BLOGS

Employment Law Updates

Finally – A Victory for California Employers

Just this month the Supreme Court of the United States issued its decision in *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, 2022 WL 2135491 (U.S. June 15, 2022), wherein it partially reversed the California Supreme Court's holding in *Iskanian v. CLS Transp. Los Angeles, LLC*. The case deals with the controversial Private Attorneys General Act ("PAGA"). California's Labor and Workforce Development Agency ("LWDA") is authorized to enforce California's labor laws; however, because the legislature believed that the LWDA did not have sufficient resources to fully comply, it enacted PAGA, which authorizes "any 'aggrieved employee' to initiate an action against a former employer 'on behalf of himself or herself and other current or former employees' to obtain civil penalties that previously could have been recovered only by the State in an LWDA action."

Viking specializes in ocean and river cruises around the world. Angie Moriana was hired as a sales representative for Viking. As part of her employment agreement, Morina agreed to arbitrate any dispute arising out of her employment and waived any right to bring representative PAGA claims. Further, under the agreement's severability clause, she agreed that if the waiver was rendered invalid, any portion of the waiver that remained valid would be enforced in arbitration. After leaving her position with Viking, Moriana filed an action against Viking alleging various wage and hour violations as to herself and other Viking employees under the California Labor Code.

Viking then moved to compel arbitration of Moriana's individual claim and dismiss the representative ones. The trial court denied that motion, and the California Court of Appeals later affirmed on the grounds that the California Supreme Court's decision in *Iskanian* prohibits waivers of representative PAGA claims generally and invalidates agreements to arbitrate or litigate individual and representative PAGA claims separately. Thus, the lower courts were required under *Iskanian* to 1) find Moriana's waiver of representative standing invalid and 2) refuse to compel arbitration of Moriana's individual claim only due to its prohibition on separating individual and representative claims.

The Supreme Court, however, found that the Federal Arbitration Act ("FAA") partially preempts *Iskanian.* While the Court upheld *Iskanian's* prohibition of waivers of representative PAGA claims, it determined that the FAA preempts *Iskanian's* rule imposing a requirement to arbitrate *all* claims or none at all. Because the FAA protects agreements to arbitrate when the parties have *agreed* to

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do so, the Court reasoned, compelling parties to choose between having to arbitrate all of their claims or forfeiting that right altogether necessarily frustrates the FAA's purpose. Thus, because the rule prohibiting division of individual and representative PAGA claims was rendered invalid, the Supreme Court held that Viking is entitled to compel Moriana to arbitrate her individual claim.

So, what does this ruling mean for employees and employers outside of California? No other state has yet enacted a statute like PAGA. However, Connecticut, Colorado, Illinois, Massachusetts, New Jersey, New York, Oregon, and Washington each have similar bills pending. If such legislation is enacted, it is important to understand how the FAA may interact with both employer and employee's rights and duties in waiving the right to arbitrate and bringing individual and representative claims, as well the extent that which the FAA protects and enforces arbitration agreements.

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