

California Supreme Court Clarifies Requirements for Representative Actions Against Employers

On June 29, 2009, the California Supreme Court issued two decisions clarifying the requirements for bringing representative actions under two state laws, the Unfair Competition Law (UCL) and the Labor Code Private Attorneys General Act of 2004 (PAGA). Both decisions will be of interest to companies with California employees.

Employees frequently bring claims under those statutes in addition to their other employment claims because the UCL extends the statute of limitations for their underlying claims to four years, and PAGA allows them to seek civil penalties for Labor Code violations if the state labor law enforcement agencies fail to do so. In *Arias v. Superior Court* (June 29, 2009, S155965) __ Cal. 4th __, the court held that an employee who sues an employer on behalf of himself and others must satisfy class action requirements for claims under the UCL but not under PAGA. And in *Amalgamated Transit Union Local 1756, AFL-CIO et al. v. Superior Court* __ Cal. 4th __ (June 29, 2009, S151615), the court ruled that unions may not bring actions on behalf of their members under the UCL or PAGA.

[Arias v. Superior Court](#)

In *Arias*, the plaintiff sued his employer (Angelo Dairy) for alleged wage and hour violations and for related Labor Code penalties, as well as for breach of contract and breach of the warranty of habitability relating to the residential units provided by the defendants. The complaint contained claims under the UCL based on the defendants' alleged violations of the California Labor Code and a claim under PAGA seeking Labor Code penalties, brought by Arias "on behalf of himself as well as other current and former employees of defendant."

[THE UCL CLAIMS](#)

The California Supreme Court held that an employee who brings a representative claim under the UCL must comply with class action requirements. The UCL prohibits "any unlawful, unfair or fraudulent business act or practice" The court noted that, as originally enacted, any person could assert representative claims under the UCL to obtain restitution or injunctive relief against unlawful, unfair or fraudulent acts or practices. However, Proposition 64, an initiative measure passed by the electorate in 2004, amended the UCL to provide that a private plaintiff may bring a representative action only if the plaintiff "has suffered injury in fact and has lost money or property as a result of ... unfair competition" and complies with the class action requirements in Section 382 of the Code of Civil Procedure.

[THE PAGA CLAIM](#)

The California Supreme Court reached a different conclusion with respect to Arias' representative claims for civil penalties under PAGA. That statute provides that an "aggrieved employee" (defined in PAGA as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed"), acting as a private attorney general, may bring an action personally or "on behalf of other current and former employees" to recover civil penalties for Labor Code violations. An aggrieved employee may bring a PAGA claim only if California's Labor and Workforce Development Agency (LWDA) refuses or fails to take action within time limits set forth in PAGA. In a PAGA action, the aggrieved employee receives 25 percent of any penalties recovered, with the remaining 75 percent going to the LWDA. The

court noted that there was existing case law holding that actions under PAGA *may* be brought as class actions, but that the courts had not resolved whether such claims *must* be brought as class actions.

The defendants argued, *inter alia*, that not requiring all PAGA representative actions to satisfy class action requirements would violate the due process rights of employers and of nonparty aggrieved employees who are not given notice of, or an opportunity to be heard in, a representative action that is not a class action. The defendants contended that, unless PAGA is construed to require all representative actions to be brought as class actions, employers may be subjected to successive actions by employees based on claims presenting common issues. In such actions, the employer, but not the employee, would be subject to the application of collateral estoppel because employees could keep bringing unsuccessful individual suits until an employee suit finally prevailed, after which all other employee-plaintiffs could prevail through the application of collateral estoppel against the employer.

The California Supreme Court disagreed, holding that a representative action brought by an aggrieved employee under PAGA does not give rise to due process concerns because the judgment in such an action is binding not only on the plaintiff, but also on government agencies and any aggrieved employee not a party to the action. With respect to the binding effect of adverse judgments on plaintiffs and government agencies, the court reasoned that an aggrieved employee suing under PAGA (i) does so as the proxy or agent of the state's labor law enforcement agencies, after those agencies have been given notice of, and an opportunity to pursue civil penalties for, the alleged violations, and (ii) represents the same legal right and interest as those agencies (i.e., the recovery of civil penalties that otherwise would have been assessed and collected by the LWDA). Because collateral estoppel applies not only against a party to a prior action in which an issue was determined, but also against those for whom that party acted as an agent or proxy, a judgment against the plaintiff in a PAGA action binds both the plaintiff and the state labor law enforcement agencies. As for the binding effect of adverse judgments on nonparty aggrieved employees, the court held that, because a representative action for civil penalties brought by an aggrieved employee

under PAGA functions as a substitute for an action by a government agency, a judgment against the plaintiff in such an action binds all those who would be bound by a judgment in an action brought by a government agency, including nonparty aggrieved employees.

