

SCOTUS Invalidates CA Law Preventing Arbitration of Individual PAGA Claims When a Valid Arbitration Agreement Exists

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In its 12th case regarding arbitration in the last five years, the Roberts court fascination with the dispute resolution method continues. In the second of two decisions regarding arbitration this week, the Court reestablished the primacy of the Federal Arbitration Act (FAA). In reasoning similar to the line of decisions that have enforced class-action waivers, the Court enforced an arbitration agreement and required arbitration of an employee's individual claims under the California Labor Code Private Attorneys General Act of 2004 (PAGA).

In *Viking River Cruises v. Moriana*, the Court held that the FAA preempts California law that invalidates contractual waivers of an employee's right to assert representative claims under PAGA. PAGA provides that employees alleging an employer has violated one provision of the California Labor Code may also step into the shoes of the state attorney general and assert that the employer has also harmed others by violating different provisions of the California Labor Code (Representative PAGA Claims). In doing so, the Supreme Court overruled part of *Iskanian v. CLS Transportation*, an important California Supreme Court ruling. In that case, the California Supreme Court ruled that California law required that a contractual provision by which an employee waived his or her right to assert Representative PAGA Claims was unenforceable. The California Supreme Court's ruling in *Iskanian* also held that agreements to separately litigate individual PAGA claims and Representative PAGA Claims were unenforceable.

In *Viking River Cruises*, however, the Court concluded that the FAA preempted the second aspect of the *Iskanian* rule and allows an employer to compel arbitration of the employee's individual PAGA claim when there is a valid arbitration agreement.

Case Background

Plaintiff Angie Moriana's (Moriana) employment agreement with defendant Viking Cruises contained an arbitration agreement, as well as a "class-action waiver," providing that the parties could not assert class-action, collective, or Representative PAGA Claims in any arbitration. The agreement also contained a severability clause, providing that the class-action waiver was found invalid, the case would be litigated, but if a portion of the clause remained enforceable, it would be enforced in arbitration.

After leaving her position at Viking, Moriana sued Viking under PAGA for violating the California Labor Code by failing to pay her final wages within 72 hours after her employment ended. In addition, Moriana also asserted Representative PAGA Claims based on "a wide array of other code violations allegedly sustained by other Viking

employees.” Upon filing suit, Viking moved to compel arbitration of her individual PAGA claim for failure to timely pay wages and to dismiss the Representative PAGA Claims pursuant to the severability clause. The California trial court denied the motion on the grounds that the *Iskanian* rule prohibited both waivers of PAGA Representative Claims, and the attempt to sever the individual claim from the Representative PAGA Claims. The California Court of Appeals affirmed, and the California Supreme Court denied review. The Supreme Court granted certiorari to determine whether the FAA preempted the *Iskanian* rule.

The Court’s Decision

The Supreme Court held that the FAA preempted the portion of the *Iskanian* rule, which did not allow for severability of PAGA actions “insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.” As the Court explained, “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 arbitration by introducing claims that the parties did not jointly agree to arbitrate.” It concluded that Viking “was entitled to enforce the agreement insofar as it mandated arbitration of Moriana’s individual PAGA claim.” Accordingly, that portion of her individual PAGA claim could be compelled into arbitration. The Court further concluded that Moriana’s nonindividual claims, *i.e.*, her Representative PAGA Claims, must be dismissed because she lacked standing to pursue her Representative PAGA Claims in court. The Court ruled, “PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding.”

The Court’s conclusion of FAA preemption is not new. In fact, *Viking River Cruises* traces a straight line from the 2018 *Epic Systems v. Lewis* case. In that decision, SCOTUS invalidated an aspect of the National Labor Relations Act, which barred parties from enforcing arbitration provisions requiring individual arbitration. *Viking River Cruises* applies the same thought process on a state level.

Implications

The Court’s decision is a big win for employers who have valid arbitration agreements with their employees because if an employee’s individual claims are required to be arbitrated, then the employee lacks standing to pursue nonindividual, representative claims under PAGA in court. As a result, this decision is likely to reduce the volume of PAGA litigation going forward. A prudent employer should closely review its employment agreements with experienced employment law counsel. As the authors mentioned in a [prior article](#), a prudent employer should not delay in filing a motion to dismiss and compel arbitration, or it could be deemed to have waived its right to compel arbitration.

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