

Supreme Court Provides Roadmap for Avoiding Large PAGA Actions

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On June 15, 2022, in *Viking River Cruises vs. Moriana*, the U.S. Supreme Court ruled 8-1 (with Justice Thomas the lone dissenter) that employers can compel arbitration of an employee's individual claims regarding labor code violations under California's Private Attorneys General Act.

As we previously reported ([here](#)), the case centered on Viking's efforts to enforce an arbitration agreement in which Moriana agreed to arbitrate "any dispute" arising from her Viking employment and further agreed that the arbitration would be bilateral, i.e. with no "class, collective, representative or private attorney general action" asserted ([see prior analysis here](#)). The California Supreme Court took up this precise issue in 2014 in *Iskanian v. CLS Transportation*. In *Iskanian*, the court decided in favor of the employee by striking the parties' PAGA-specific bilateral arbitration provision as inconsistent with California's PAGA law and public policy. *Iskanian*, however, was decided by the California Supreme Court before the U.S. Supreme Court demonstrated its consistently broad deference to the Federal Arbitration Act's ("FAA") recognition of the enforceability of arbitration agreements.

In *Moriana*, the Supreme Court held that, under the FAA, bilateral arbitration agreements must be respected, and that courts must order the parties to arbitrate a California employee's *individual* PAGA claim if an enforceable arbitration agreement so requires. The Court further held that under the current state of California law, where an employee is compelled by contract to arbitrate her individual PAGA claim, the employee lacks statutory standing to pursue her non-individual, representative PAGA claims. For these reasons, the Court held that Plaintiff Moriana must arbitrate her own individual PAGA claims pursuant to her valid, bilateral arbitration agreement with Viking Cruises, and that Moriana's non-individual or representative PAGA claims must therefore be dismissed.

Justices Alito, Breyer, Sotomayor, Kagan, and Gorsuch joined this opinion in full with Justices Roberts, Kavanaugh, and Barrett concurring with the majority's holding that an employee can agree to arbitrate their *individual* PAGA claims, but also stating that they would not have addressed the outcome of Moriana's non-individual PAGA claims. Justice Sotomayor also concurred, but her concurrence elaborated to say that California courts could now clarify when an employee has standing over non-individual claims. Justice Sotomayor also noted that the legislature could modify PAGA to provide for standing to employees to pursue non-individual PAGA claims when their individual PAGA claims are addressed in a different forum (e.g., arbitration).

The *Moriana* decision represents a significant development in the body of case law interpreting the FAA and California's PAGA law. It stands for the proposition that employers, at least for now, may

avoid all representative, class, and collective actions in the state if they have a valid arbitration agreement that, among other terms, expressly requires that an employee's *individual* PAGA claims be adjudicated in arbitration. Employers using such arbitration agreements will - unless California courts or the legislature intervenes - no longer risk the existence of a court-based representative PAGA action while parallel individual claims proceed in arbitration.

Employers in California should review their current arbitration agreements, specifically those provisions regarding PAGA, to ensure that they are in keeping with today's ruling. Employers without arbitration agreements may explore whether implementing such agreements is beneficial now that they will dispose of representative PAGA actions in addition to class and collective actions. As always, Benesch's Labor and Employment team stands ready to assist our clients not only in ensuring that their arbitration agreements take advantage of the *Moriana* decision, but also in navigating the various other murky waters of California's labor and employment laws and jurisprudence.

For more information on this ruling or to learn how it can affect your business, contact a member of Benesch's [Labor & Employment Practice Group](#).

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