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ALERTS

Labor And Employment Law Alert - Supreme Court Leaves California's Carve-Out For PAGA Wage-and-Hour Representative Actions Intact

January 23, 2015 | Atlanta | Chicago | Columbus | Delaware | Elkhart | Fort Wayne | Grand Rapids | Indianapolis | Los Angeles | Minneapolis | South Bend

The U.S. Supreme Court has denied certification of a petition challenging a California Supreme Court ruling that representative Private Attorneys General Act (PAGA) claims cannot be waived in employment arbitration agreements. As a result, California's carve-out exempting PAGA claims from arbitration agreements remains intact, and employees can continue to bring PAGA representative actions even if they have signed arbitration agreements with class and representative action waivers.

The case at issue, *Iskanian v. CLS Transportation Los Angeles, LLC,* 59 Cal. 4th 348 (2014), has been closely watched, since the California Supreme Court held that the plaintiff, a limo driver who signed an arbitration agreement that contained a class and representative action waiver, could nevertheless pursue a wage-and-hour representative action against his former employer. In reaching its decision, the California Supreme Court reasoned that PAGA claims are not subject to arbitration agreements, because when bringing such claims, a plaintiff essentially steps into the shoes of the state's California's Labor and Workforce Development Agency and is authorized to seek and split any recovered penalties with the state.

In its petition for review, CLS Transportation Los Angeles, LLC argued that in creating a carve-out for PAGA claims, the California Supreme Court had ignored the preemptive effect of the Federal Arbitration Act and the United States Supreme Court's rulings in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 321 (2011) and *American Express Co. v. Italian Colors Restaurant,* 570 U.S. ___ [133 S.Ct. 2304] (2013) – all of which call for arbitration agreements, including those with class and representative action waivers, to be enforced according to their terms. In response, Iskanian argued that the California Supreme Court's decision, which remanded the case, was not a final decision so was unripe for review and that there was no split in the courts that needed to be addressed.

By denying certification, the U.S. Supreme Court has left California's PAGA carve-out intact, and California employers should brace for the continuation of representative PAGA court cases notwithstanding otherwise valid arbitration provisions.

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