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California Supreme Court Rules Against Employers on Arbitration Agreements and Class Action/PAGA Representation Waivers

Last summer we sent out a newsletter highlighting a major win for employers in the battle against the onslaught of PAGA lawsuits ravaging California agriculture. The victory came by way of a pivotal United States Supreme Court opinion in *Viking River Cruises, Inc., v. Moriana*. The Supreme Court held that the Federal Arbitration Act ("FAA") preempts a prior California Supreme Court decision and that, yes, California employers can force employees to arbitrate PAGA claims.

Shortly after the *Viking* decision came out, the California Supreme Court took up the case *Adolph v. Uber Technologies,* to determine whether an employee who has been compelled to arbitrate claims under PAGA maintains standing to pursue PAGA claims arising out of events involving other employees. The plaintiff, Adolph, signed an arbitration agreement prior to working as a driver for UberEATS. Plaintiff eventually sued Uber for misclassifying him as an independent contractor, rather than an employee and brought a representative PAGA action alleging multiple violations. In yet another blow to California employers, the California Supreme Court held today that where a plaintiff has brought a PAGA action comprising both individual and non-individual (representational) claims, an order compelling arbitration of the individual claims does not strip the plaintiff of standing to litigate claims on behalf of other employees under PAGA. The court broke away from the holding in *Viking* and instead affirmed California Court of Appeal cases which held plaintiffs can maintain representational claims under PAGA even when their individual PAGA claims were time-barred or settled, or when the individual claims are sent to arbitration.

In their opinion, the California Supreme Court explained that the trial court can exercise its discretion to stay Adolph's non-individual PAGA claims pending the outcome of the arbitration. The court further explained that following the arbitrator's decision, any party may petition the court to confirm or vacate the arbitration award. If the arbitrator determines that Adolph is an aggrieved employee, that determination, if confirmed and reduced to a final judgment, would be binding on the court, and Adolph would continue to have standing to litigate his non individual claims. If the arbitrator determines that Adolph is not an aggrieved employee (i.e., he cannot prove any violations as to himself) and the court confirms that determination and reduces it to a final judgment, the court would give effect to that finding, and Adolph could no longer prosecute his non-individual claims due to lack of standing.

Prior to the decision in *Viking River Cruises*, the issue of whether the FAA preempted Assembly Bill 51 ("AB 51") was taken up in in the U.S. District Court in *Chamber of Commerce of the United States v. Bonta*. AB 51 is a California law prohibiting employees from requiring employees to enter into arbitration agreements as a condition of employment. The Chamber of Commerce of the United States and other business

groups filed suit in US District Court arguing the FAA preempted AB 51 as it relates to mandatory arbitration. The trial court concluded that the FAA did preempt California Assembly Bill 51 and that AB 51's preclusion of mandatory arbitration agreements was unenforceable. For now, it looks like AB 51 will remain fully blocked, which means employers can continue enforcing mandatory arbitration agreements.

What This Means for Employers:

The California Supreme Court's decision is horrible news for California employers, and we can expect Plaintiff attorneys to continue filing their financially crushing PAGA actions, which in reality only benefit plaintiff's attorneys through the recovery of exorbitant fee awards. However, the decision in *Adolph v. Uber* does not mean employers should stop requiring new employees to sign arbitration agreements as a condition of employment. As we suggested last summer, employers should review their arbitration agreements to ensure they are taking full advantage of the *Viking* decision. Furthermore, requiring a plaintiff to arbitrate their individual PAGA matters will determine if an employee is actually aggrieved. If the plaintiff is not aggrieved, they do not have statutory standing to pursue a non-individual PAGA action.

In addition to reviewing and revising the content of the arbitration agreement employers should ensure that the agreements themselves are being presented to employees appropriately. Although the law prohibiting mandatory arbitration agreements has been struck down, the agreements are still subject to basic contract principles of unconscionability. In other words, threatening employees to sign an arbitration agreement to avoid their own termination is not always a sound approach and may lead to arbitration agreements being invalidated if challenged in court. Likewise, the agreement must be presented to the employee in the language they use. Please contact Barsamian & Moody at (559) 248-2360 if you have any questions about your arbitration agreements or how they should be presented to new and existing employees.