California Court Creates Appellate Split On 'Headless' PAGA Claims

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A recent decision from the California Court of Appeal for the Fourth Appellate District has created a split on whether employees can bring "headless" Private Attorneys General Act (PAGA) claims. "Headless" PAGA refers to the practice of alleging only non-individual PAGA claims and intentionally foregoing an individual PAGA claim to avoid arbitration agreements. As discussed in our earlier *Client Alert*, the Second Appellate District previously held that there is no such thing as a "headless" PAGA claim because all PAGA claims include both an individual and non-individual component. Thus, an individual cannot intentionally omit an individual PAGA claim in an effort to avoid arbitration.

However, the Court in *Parra Rodriguez v. Packers Sanitation Services LTD., LLC*, reached a different conclusion based on what it viewed as essentially a pleadings issue. The plaintiff opposed a motion to compel arbitration based on his representation that he intentionally did not assert an individual PAGA claim in his complaint. Based on that intentional omission, the Court declined to compel arbitration because the plaintiff's individual claim was not pled in the Complaint and, therefore, there was no claim subject to the arbitration agreement. According to the Court, the plaintiff is the master of their Complaint and can include or omit any allegations they choose. The Court held that it was not its role to read additional allegations into the employee's pleading.

The Court disagreed that PAGA's statutory language compels a finding that every PAGA action necessarily includes an individual component. Instead, the Court held that a motion to compel arbitration should be determined based on whether an examination of the complaint reveals a claim subject to arbitration. The Court held that, "if on a motion to compel arbitration the court examines the complaint and determines it does not allege an individual PAGA claim, the court should decline to compel any such claim to arbitration."

The Court did not reach the issue of whether alleging a "headless" PAGA claim means the complaint fails to properly allege a PAGA claim. However, the Court noted that the proper mechanism for challenging

the sufficiency of a pleading is to file a demurrer, not a motion to compel arbitration. “If the defendant files a motion raising such a challenge and the court grants it with leave to amend, the plaintiff will then have the opportunity to decide for himself or herself whether to cure the asserted deficiency by adding an individual PAGA claim.”

The main takeaway from the *Parra Rodriguez* decision is that, until the issue is resolved at the California Supreme Court, employers will need to tailor their responses to “headless” PAGA claims based on the jurisdiction. In the Second District, employers can simply move to compel the arbitration agreement. In the Fourth District, employers will first need to challenge the sufficiency of the complaint. And in other jurisdictions, employers may pursue a hybrid approach: demurring to the complaint or alternatively compelling arbitration. For more information on how *Parra Rodriguez* may impact your arbitration strategy, contact your Vorys lawyer.