

Legal Updates & News

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California Supreme Court Rolls Out the “Red Carpet” for Employees to Pursue PAGA Representative Actions Absent Any Compliance with Class Action Standards; UCL Claims, However, Are Subject to Class Action Requirements

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In recent years, wage-and-hour representative actions have increased dramatically in California and other states. Employees frequently pursue claims for misclassification as an exempt employee, unpaid overtime, and missed meal and rest periods through putative class actions. Not surprisingly, the focal point of much of this litigation is on the question of whether the action can properly proceed on a class basis based on California Code of Civil Procedure section 382 (i.e., whether common questions of law and fact predominate and whether the class is ascertainable). Given the mounting difficulties plaintiffs have had in obtaining class certification, however, plaintiffs and their attorneys have been feverishly searching for alternative avenues to pursue these claims without the burden of having to pass through the class certification gauntlet.

Arias v. Superior Court is an example of one such approach, which has now received a partial stamp of approval by the California Supreme Court. In *Arias*, the plaintiff sought to evade class certification requirements by pursuing wage-and-hour claims on behalf of a group of employees pursuant to two separate statutes: (1) the Private Attorneys General Act of 2004 (PAGA), Lab. Code § 2698 *et seq.*, and (2) California’s Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200 *et seq.* The plaintiff did not attempt to plead either claim in a manner that would comply with Section 382 class action requirements.

On June 29, 2009, the California Supreme Court ruled unanimously in *Arias* that representative lawsuits brought on behalf of a group of nonparty employees under PAGA need not comply with class certification requirements. In contrast, the Supreme Court also found that UCL actions must now satisfy class action requirements based on amendments made to applicable UCL provisions in 2004.

The Facts

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Plaintiff Jose Arias, a former Angelo Dairy employee, brought an action against Angelo Dairy and its owners, alleging numerous Labor Code violations, including that Angelo Dairy did not compensate him for overtime wages or provide meal and rest periods during his shifts. In addition to seeking penalties and lost wages in an individual capacity, Arias's complaint also sought these same remedies on behalf of other current and former employees of Angelo Dairy based on his PAGA and UCL claims. Arias, however, did not comply with class action pleading requirements.

In response, Angelo Dairy moved to strike Arias's representative claims due to Arias's failure to comply with the requirements for pleading a class action. The superior court granted Angelo Dairy's motion, and Arias petitioned for writ of mandate in the Court of Appeal, asserting he did not need to comply with class action requirements to pursue a PAGA or UCL claim. The appellate court concluded that PAGA permits an employee to bring an action on behalf of other employees without meeting class action standards, but it found the amended UCL provisions expressly require compliance with class action requirements. The Court of Appeal issued a peremptory writ of mandate directing the superior court to strike only the UCL causes of action, and to permit Arias to amend his complaint to let the PAGA representative claim go forward. Arias then petitioned for review by the California Supreme Court.

The California Supreme Court's Ruling and Rationale

The Private Attorneys General Act – Labor Code Sec. 2698 et seq.

PAGA permits "aggrieved employees" to act as private attorneys general and bring actions in the public interest for violation of any Labor Code provision. This includes claims for failure to pay overtime, meal and rest period violations, and employee misclassifications.

Under PAGA, the plaintiff may only be awarded civil penalties, and is not entitled to recover unpaid wages. PAGA establishes a statutory penalty for all provisions of the Labor Code where a civil penalty is not specifically provided (\$100 per employee per pay period for the initial violation and \$200 per employee per pay period for subsequent violations). These seemingly nominal penalties, however, can add up quickly even for relatively small employers if pursued on a representative basis on behalf of all employees. For instance, an employer whose payroll violation affects 200 employees each bi-weekly pay period for one year may be subject to penalties in excess of \$500,000. PAGA also provides that a prevailing employee is entitled to an award of reasonable attorneys' fees and costs.

In *Arias*, the Supreme Court affirmed the appellate court's finding that PAGA representative actions need not meet class action requirements. It based this conclusion in part on the language of the Act. The court noted that Labor Code section 2699(a) provides that PAGA applies "notwithstanding any other provision of law," such as class action statutes, and PAGA does not expressly require compliance with Code of Civil Procedure section 382 (California's class action statute). The court also found that any due process concerns arising from maintaining a representative action without meeting class action procedural requirements are alleviated, because only civil penalties (and not wages) are available under PAGA and nonparty employees as well as the government are bound by the judgment.

The Unfair Competition Law – Section 17200

The *Arias* decision also confirmed the general understanding that, based on the amendment of UCL provisions by Proposition 64, representative actions brought under the UCL must now meet class certification requirements.

Based on a UCL claim, a plaintiff can recover unpaid wages based on violation of an underlying violation of law. In 2004, California voters passed statewide ballot Proposition 64, which altered the standing and procedural requirements for asserting a UCL action. Section 1 of the initiative set forth findings that unfair competition laws were being misused by private lawsuits where no client was injured, without accountability to the public. As the Supreme Court noted, Proposition 64 amended UCL to require compliance with Code of Civil Procedure § 382, which is commonly understood to authorize class actions. Moreover, the ballot materials indicated that a purpose of the initiative was to impose class action requirements on representative UCL actions, including a ballot measure summary prepared by the Secretary of State, which informed the voters that a "yes" vote meant that a person pursuing UCL claims on behalf of others would have to meet the additional requirements of class action lawsuits. Accordingly,

the Court confirmed that in order to pursue a UCL claim, a plaintiff must now comply with class action procedures.

Practical Advice to Employers

The California Supreme Court's finding that a plaintiff can maintain a PAGA claim without meeting burdensome class action requirements certainly increases the likelihood of additional representative actions for violation of California Labor Code provisions. As a result, employers should consider taking the following actions:

- Conduct a thorough wage-and-hour audit on an annual basis.
- Modify past practices as appropriate with the advice of counsel.
- Confirm employment policies and training materials regarding wage-and-hour issues are up-to-date.
- Seek to resolve wage-and-hour issues raised by individual employees early in the process and before the dispute grows into a representative action.
- Implement bi-monthly (rather than bi-weekly) payroll periods to reduce PAGA penalty exposure.