

Supreme Court Holds that Individual PAGA Claims are Subject to Arbitration

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In a decision as complicated as the PAGA statute itself, the United States Supreme Court just held that the Federal Arbitration Act partially preempts California's "Iskanian rule" that prohibits submitting individual PAGA claims to arbitration. In *Viking River Cruises v. Moriana*, the Supreme Court held that a PAGA action is severable into individual claims and non-individual claims and that individual PAGA claims subject to an arbitration agreement are enforceable in arbitration.

In *Viking River*, Moriana had agreed to submit employment disputes to binding arbitration. Her arbitration agreement contained a class action waiver by which she further agreed to waive any right to bring a class, collective, representative, or PAGA action before the arbitrator. Notwithstanding, Moriana sued Viking River, alleging myriad California Labor Code violations in a single PAGA action. Both the trial court and appellate court denied Viking River's subsequent motion to compel arbitration. The United States Supreme Court reversed.

The Court found that PAGA actions can be divided into individual and non-individual claims. Given this, the Court held that the Federal Arbitration Act "preempts the rule of *Iskanian* insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." Thus, the Court held that Moriana was compelled to arbitrate her individual PAGA claims.

Moriana's non-individual claims are not subject to arbitration, but the Court found that, "PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding." Thus, a plaintiff who does not have an individual PAGA claim in the action lacks standing to maintain non-individual PAGA claims and Moriana's non-individual PAGA claims were therefore dismissed.

In light of *Viking River*, employers may want to consider implementing arbitration programs. Employers that already have arbitration programs should ensure their arbitration agreements comply with the Court's decision. Additionally, employers currently litigating PAGA actions in

court may consider compelling arbitration based on an arbitration agreement's representative action waiver. With that said, employers should fully expect the California Legislature and/or state courts to try to blunt the employer-friendly aspects of the case, and they were provided a potential roadmap on how to do so in Justice Sotomayor's concurring opinion. Contact your Vorys lawyer if you have questions about *Viking River* and implementing, evaluating, or litigating arbitration agreements in California.