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CLIENT ALERT

September 2019

By: Robert Cooper

Co-Chair Labor and Employment Group

California Supreme Court Limits PAGA Claim Damages in Landmark Ruling Denying Plaintiff's Wage Claim

In a surprising decision, the California Supreme Court has ruled that Plaintiffs in Private Attorney General Act (PAGA) cases cannot recover for their own or their fellow employees' unpaid wages, but instead are limited to recovering civil penalties set forth in the California Labor Code.

The decision in *Z.B., N.A. et al. v. Superior Court* (Lawson), No. S246711 (Sept. 12, 2019), while certainly not a death knell for the recent upsurge in filings of representative wage and hour actions under the PAGA statute, nevertheless imposes a significant limitation on the scope and damages available in such claims. The high court's ruling also provides helpful guidance on one of many ambiguous aspects of the PAGA law.

The PAGA statute, enacted in 2004 permits an employee to sue their employer as a "private attorney general" on behalf of state of California, both for themselves and for all "similarly aggrieved" employees, to enforce violations of any of the myriad of Labor Code provisions governing California employees. A representative employee who brings a PAGA claim is entitled to keep as much as 25% of the recovery obtained from the employer, while the state of California keeps the remaining 75%. PAGA claims have been likened to *qui tam* actions under the federal False Claims Act, and the statute's original purpose was to assist the beleaguered state of California with enforcement of its wage and hour laws.

Although the civil penalties recoverable under PAGA usually range in the amount of \$50 to \$200 for each employee violation, per pay period, Plaintiffs in PAGA actions asserting overtime claims could also collect, until this ruling, their unpaid wages in addition to the civil penalties. Combining back wages with the extensive penalties available for Labor Code violations created huge exposure for employers in PAGA lawsuits. For example, an employee alleging a mere two minutes of working off the clock each pay period for a 30-person company can allege claims stemming from unpaid minimum wages and overtime of more than \$69,508 per employee and \$2 million in total damages in a PAGA action, which is some 2,430 times the alleged actual damages suffered by the employee of \$28.61. (Noted in *California Business & Industrial Alliance v. Xavier Becerra*, Orange County Superior Court)

While the PAGA statute was initially little-used because class actions were deemed far superior and had no damages-sharing requirement, PAGA lawsuits began to skyrocket in 2014 after the Supreme Court's decision in *Iskanian v. CLS Transportation*, (2014) 59 Cal.4th 348. The *Iskanian* decision validated employers' use of arbitration agreements with class action waivers, thereby permitting employers to prevent their employees from participating in standard class action lawsuits as a condition of their employment. However, the *Iskanian* decision excluded PAGA claims from arbitration. PAGA lawsuits therefore took off as a secondary method of bringing a class action because standard

class actions were often precluded by the prevalent use of class action waivers contained in employer arbitration agreements.

The plaintiff in *Lawson* brought a PAGA claim for unpaid overtime pursuant to Labor Code section 558, a statute, which provides not only for civil penalties but also permits an award for the amount of unpaid wages as well. Section 558 provides that an employer “shall be subject to a civil penalty” defined as \$50 per employee per pay period for an initial violation and \$100 per employee per pay period for each subsequent violation “in addition to an amount sufficient to recover underpaid wages.” It further provides that “wages recovered pursuant to this section shall be paid to the affected employee.” Labor Code sect. 558 (a)(3).

In *Lawson*, the employer Zions Bancorp sought to compel arbitration of the unpaid wages portion of the recovery, arguing that back wages are not subject to the *Iskanian* rule that would prevent them from being subject to mandatory arbitration. The Court agreed, but took it a step further in its ruling, finding that back wages under section 558 are not only subject to arbitration but are unrecoverable in a PAGA case to begin with. The Court reasoned that back wages constitute “compensatory damages” paid to the individual employees, not civil penalties payable to the state of California. The court therefore concluded that the question of whether the back wages are subject to arbitration was moot. “Although Section 558 authorizes the labor commissioner to recover such an amount, this amount—understood in context—is not a civil penalty that a private citizen has authority to collect through the PAGA.”

Based upon the Court's ruling in *Lawson*, while employees may pursue their individual wage claims in a civil action, or through a claim before the Labor Commissioner, they *cannot* recover unpaid wages through the PAGA statute, which is reserved as a means to obtain civil penalties only on behalf of the state.

The ruling is significant for employers, as it greatly lessens the damages available in PAGA claims by precluding recovery of wages and limiting PAGA awards to civil penalties. The ruling also bolsters the application of class action waivers in employer arbitration agreements, because in light of *Lawson*, all claims for back wages are subject to arbitration.

The decision is much needed good news for California employers, which have been inundated by the rash of high-stakes PAGA lawsuits which they could not compel to individual arbitration. More than 100 different law firms have sent more than 50 PAGA notices (claims) each since 2004 to the state agency that administers such claims, and one firm has sent some 753 PAGA claim notices. (California Business & Industrial Alliance v. Xavier Becerra, Orange County Superior Court)

It remains to be seen whether the Supreme Court's ruling in *Lawson* will help curtail the sheer volume of PAGA cases filed, but most importantly, it will in many cases greatly reduce the exposure to monetary damages that employers face in PAGA claims.



Robert S. Cooper is Shareholder and Co-Chair of Buchalter's Labor & Employment Practice Group. He can be reached at rcooper@buchalter.com or (213) 891-5230.

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