

9 Tools To Manage PAGA Claims After Calif. High Court Ruling

By **Ryan Krueger** (January 26, 2024)

On Jan. 18, the California Supreme Court issued its decision in *Estrada v. Royalty Carpet Mills Inc.*, finding that trial courts lack inherent authority to strike claims under the Private Attorneys General Act on manageability grounds.

This article addresses the potential impact of the decision on California employers, and options that employers and courts may consider to handle these cases.



Ryan Krueger

Wave of PAGA Lawsuits Likely to Continue

Sending a letter alleging the facts and theories of violations is a prerequisite for an employee to file a civil lawsuit asserting a PAGA claim on behalf of the California Labor and Workforce Development Agency.

Every month, hundreds of letters are sent to the LWDA against California employers. The letters often allege the same types of claims, asserting employers have violated requirements for meal and rest periods, overtime pay, minimum wage, wage statements, and waiting time penalties. And they often allege that such violations harmed all nonexempt employees at the company.

In the wake of *Estrada*, these claims are likely to continue or even increase in number. Without the risk of the claims being stricken on manageability grounds, it is likely that the list of violations alleged by plaintiffs will increase, thus expanding the scope — and expense — of litigation.

Prior to this decision, there were already unique features of PAGA, and cases interpreting that statute, to incentivize such lawsuits. This includes a one-way attorney fees provision and permission for "a plaintiff to have representational standing to seek penalties on behalf of individuals who have allegedly suffered violations that vary widely in nature," according to the *Estrada* opinion.

The opinion cites one view about the impact of the attorney fees provision: "Many employers encounter pressure to settle PAGA cases, even when they believe they have done nothing wrong, because they wish to avoid the substantial costs of defending litigation that presents a risk of paying both sides' attorney's fees." The *Estrada* opinion highlights the one-way attorney fees provision, but says that it is a "concern better addressed to the Legislature."

The court noted that it "unequivocally endorse[s]" the proposition that "trial participants should endeavor in all cases (including PAGA cases) to ensure that a case is efficiently adjudicated." However, the court failed to identify any incentive a plaintiffs attorney has for bringing a streamlined case beyond the fact that such claims may be narrowed.

In contrast, employers are forced to defend against overbroad (and often boilerplate) claims on behalf of hundreds or thousands of employees, which, based on the nature of the claims, is often not an efficient or streamlined process.

How to Manage Unmanageable Cases

While the Estrada decision is a blow to California employers and overburdened trial courts, tools remain to deal with PAGA claims, some of which are described in the opinion.

Compliance With the Law

This is the obvious method to proactively reduce the risk of PAGA claims that is consistent with the Legislature's articulated purpose of the statute — "to achieve maximum compliance with state labor laws." However, as noted above, it does not mean that employers will avoid PAGA lawsuits.

Arbitration Agreements

California employers commonly use arbitration agreements with class action waivers to reduce the risk of wage and hour class actions. Following the U.S. Supreme Court's 2022 ruling in *Viking River Cruises Inc. v. Moriana*, employers with proper arbitration agreements can seek to compel individual PAGA claims to arbitration with the nonindividual PAGA claim remaining in court, where they are often stayed pending arbitration.[1]

Due Process Challenges

In *Estrada*, the California Supreme Court found that Royalty Carpet Mills failed to demonstrate any potential violation of its right to due process as a result of the Fourth Appellate District's decision to reverse the trial court's ruling that dismissed the plaintiff's PAGA claim.

However, the court expressly noted, "we do not foreclose the possibility that a defendant could demonstrate that a trial court's use of case management techniques so abridged the defendant's right to present a defense that its right to due process was violated." As such, employers and trial courts must keep in mind an employer's opportunity to present affirmative defenses. This is likely an issue that can be addressed through the requirement to present a feasible trial plan.

Limiting Scope of the PAGA Claim

The *Estrada* opinion expressly provides that trial courts may "limit the scope of the PAGA claim." That includes "limiting the types of evidence a plaintiff may present," and "limit[ing] witness testimony and other forms of evidence when determining the number of violations that occurred and the amount of penalties to assess."

From an employer's perspective, limiting the scope of the claim should be considered at each phase of litigation.

Phased or Separated Trials

An individual must be an aggrieved employee to have standing to bring PAGA claims on behalf of other employees, meaning a person employed by the alleged violator and against whom one or more alleged violations were committed. A court may consider a two-phased trial, with the plaintiff's PAGA claims first, and a second phase involving the other employees only if the plaintiff prevails in the first phase.

In a similar vein, Code of Civil Procedure, Section 1048(b), authorizes a trial court to order

"a separate trial of any cause of action ... or of any number of causes of action" in the "furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy." The Estrada opinion specifically identifies this as an option for a plaintiff bringing unrelated PAGA claims against the same entity.

Discretion to Not Assess a Penalty

Under PAGA, courts have the discretion under Section 2699, Subdivision (e)(1), to reduce any PAGA penalties if an award would be "unjust, arbitrary and oppressive, or confiscatory." Rather than striking a PAGA claim based on manageability, a court could consider reducing or awarding no penalties for an unmanageable case based on this provision.

Substantive Rulings

As noted in the Estrada opinion, a court

may issue substantive rulings, including those on demurrer, or on motions for summary judgment or judgment notwithstanding the verdict ... to fairly and efficiently adjudicate an action in cases in which a plaintiff pleads the claim in such an overbroad or unspecific manner that the plaintiff is unable to prove liability as to all or most employees.

Complex Civil Litigation Deskbook

The Estrada opinion cites to the California Deskbook on Complex Civil Litigation Management as a resource that includes "many of the tools that courts may use in managing discovery, other pretrial proceedings, and the trial of complex cases, including cases involving PAGA claims."

However, the deskbook only includes one paragraph about PAGA discovery, and no discussion about case management conferences and orders for PAGA cases or trials.

Legislation and Ballot Initiative

Employers may want to consider lobbying the Legislature to amend PAGA in ways that would reduce the incentive to bring overbroad PAGA lawsuits. However, given the current makeup of the Legislature, such legislation seems unlikely to prevail.

A more realistic option may be to support the ballot initiative to repeal PAGA, which is set for later this year.

Conclusion

The Estrada opinion will certainly affect the PAGA landscape moving forward and is likely to increase the number of PAGA lawsuits against California employers. How trial courts and employers respond remains to be seen, but, at the very least, some of the above strategies should be considered by employers that are facing unmanageable PAGA claims.

Ryan Krueger is a partner at Sheppard Mullin Richter & Hampton LLP.

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[1] Viking River Cruises Inc. v. Moriana, 142 S.Ct. 1906 (2022).