California Court of Appeal Approves Limiting or Striking Unmanageable PAGA Claims

September 14, 2021

Key Points

- In *Wesson v. Staples The Office Superstore, LLC*, the California Court of Appeal held that "courts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable."
- Drawing on principles from other types representative actions—including class actions—the court explained that "[i]n general . . . a need for individualized proof pertaining to a very large number of employees will raise manageability concerns."
- The *Wesson* decision marks the first time an appellate court has weighed in on whether PAGA claims must be manageable, and comes after years of skepticism at the trial court level regarding whether courts had authority to limit or preclude PAGA claims due to manageability concerns.

On September 9, 2021, the California Court of Appeal 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.

Under PAGA, "aggrieved employees" may sue employers for civil penalties for alleged violations of the California Labor Code on behalf of other allegedly aggrieved employees, without satisfying class certification requirements. Employers have often defended such claims by arguing that plaintiffs have not demonstrated that such claims can be manageably tried. However, until last week, no appellate court had weighed in the manageability issue, and most state trial courts have been reluctant to limit or preclude PAGA claims based on manageability concerns.

The *Wesson* decision breathes new life into the manageability argument. The court unequivocally held that "courts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike claims that cannot be rendered manageable[.]" Slip op. at 4. The court also made clear that "as a matter of due process, defendants are entitled to a fair opportunity to litigate affirmative

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defenses," and therefore courts should ensure that both the claims *and defenses* can be manageably tried. *Id*.

In reaching its decision, the court drew upon precedent from other types of representative actions (such as those under the Unfair Competition Law), but also on class action principles. In fact, it specifically observed that because the procedural safeguards that attend class actions do not apply, "PAGA claims may well present more significant manageability concerns than those involved in class actions." *Id*. at 30. In particular, because PAGA has no commonality requirement, "a PAGA claim can cover disparate groups of employees and involve different kinds of violations raising distinct questions." *Id*. Indeed, the court specifically rejected the argument that under *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), class certification issues were never relevant to PAGA claims. *Id*. at 33.

While *Wesson* will come as a welcome lifeline to employers defending unwieldy PAGA claims, employers should not expect courts to routinely strike PAGA claims. The court specifically cautioned that courts "should not lightly strike even procedurally challenging claims." *Id*. at 35. Striking a claim should be a last resort, and "if possible, the court should work with the parties to render a PAGA claim manageable by adopting a feasible trial plan or limiting the claim's scope." *Id*. at 40.

There are also facts about *Wesson* that made the employer's manageability argument particularly strong. The plaintiff conceded that, to prove its exemption defense, Staples would have to provide a week-by-week, employee-by-employee analysis, and he did not dispute Staples' estimate that a trial would take six days per employee, or approximately *eight years* to complete. *Id*. at 8. The plaintiff also rejected the court's invitation to offer an alternative trial plan. The Court of Appeal found that the plaintiff's "lack of cooperation with the trial court's inquiry in this regard stymied the court's efforts to devise a plan that would allow the action to proceed, in whole or in part." *Id*. at 47.

However, *Wesson* did leave some clues as to when it will be appropriate to strike or limit a PAGA claim. "In general . . . a need for individualized proof pertaining to a very large number of employees will raise manageability concerns." *Id*. at 38. Employers would be well advised to explain in concrete terms the burden a trial would have on the court system, including by demonstrating that similar claims may result in "lengthy [trials] even when they involve only a few employees." *Id*. at 41. Case law demonstrating that similar claims are often not amenable to class treatment may also be persuasive. *Id*. at 42 (quoting the observation in *Duran v. U.S. Bank N.A.*, 59 Cal. 4th 1, 30 (2014) that misclassification claims "can pose difficult manageability challenges").

One significant question that *Wesson* left unresolved is which party will bear the burden on the manageability issue. Plaintiffs will undoubtedly argue that defendants bear the burden of proving that a claim is unmanageable, while defendants will argue that plaintiffs must be able to show that their claims can be manageably tried. Although the court declined to answer this question, there is some support for placing the burden on a representative plaintiff. See *South Bay Chevrolet v. Gen. Motors Acceptance Corp.*, 72 Cal. App. 4th 861, 894 (1999) (plaintiff in representative UCL action "did not meet its burden to establish that [dealerships] were similarly situated"); slip op. at 27 (citing *South Bay* approvingly).

In sum, *Wesson* clears the way for an employer that is able to show meaningful variation among alleged "aggrieved employees" regarding merits issues to narrow or eliminate a PAGA claim. PAGA defendants should think hard about potential manageability concerns and consider bringing motions to strike when claims or defenses turn on individualized issues.

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