



California Wage & Hour Class Action and PAGA Litigation

Key Recent Developments & Trends

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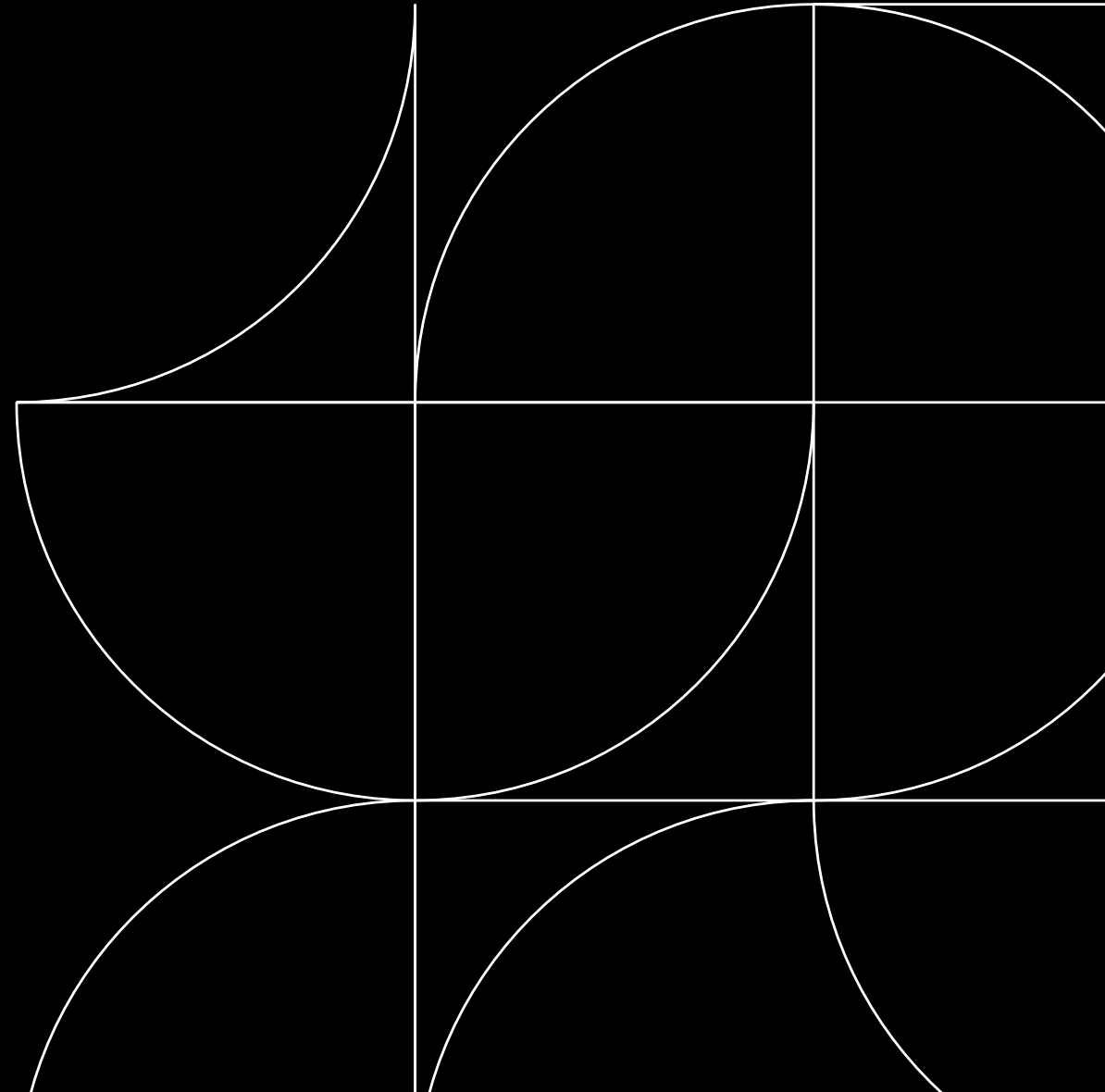
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Seyfarth Shaw LLP

