who have executed arbitration agreements specifically addressing PAGA claims with employees. To the extent that the arbitration agreement is written in a manner which does not wholly waive PAGA representative claims but instead requires an employee to arbitrate his or her individual PAGA violations, the employee can be forced to arbitrate his or her claims. We can expect there to be push back from plaintiff's counsel as to whether an arbitration agreement wholly waives the PAGA claims or allows for severability of individual PAGA claims. Resolution of the individual claims requires the dismissal of the entire PAGA action, as that individual no longer has standing to bring the PAGA representative action. Employers should immediately update their arbitration agreements to include language consistent with this ruling.

*The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.*