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California Supreme Court Eases Class Action Rules Under Private Attorney General Act

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The California Supreme Court has made it easier for workers to seek civil penalties against their employers for Labor Code violations, ruling unanimously that employees do not have to qualify their lawsuits under the California Private Attorney General Act ("PAGA") as class actions. *See* Cal. Labor Code §§ 2699 *et seq.*; *see also Arias v. Superior Court, 2009 Cal. LEXIS 6017 (Cal., June 29, 2009).*

Many have referred to PAGA as a bounty hunter law, because it allows an "aggrieved employee" to bring an action on behalf of himself and other current or former employees to recover potentially large and sometimes doubled civil penalties for Labor Code violations, as well as attorneys' fees if they prevail in the lawsuit. *See* Cal. Labor Code § 2699(a). Of the civil penalties recovered, 75 percent goes to the Labor and Workforce Development Agency ("LWDA"), and the remaining 25 percent goes to the "aggrieved employees." *Id.* § 2699(i). Before bringing a PAGA claim, an employee must give written notice of the alleged Labor Code violation to both the employer and the LWDA. *Id.* § 2699.3(a). If the LWDA notifies the employee and the employer that it does not intend to investigate, or if the agency fails to respond within 33 days, the employee may then bring a civil action against the employer. *Id.* § 2699.3(a)(2)(A). If the LWDA decides to investigate, however, it has 120 days to do so, and if the LWDA subsequently decides not to issue a citation or fails to issue a citation within 158 days of the postmark date of the employee's notice, the employee may commence a civil action. *Id.* § 2699.3(a)(2)(B).

In *Arias*, a former dairy employee brought an action against his former employer, Angelo Dairy, for various Labor Code violations. The employee brought the first through sixth causes of action on behalf of himself only. The seventh through eleventh causes of action, however, including causes

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of action for violation of California's Unfair Competition Law ("UCL") and for civil penalties pursuant to PAGA, were brought on behalf of himself as well as other current and former employees of Angelo Dairy. The trial court granted the employer's motion to strike the seventh through eleventh causes of action on the ground that the plaintiff failed to comply with the pleading requirements for class actions. The Court of Appeal affirmed as to the employee's UCL claim but held that claims under PAGA are not subject to class action requirements. The parties then cross-petitioned the California Supreme Court for review.

The California Supreme Court agreed that PAGA plaintiffs need not meet class action requirements. The Court also held, however, that plaintiffs purporting to sue on behalf of others in non-PAGA cases, including under the UCL, must meet class action requirements.

In particular, the Supreme Court agreed that Proposition 64, the 2004 voter initiative that imposed particularized standing and injury requirements on all UCL plaintiffs, requires plaintiffs to satisfy strict class action requirements when seeking to recover lost wages and other damages under the UCL.

Thus, while employees will continue to be required to meet strict class action requirements for claims brought under the UCL, the Court's decision in *Arias* makes it easier for employees to bring PAGA claims. As such, it is likely that the number of PAGA claims will increase, especially in light of California's worsening financial crisis, which undoubtedly will affect the LWDA's ability and willingness to conduct its own investigations of alleged Labor Code violations.

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