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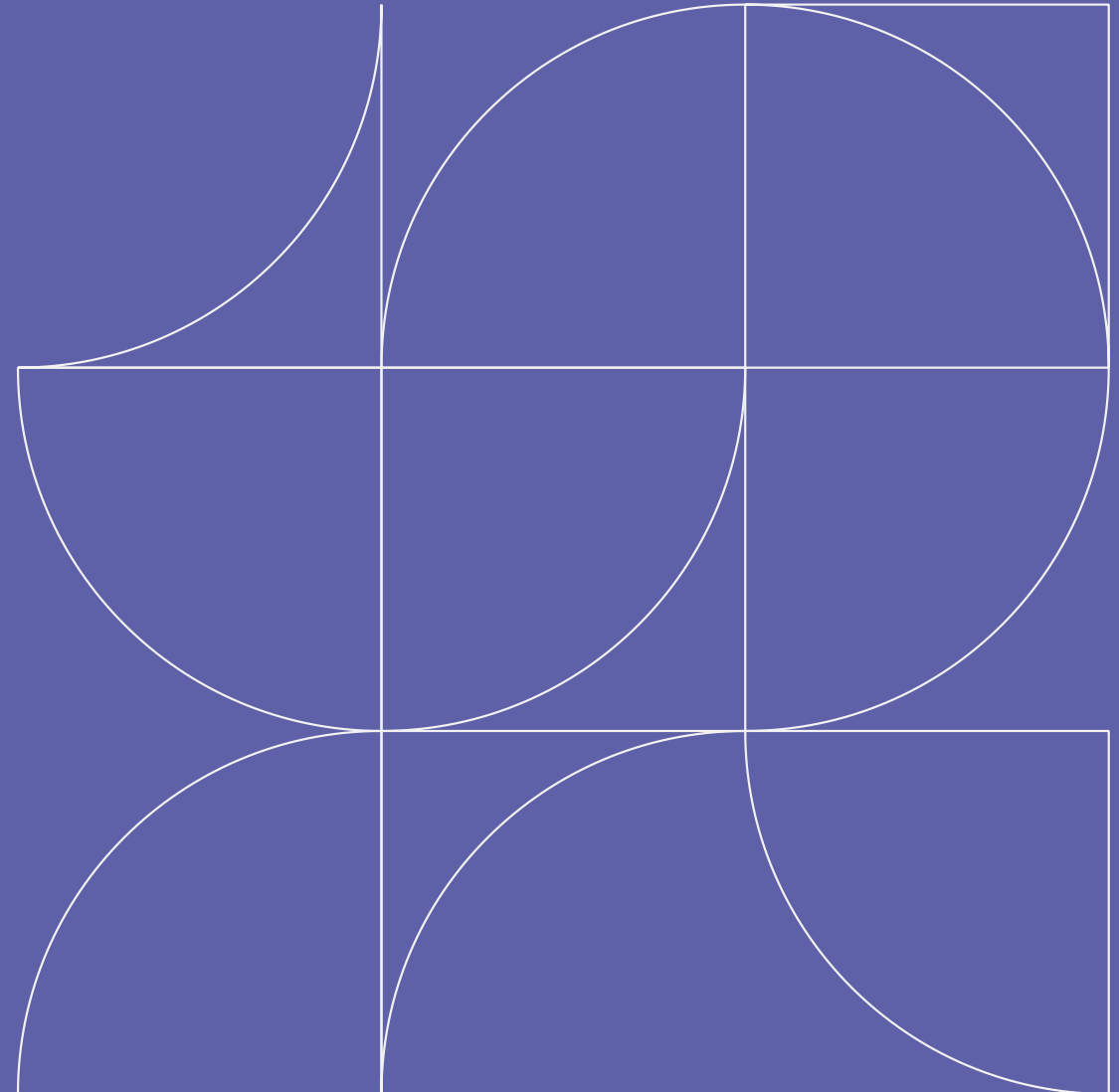
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- 1 | Introduction: Litigating California Wage & Hour Class and PAGA Actions (24th Edition)**
 - 2 | New PAGA – What it Means for Employers**
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-

24th Edition of Litigating California Wage & Hour Class and PAGA Actions





Litigating California Wage & Hour Class and PAGA Actions



24th Edition



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Statutes of Limitations for Selected California Wage and Hour Claims