The court acknowledged that an adverse judgment against the plaintiff in a PAGA action will not bind nonparty aggrieved employees with respect to claims for Labor Code remedies that may be recovered in addition to civil penalties (e.g., claims for failure to provide a meal or rest period under Section 226.7 of the Labor Code). Thus, if an aggrieved employee prevails in a PAGA action for civil penalties by proving that the employer has committed a Labor Code violation, the employer will be bound by the resulting judgment, and nonparty aggrieved employees will be able to invoke collateral estoppel against the employer to obtain remedies other than civil penalties for the same Labor Code violations.

However, if the employer prevails in such an action, the nonparty aggrieved employees will not be bound by the judgment with respect to remedies other than civil penalties because they were not given notice of the action or afforded an opportunity to be heard. Nevertheless, the California Supreme Court held that, because an action under PAGA is designed to protect the public, and the potential impact on remedies is incidental to the action's primary objective, the one-way operation of collateral estoppel in this limited situation does not violate an employer's right to due process of law.

Amalgamated Transit Union Local 1756, AFL-CIO et al. v. Superior Court

In *Amalgamated Transit*, 17 individual plaintiffs and two labor unions sued three employers for Labor Code violations. In the complaint, the plaintiff-unions alleged that (i) the unions were the representatives of the defendants' employees, (ii) the action was brought on behalf of the unions and all aggrieved transportation employees employed by the defendants, and (iii) more than 150 employees and former employees of the defendants had assigned their rights under the UCL and PAGA to the unions.

The trial court ruled that the unions did not have standing under the UCL because they had not suffered

any actual injury, and under PAGA because they were not “aggrieved employees.” The trial court also ruled that the employees’ assignment of rights to the unions did not confer standing on the unions to prosecute claims under the UCL or PAGA, and that UCL representative claims must be brought as class actions. The Court of Appeal denied the unions’ petition for writ of mandate.

The California Supreme Court affirmed. After reviewing the UCL and PAGA, the court found that both statutes required a plaintiff to have suffered injury resulting from an unlawful action (i.e., from an unlawful, unfair or fraudulent act or practice under the UCL, or from a Labor Code violation under PAGA). Although the unions conceded that they did not satisfy these requirements, they nevertheless argued that they had standing to sue in a representative capacity as assignees of defendants’ employees who sustained injury. The court held that the unions did not have standing to bring actions representative actions on behalf of their members under either the UCL or PAGA, and that such claims were not assignable to the unions because (i) assignment of the UCL claims would violate the UCL’s requirement that plaintiffs must have suffered “injury in fact,” (ii) assignment of the PAGA claim would violate existing California law prohibiting the assignment of the right to recover a statutory penalty, and (iii) the doctrine of associational standing under Article III of the US Constitution does not exempt the unions from the express statutory standing requirements of the UCL and PAGA.

Conclusion

Taken together, the decisions in *Arias* and *Amalgamated Transit* provide important guidance for California employers defending class actions. It is now established

that: (i) plaintiffs who bring private UCL representative actions must satisfy class action requirements; (ii) plaintiffs who bring PAGA representative actions need not satisfy class action requirements; (iii) judgments in PAGA actions for civil penalties are binding on the plaintiffs, state labor law enforcement agencies and nonparty employees, except that an adverse judgment against a plaintiff in such an action will not bind nonparty employees with respect to claims for Labor Code remedies that may be recovered in addition to civil penalties, (iv) UCL claims may be brought only by plaintiffs who have suffered injury resulting from unlawful, unfair or fraudulent acts or practices, and are not assignable to plaintiffs who do not meet this requirement, and (v) PAGA claims may be brought only by employees who have suffered injury resulting from Labor Code violations and are not assignable.

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