

Labor and Employment Alert

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California Supreme Court Holds That Unpaid Wages Are Not Recoverable Under PAGA

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Key Points:

- On September 12, 2019, in *ZB, N.A. v. Superior Court (Lawson)*, Case No. S246711, the California Supreme Court held the Private Attorneys General Act (PAGA) does not allow recovery of unpaid wages under Labor Code Section 558.
- The Court had granted review ostensibly to resolve a split of authority regarding whether PAGA claims for unpaid wages under Section 558 could be compelled to arbitration.
- In an unexpected win for employers, the Court rendered that question moot by ruling that PAGA plaintiffs may not seek unpaid wages under Section 558—in any forum.

On September 12, 2019, the California Supreme Court resolved an open question regarding the Private Attorneys General Act (PAGA) in unexpected fashion. In *ZB, N.A. v. Superior Court (Lawson)*, Case No. S246711, the parties disputed whether a portion of the plaintiff's PAGA claim seeking unpaid wages under Labor Code Section 558 could be compelled to arbitration. The Court rendered the arbitration question moot by holding that such relief is not available under PAGA at all.

Section 558 permits the Labor Commissioner to collect a "civil penalty" for certain Labor Code violations relating to overtime and hours and days of work, equal to \$50 to \$100 dollars "for each underpaid employee for each pay period for which the employee was underpaid *in addition to an amount sufficient to recover underpaid wages.*" Cal. Lab. Code § 558(a)(1), (2) (emphasis added). "Wages recovered pursuant to this section shall be paid to the affected employee." Id. § 558(a)(3).

Section 558 does not provide a private right of action but the penalties available under that section may be recovered by a private plaintiff on behalf of the state through a PAGA action. The California Court of Appeal has consistently held that "underpaid wages" are recoverable as part of the civil penalty provided by Section 558. *E.g., Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112, 1145 (2012).

However, a split of authority emerged in recent years over whether PAGA claims could be compelled to arbitration to the extent they sought such underpaid wages. *Compare*

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Esparza v. KS Industries, L.P., 13 Cal. App. 5th 1228 (2017) (holding that PAGA claims for unpaid wages can be compelled to arbitration) *with Lawson v. ZB, N.A.*, 18 Cal. App. 5th 705 (2017) (holding the opposite).

The California Supreme Court granted review of *Lawson*, ostensibly to resolve this split. In an unexpected win for employers, it overruled *Thurman* and other authorities holding that underpaid wages were included as part of the civil penalty recoverable under Section 558. *ZB*, slip op. at 25-26 & n.8. As the Court explained, “Reading the relevant provisions in context, it becomes clear that unpaid wages the Labor Commissioner recovers through section 558 are separate from and additional to, rather than thoroughly included within, the civil penalty a private plaintiff may recover in a PAGA action.” *Id.* at 25. Thus, PAGA plaintiffs now may not recover unpaid wages under Section 558 in any forum.

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