Statutory Section	Claim	Statute of Limitations
Labor Code § 203	Waiting Time Penalties	3 years
Labor Code § 226	Wage Statement Penalties	1 year
Labor Code § 226.7	Meal and Rest Premium Pay	3 years (unclear whether UCL extends SOL to 4 years)
Labor Code § 558	Penalties for Violation of Wage Order and Certain Labor Code sections	1 year
Labor Code § 1198.5	Penalty for Failure to Provide Timely Records and Inspection	1 year
Labor Code § 2699	PAGA Penalties	1 year
Labor Code § 2802	Reimbursement of Employee Business Expenses	3 years (Under UCL: 4 years)
Code Civ. Procedure § 338	Unpaid Wages	3 years (under UCL: 4 years)
Code Civ. Procedure § 338	Unpaid Overtime	3 years (under UCL: 4 years)
Bus. & Prof. Code § 17200, <i>et seq.</i>	Unfair Competition	4 years. A UCL claim effectively expands the statute of limitations on a Labor Code <u>wage</u> claim from 3 years to 4 years.



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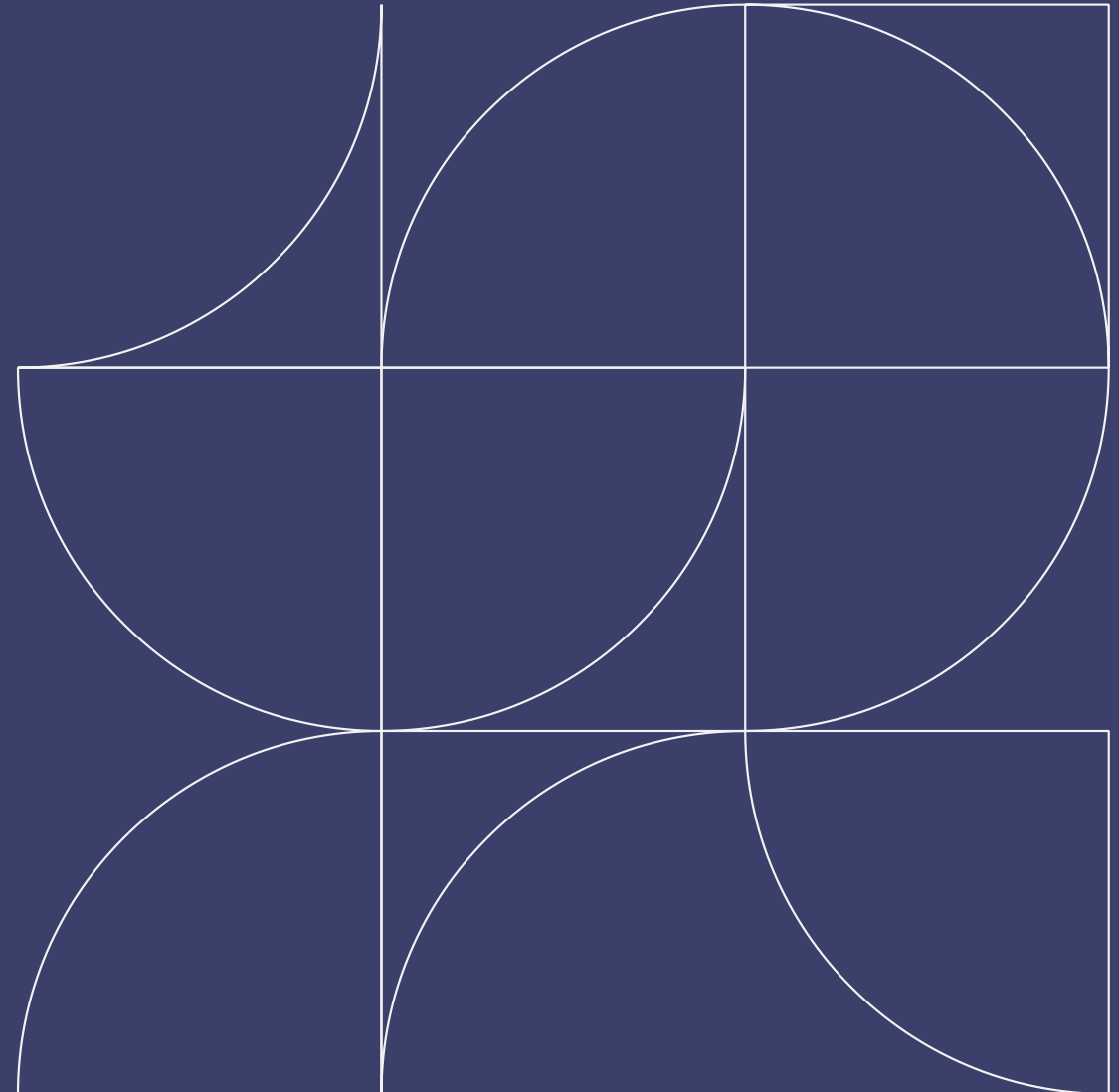
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New PAGA – What it Means for Employers



