

JULY 27, 2023 | STATE & LOCAL TRENDS

The Story That Just Won't End: Employment Arbitration Agreements

Last year, the United States Supreme Court in *Viking River* decided, in part, that where a valid arbitration agreement existed, individual PAGA claims could be compelled to arbitration and the remaining representative PAGA claims could be dismissed for lack of standing. For the full background on *Viking River*, our blog article on that decision can be found [here](#).

At the time, we predicted that this would not be the last we heard about PAGA standing because the U.S. Supreme Court left open the possibility that it misunderstood PAGA and that the California courts would have the last word on the subject. Now the California Supreme Court has weighed in on the scope of PAGA standing.

Last week, the California Supreme Court issued its [decision](#) in *Adolph v. Uber Technologies, Inc.* The Court, disagreeing with *Viking River*, found that PAGA plaintiffs retain standing to pursue representative claims on behalf of aggrieved employees in court, even when their individual claims have been compelled to arbitration. As the final arbiter of what PAGA requires, the California Supreme Court made it clear that PAGA standing "is not affected by enforcement of an agreement to adjudicate a plaintiff's individual claim in another forum. Arbitrating a PAGA plaintiff's individual claim does not nullify the fact of the violation or extinguish the plaintiff's status as an aggrieved employee." 

The Court further reasoned that the "[l]egislature conferred fairly broad standing on all plaintiffs who were employed by the violator and subject to at least one alleged violation" and that "[a] narrower construction of PAGA standing would 'thwart the Legislature's clear intent to deputize employees to pursue sanctions on the state's behalf.'"

What Does This Mean for Employers?

Time will tell whether this pronouncement will change the landscape of PAGA litigation in California. We will continue to monitor this issue as we suspect the fight over arbitration agreements and PAGA will continue. For example, the California Fair Pay and Employer Accountability Act, which will be on the ballot in November 2024, would repeal PAGA in favor of an alternative statutory scheme.

