

Labor and Employment Alert

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Split of Authority Develops in California Court of Appeal Over PAGA Manageability Requirement

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- On March 23, 2022, in *Estrada v. Royalty Carpet Mills, Inc.*, the California Court of Appeal, held that “a court cannot strike a PAGA claim based on manageability.” This decision creates a split of authority with *Wesson v. Staples The Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021) and raises the possibility that the California Supreme Court will need to decide the issue.
- *Estrada* explained that under its holding, a trial court may still limit the evidence that may be admitted at trial in order to ensure a manageable trial, and that a PAGA plaintiff seeking to try an unmanageable claim “risk[s] being awarded a paltry sum of penalties, if any,” due to problems of proof.
- The Court also encouraged plaintiffs to work with trial courts to “define a workable group or groups of aggrieved employees,” including by “narrowing alleged violations to employees at a single location or department.”

On September 9, 2021, the California Court of Appeal (the “Court”) issued a significant decision in *Wesson v. Staples The Office Superstore, LLC*, holding that trial courts have authority to ensure that claims under the Private Attorneys General Act (PAGA) are manageable, and that courts may limit or strike unmanageable PAGA claims. In its wake, several trial courts in both state and federal court have struck PAGA claims where proof of violations depended on individualized evidence regarding allegedly aggrieved employees.

A published decision earlier this week from the Fourth District of the Court of Appeal expressly disapproved of the holding in *Wesson*, therefore creating a split of authority. In *Estrada v. Royalty Carpet Mills, Inc.*, 2022 WL 855568 (Cal. Ct. App. Mar. 23, 2022), the Court held that “a court cannot strike a PAGA claim based on manageability.” *Id.* at *1. The Court explained that “dismissal of a claim based on manageability is rooted in class action procedure,” and that “[t]he LWDA is not subject to a manageability requirement when it investigates Labor Code violations and assesses fines internally.” *Id.* at *11-12. Thus, “[i]mposing a manageability requirement would create an extra hurdle in PAGA cases that does not apply to LWDA enforcement actions.” *Id.* at *12.

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Nevertheless, the Court shared *Wesson*'s concerns about unmanageable claims. It explained that where claims involve "hundreds or thousands of alleged aggrieved employees, each with unique factual circumstances," it would be "unduly expensive [and] impractical" to permit the plaintiff to introduce evidence or testimony regarding each employee's circumstances, and courts may limit the presentation of evidence and witnesses to ensure a manageable trial. In fact, counsel is encouraged "to work with the trial courts during trial planning to define a workable group or groups of aggrieved employees," including by "narrowing alleged violations to employees at a single location or department." *Id.* at *12 & n.8.

While *Estrada*'s recommendations for trial management are a silver lining for employers, the decision raises questions about the proper scope of discovery *before* trial. Because *Estrada* encourages the narrowing process to occur during trial management, a PAGA plaintiff arguably could seek individualized merits discovery regarding every employee in California under this rule. However, such a dragnet approach would also seem to be at odds with the principles that discovery must be reasonably calculated to lead to admissible evidence and proportional with the needs of the case, given *Estrada*'s admonition that trials should be made manageable by limiting the presentation of evidence. Courts arguably should not permit plaintiffs to seek far more evidence in discovery than they could ever hope to introduce at trial.

It remains to be seen whether trial courts will follow *Estrada*, and if they do, how the decision informs the scope of discovery. Whatever happens in the trial courts, the *Estrada* decision makes it much more likely that the California Supreme Court will take up the issue to resolve one of the more consequential splits of authority in PAGA's 18-year history.

For more news and analysis on PAGA, visit Akin Gump's blog, [The PAGA Report](#).

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