What is New PAGA?



Pre-Reform Cases (letters from 6/18/2024 or earlier):

- To bring a PAGA action, an employee (or former employee) need only allege that they experienced a single violation of the Labor Code at some point during their employment.
- An employee can then bring their PAGA claim on behalf of any and all employees for any violation of the Labor Code – even if they did not personally experience the same violation or violations.
- Still not out of the woods in this time period...

Post-Reform Cases (letters from 6/19/2024 or later)

- Plaintiff needs to have personally experienced each violation alleged.
- An employee can only bring claims on behalf of other employees for violations the employee personally experienced.
- Penalties can be capped at 15% of amount sought if employer sought compliance before PAGA letter, and a 30% cap if compliance was sought after.
- Wage statements with no injury capped at \$25/employee/pay period and Plaintiffs cannot get PAGA penalties in addition.
- Different pay allocation (65/35)

Penalty Caps



“All Reasonable Steps” – 15% Cap on Penalties

- Employers can obtain a 15% cap on civil penalties if they take “all reasonable steps” to comply prior to receiving a notice of alleged violations or an employee’s records request
- The amendment defines “all reasonable steps” to include:
 - Periodic payroll audits
 - Taking action in response to the audits
 - Publishing lawful written policies
 - Training supervisors about compliance
 - Taking corrective action against supervisors who fail to support compliance
- Whether an employer took all reasonable steps involves evaluation of the totality of the circumstances, including the size/resources of the employer and the nature, severity, and duration of the alleged violations

