

CALIFORNIA LABOR ALERT

CALIFORNIA PLAINTIFFS NEED NOT MEET CLASS CERTIFICATION REQUIREMENTS IN CERTAIN REPRESENTATIVE ACTIONS

California's Private Attorneys General Act (PAGA) empowers "aggrieved employees" to sue to recover civil penalties for violations of the California Labor Code. PAGA claims can be pursued by an "aggrieved employee" on an individual basis, or on a representative basis on behalf of other "aggrieved employees." On June 29, 2009, the California Supreme Court held that plaintiffs who bring representative actions under PAGA need not satisfy class certification requirements. In *Arias v. Superior Court of San Joaquin County*, the plaintiff alleged two wage-and-hour claims on a representative basis: (1) a claim for violation of California's Unfair Competition Law (UCL) and (2) a claim for penalties under PAGA for violating various provisions of the Labor Code. The Court held that, while the plaintiff was required to satisfy class certification requirements for the UCL claim, he did not need to do so with respect to his PAGA claim. The Court reasoned that class certification requirements need not be met for PAGA claims, in part because the due process concerns generally attendant to representative actions weigh less heavily in this context because only penalties—and not wages—can be recovered.

HOW REPRESENTATIVE PAGA ACTIONS MIGHT BE MANAGED

The Supreme Court provided no guidance on how this type of "uncertified" representative action should be managed, and plaintiffs may contend that they can recover on behalf of other "aggrieved employees" simply by proving their own claim. But cases decided in an analogous context suggest otherwise. Until it was amended several years ago, California's Unfair Competition Law similarly authorized "uncertified" representative actions. In that context, some courts evaluated whether a plaintiff could proceed on a representative basis by applying standards similar to those employed in the class action context. For example, courts asked whether the plaintiff was "similarly situated" to the individuals he or she sought to represent. Courts also considered factors such as the complexity of the case, the amount of damages and whether or not the damages would have to be calculated on an individual basis. This line of cases suggests that, while a PAGA plaintiff technically is not required to satisfy class certification requirements, courts may still consider similar factors in deciding whether to permit a PAGA representative action to proceed.

IMPLICATIONS FOR FEDERAL COURT JURISDICTION

The *Arias* decision also may have implications for determining which courts adjudicate representative actions. Plaintiffs in California typically allege state law claims to take advantage of California's more favorable employment laws, and they often file their claims in state court. Yet employers in California often prefer federal court because of the general quality of federal judges, their experience with representative actions, and their tendency to more strictly enforce procedural rules. In recent years, employers have taken advantage of the federal Class Action Fairness Act (CAFA), which allows employers that are not citizens of California to remove state court class actions to federal court if they establish (1) diversity of citizenship, and (2) the amount in controversy exceeds \$5 million. CAFA, however, arguably does not cover PAGA representative actions because the statute is generally limited to "class actions," which are defined as civil actions filed under Federal Rule of Civil Procedure 23 or analogous state statutes. If CAFA does not apply, defendants will likely have to satisfy the traditional diversity jurisdiction requirements to remove PAGA actions to federal court, including the requirement that each plaintiff's claim places \$75,000 in controversy. Because PAGA has a one-year statute of limitations, satisfying that requirement for any single plaintiff would be extremely difficult.

CONCLUSION

In the wake of *Arias*, plaintiffs may increasingly focus on PAGA claims to avoid federal jurisdiction and traditional class certification requirements. Still, other factors suggest that *Arias* may not drastically alter the employment litigation landscape in California. PAGA claims are governed by a one-year limitations period, and only 25 percent of the penalties recovered are awarded to the "aggrieved employees," with the rest going to the state of California. Therefore, in those cases in which the PAGA claims are based on alleged Labor Code violations for which damages (e.g., unpaid wages) are potentially recoverable, plaintiffs may be reluctant to forego potentially more valuable Labor Code claims, despite the advantages of PAGA. If a plaintiff asserts both a class Labor Code claim and a representative PAGA claim, CAFA should apply, and the case might be removable to federal court. Further, the Labor Code claim would be governed by the traditional class action rules. If the court rejected class certification of the Labor Code claim—because, for example, it found that the claim could not be adjudicated on a representative basis—it may be less likely to then permit the PAGA claim to proceed on that basis.

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