

**California Supreme Court: Labor Code PAGA Representative Actions
Need Not Meet Class Action Requirements**

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On June 29, the California Supreme Court issued a decision in *Arias v. Superior Court (Angelo Dairy)*, No. S155965 (June 29, 2009), that could result in even more lawsuits against employers over wage and hour claims. By ruling that employees may sue their employers on behalf of themselves and other employees under the Labor Code Private Attorneys General Act of 2004 (PAGA) without having to meet class action requirements, the court provided an alternative path for employees to bring representative claims for Labor Code violations, even if they cannot establish the standards for class certification.

**PAGA Representative Actions Do Not Need to Satisfy
Class Action Procedural Requirements**

In *Arias*, the plaintiff sued his former employer on behalf of himself as well as other current and former employees, including a cause of action brought under PAGA, alleging that the employer violated the Labor Code by failing to pay all wages due, provide itemized wage statements, maintain adequate payroll records, pay all wages due upon termination, provide meal and rest breaks, offset proper amounts for employer-provided housing, and provide necessary tools and equipment. PAGA allows an aggrieved employee to bring a civil action personally and on behalf of other current and former employees to recover civil penalties for any Labor Code violations, with limited exceptions. These penalties include those specified in the Labor Code, or a “default penalty” of \$100 per employee per pay period for the initial violation, and \$200 for subsequent violations. Seventy-five percent of any awarded penalties are payable to the state, but a court may award prevailing employees 25% of the penalty, plus reasonable attorneys fees and costs.

The California Supreme Court ruled that because PAGA does not expressly require that a representative action under the act be brought as a class action, class action requirements such as demonstrations of numerosity, commonality, typicality, adequacy of class representation, and predominance of common questions need not be satisfied. The court relied on its prior construction of the Unfair Competition Law (before it was amended in 2004) as authorizing representative actions that were not class actions.

Among other arguments, the employer contended that the application of collateral estoppel in non-class-action PAGA actions could unconstitutionally violate the due process rights of employers and nonparty aggrieved employees. The employer argued that different plaintiffs could successively sue and lose, one after another, until one eventually prevails, allowing all future plaintiffs to benefit from that single

success. The court held that this was not a concern in PAGA cases because, in addition to the named employee plaintiff, the judgment in a PAGA non-class-action representative action would also bind government agencies and “any aggrieved employee not a party to the proceeding.” The court found that, “with respect to the recovery of civil penalties,” a representative action PAGA judgment binds all those “who would be bound by a judgment in an action brought by the government,” including nonparty aggrieved employees not given notice of the proceedings.

The court recognized a potential negative consequence for employers. Recovery of civil penalties under PAGA requires proof of a Labor Code violation, and remedies in addition to civil penalties are available for some of those violations, including overtime and other premium pay. Therefore, nonparty employees could potentially invoke collateral estoppel to obtain these other remedies based on a prior representative action PAGA judgment finding a violation of the Labor Code. However, those same nonparty employees would not be bound by a judgment favorable to the employer. Nevertheless, the court ruled that “[b]ecause an action under [PAGA] is designed to protect the public, and the potential impact on remedies other than civil penalties is ancillary to the action’s primary objective, the one-way operation of collateral estoppel in this limited situation does not violate the employer’s right to due process of law.”

Unfair Competition Law Representative Claims Must Satisfy Class Action Requirements

The plaintiff in *Arias* also alleged violations of California’s Unfair Competition Law (UCL) (Business & Professions Code § 17200 *et seq.*) on behalf of himself and other current and former employees, based on the employer’s failure to comply with several Labor Code provisions regarding the payment of wages, overtime wages, and meal and rest breaks. The court rejected the plaintiff’s argument that a UCL claim also did not need to meet the requirements for a class action.

In 2004, Proposition 64, an initiative adopted by the California voters, amended the UCL so that a representative action under the UCL must comply with the California statute that authorizes class actions. The *Arias* court examined statutory history and evidence of voter intent and concluded that Proposition 64 imposes a requirement that UCL representative actions must be brought as class actions.

PAGA and UCL Claims Not Assignable

In a companion case to *Arias*, *Amalgamated Transit Union, Local 1756, AFL-CIO, et al. v. Superior Court (First Transit, Inc.)*, No. S151615 (June 29, 2009), the court ruled that a labor union does *not* have standing to bring a representative action under PAGA or the UCL on behalf of aggrieved employees because the union has not suffered any injury from an unlawful action, and claims under both laws cannot be assigned by an aggrieved employee to an uninjured person.

Implications for Employers

The *Arias* decision appears to provide employees with a “back door” around class certification with respect to claims for Labor Code penalties. Its other potential implications, including how it may impact the settlement of PAGA claims, remain to be seen.

The decision in *Arias* will likely result in an increase in litigation brought under PAGA. PAGA claims can be based on numerous provisions found in the Labor Code, including ones that are not widely