Penalty Caps



“All Reasonable Steps” – 30% Cap on Penalties

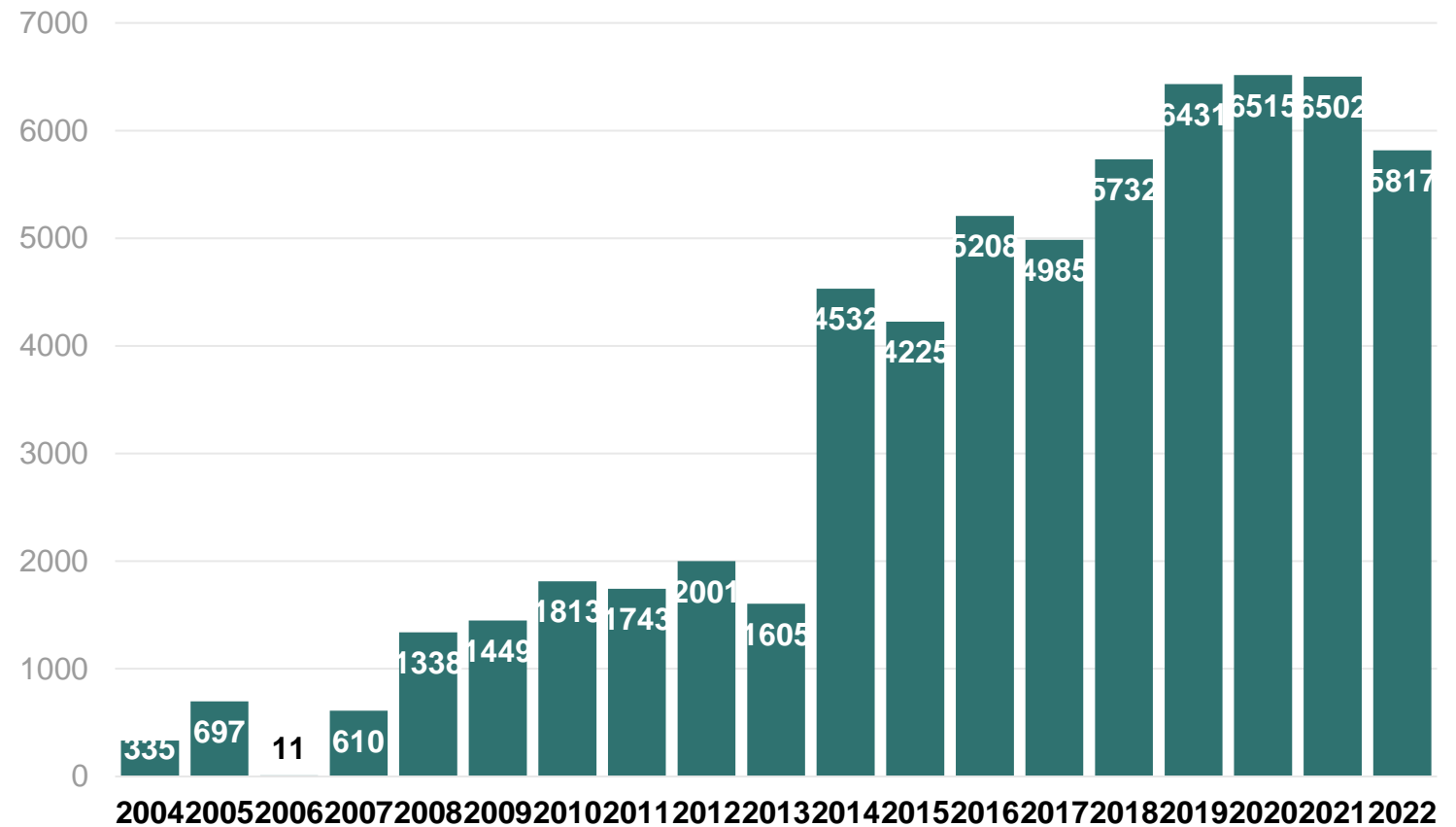
- Employers can obtain a 30% cap on penalties if, within 60 days of receipt of notice of violations, the employer takes all reasonable steps to comply prospectively
- Same definition of “all reasonable steps”:
 - Periodic payroll audits
 - Taking action in response to the audits
 - Publishing lawful written policies
 - Training supervisors about compliance
 - Taking corrective action against supervisors who fail to support compliance
- Timing is important here! Need to get this underway quickly
- Privileged vs. non-privileged audits

Increase in PAGA Notices



Since enactment, there has been a steep increase in the number of PAGA Notices filed with the LWDA.

Number of PAGA Notices



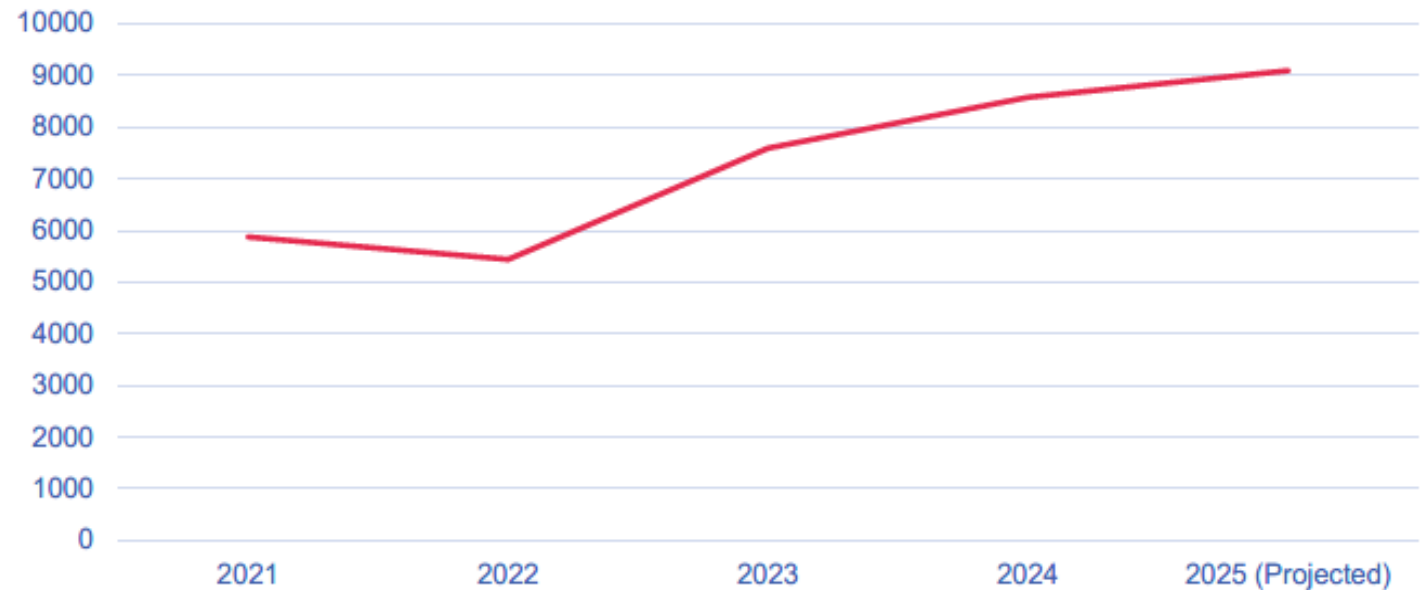
Increase in PAGA Notices



Has that changed under New PAGA? No.

- While the hope was that the New PAGA amendments would reduce PAGA filings, that has not happened.

Number of PAGA Filings



The Rise of PAGA Piracy



Why are plaintiffs bringing more and more PAGA-only actions, even under New PAGA?

- The administrative exhaustion requirement is generally easy to meet and the LWDA rarely gets involved upon receiving the required pre-litigation notice
- Cannot use civil penalties as basis for removal to federal court
- Usual class certification rules (e.g., adequacy, typicality, commonality) do not apply
- Do not need to move for class certification; burden is on employer to file a motion to strike
- Summary judgment is challenging
- Liberal state law pleading and discovery rules
- Can compel arbitration of individual PAGA claim only, not representative PAGA claims
- Courts are still unwilling to hold them to trial plans or manageability

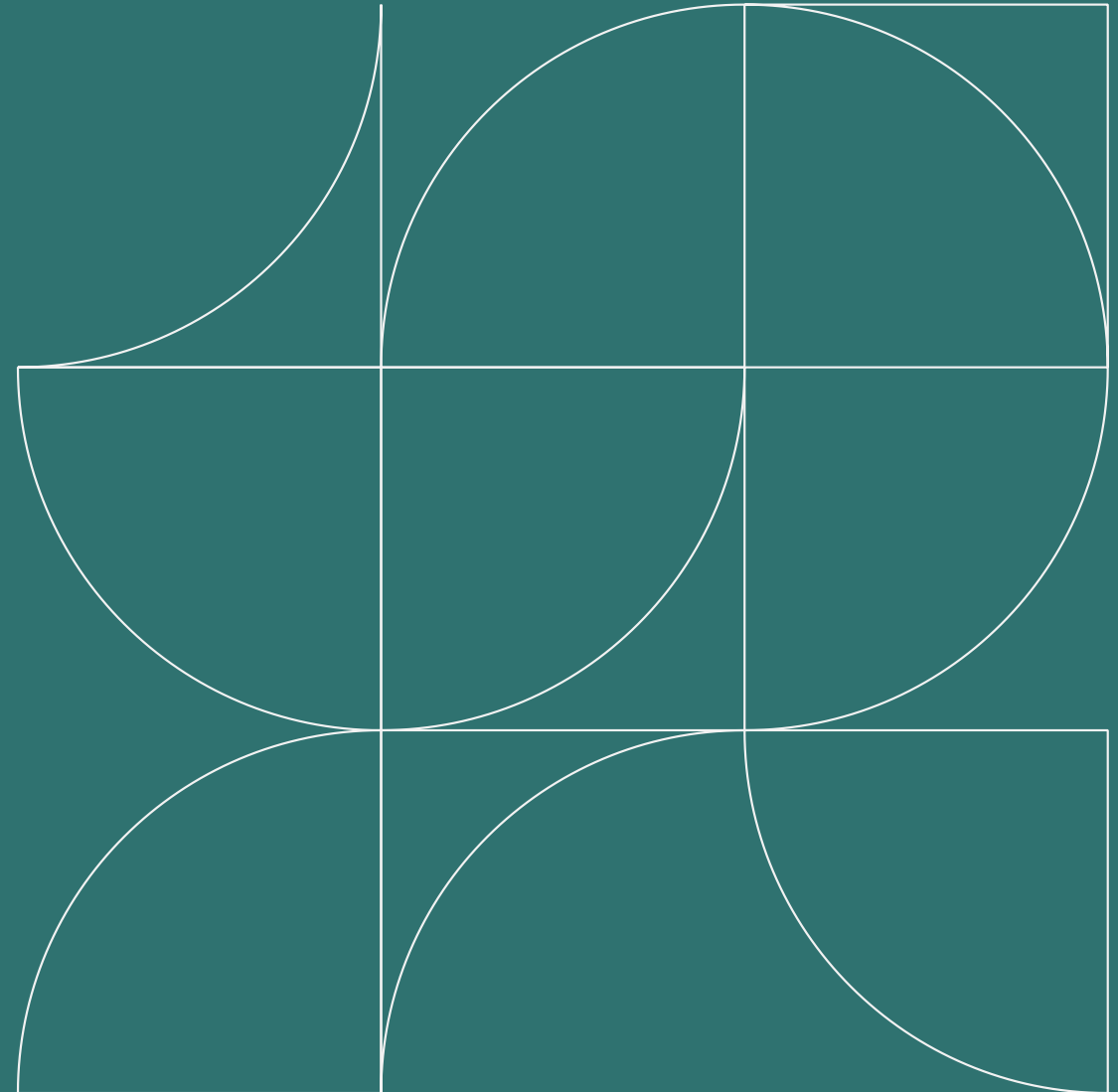
Positive Impact of New PAGA?



What positive impact has New PAGA had on the scope of claims and alleged violations?

- Action by LWDA to stop “boilerplate” or “cookie-cutter” PAGA notices filed by plaintiffs’ firms that send the same thing to different employers, without any factual differences
- Action by courts to dismiss PAGA claims where the LWDA letter was so overbroad, and claims actually pursued in litigation were much more defined
- Early evaluation conferences

The Rise of “Headless” PAGA Actions



“Headless” PAGA Actions

History of Arbitrability of PAGA Claims

- Prior rule in California: There is no individual component to a PAGA action that may be split off for purposes of arbitration, because the State is the real party in interest. *Iskanian v. CLS Transp.*, 59 Cal. 4th 348 (2014).
- The U.S. Supreme Court held this PAGA “indivisibility” rule was preempted by the Federal Arbitration Act. *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022).
- In *Viking River*, the Court held that under the FAA, the named plaintiff’s individual PAGA claims could be split off and sent to arbitration.
- The California Supreme Court held that if the named plaintiff lost at arbitration, they lost standing to pursue a representative PAGA action on behalf of others. *Adolph v. Uber*, 14 Cal. 5th 1104 (2023).

“Headless” PAGA Actions

Balderas v. Fresh Start Harvesting, Inc., **101 Cal. App. 5th 533 (2024)**

- The Plaintiff alleged she was “not suing in her individual capacity; she is proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved employees, including herself and other aggrieved employees.”
- Trial court dismissed, holding Plaintiff “lacked standing to pursue a ‘non-individual’ or representative PAGA action on behalf of other employees” absent her own individual non-PAGA claim.
- Court of Appeal reversed, holding “that an employee who does not bring an individual claim against her employer may nevertheless bring a PAGA action for herself and other employees of the company.”
- The Plaintiff *had* alleged that she (1) had been an employee of Defendant and (2) experienced Labor Code violations, as required by Labor Code section 2699(c).

“Headless” PAGA Actions

***Leeper v. Shipt, Inc.*, 107 Cal. App. 5th 1001 (2024) (review granted)**

- Held that the plain language of the PAGA statute required a plaintiff to pursue their own claim along with those of others.
- PAGA provides that a claim may be brought by “an aggrieved employee on behalf of himself or herself *and* other current or former employees.” Cal. Labor Code Section 2699(a) (emphasis added).
- Legislative history supported this reading:
 - Legislature sought to avoid the abuses that had arisen in connection with the original Unfair Competition Law.
 - During legislative process, the text of the bill had been changed to replace “or” with “and”

“Headless” PAGA Actions

***Rodriguez v. Packers Sanitation Svc.*, 109 Cal. App. 5th 69 (2025) (review granted)**

- Held that the Plaintiff did not assert an individual claim, even though the complaint specifically alleged that the Plaintiff had been subjected to Labor Code violations.
 - The court indicated that these allegations were not claims but were made to meet the standing requirements.
- Criticized *Leeper* for supposedly assuming the Plaintiff had alleged an individual claim; said *Leeper* had treated the matter like a motion to dismiss instead of a motion to compel arbitration, and had read an individual claim into the complaint.
 - However, the *Leeper* complaint did assert that the Plaintiff has been subjected to Labor Code violations, as required to meet PAGA’s standing requirements.

“Headless” PAGA Actions

***Williams v. Alacrity Solutions Group*, 110 Cal. App. 5th 932 (2025) (review granted)**

- Concerned a claim brought under the “old” PAGA statute.
- Held that a PAGA plaintiff must bring an action within one year of personally experiencing a Labor Code violation.
 - Distinguished *Johnson v. Maxim Healthcare*, 66 Cal. App. 5th 924 (2021), which held that PAGA’s requirements to be an “aggrieved employee” were met by individual who had not experienced a Labor Code violation within one year of commencing claim, noting the limitations period was a separate requirement.
- Noted that the limitations requirement would be rendered meaningless if a PAGA plaintiff did not have to bring an individual claim, citing *Leeper* with approval.

“Headless” PAGA Actions

CRST Expedited, Inc. v. Sup. Ct. **112 Cal. App. 5th 872 (2025) (review granted)**

- The court examined the language of the PAGA statute providing that a claim may be brought by “an aggrieved employee on behalf of himself or herself *and* other current or former employees.” Cal. Labor Code Section 2699(a) (*emphasis added*).
- Court found that “and” in this section to be ambiguous, and held that it should be interpreted to mean “and/or.”
- Noted that *Viking River* dramatically altered the legal landscape in a way that the Legislature could not have anticipated (however, this ignores the fact that the Legislature recently amended PAGA to limit standing and also revised the language of this section without changing “and” to “or”).
- Therefore, in order to promote PAGA’s goals, the word “and” may now be read in a different way than the Legislature may have originally intended.

“Headless” PAGA Actions

***Medina v. Sood Enterprises,* 2025 WL 2846580 (Cal. App. Aug. 14, 2025) (Unpub.)**

- The Plaintiff initially alleged a claim on behalf of himself and other employees, but when the Defendant sought to compel arbitration, Plaintiff purported to waive his individual claims.
- The court found that the language of the PAGA statute unambiguously required that PAGA claims be asserted on behalf of both individual plaintiffs and other employees, citing *Leeper* and *Williams* with approval.

“Headless” PAGA Actions

***Galarsa v. Dolgen California,* 2025 WL 2846580 (Cal. App. Oct. 8, 2025)**

- Cited *Stone v. Alameda Health System*, 16 Cal. 5th 1040 (2024), for the proposition that Labor Code provisions should be liberally construed to promote their objectives.
- Agreed with *CRST* that the use of “and” in PAGA is ambiguous and that *Viking River* created a change in circumstances that the Legislature could not have foreseen. Therefore, in order to maximize PAGA enforcement, “and” should be read as “and/or” in the statutory language in order to permit PAGA plaintiffs to assert “headless” PAGA actions for the purpose of avoiding arbitration.

“Headless” PAGA Actions

Galarsa v. Dolgen California, **2025 WL 2846580 (Cal. App. Oct. 8, 2025)**

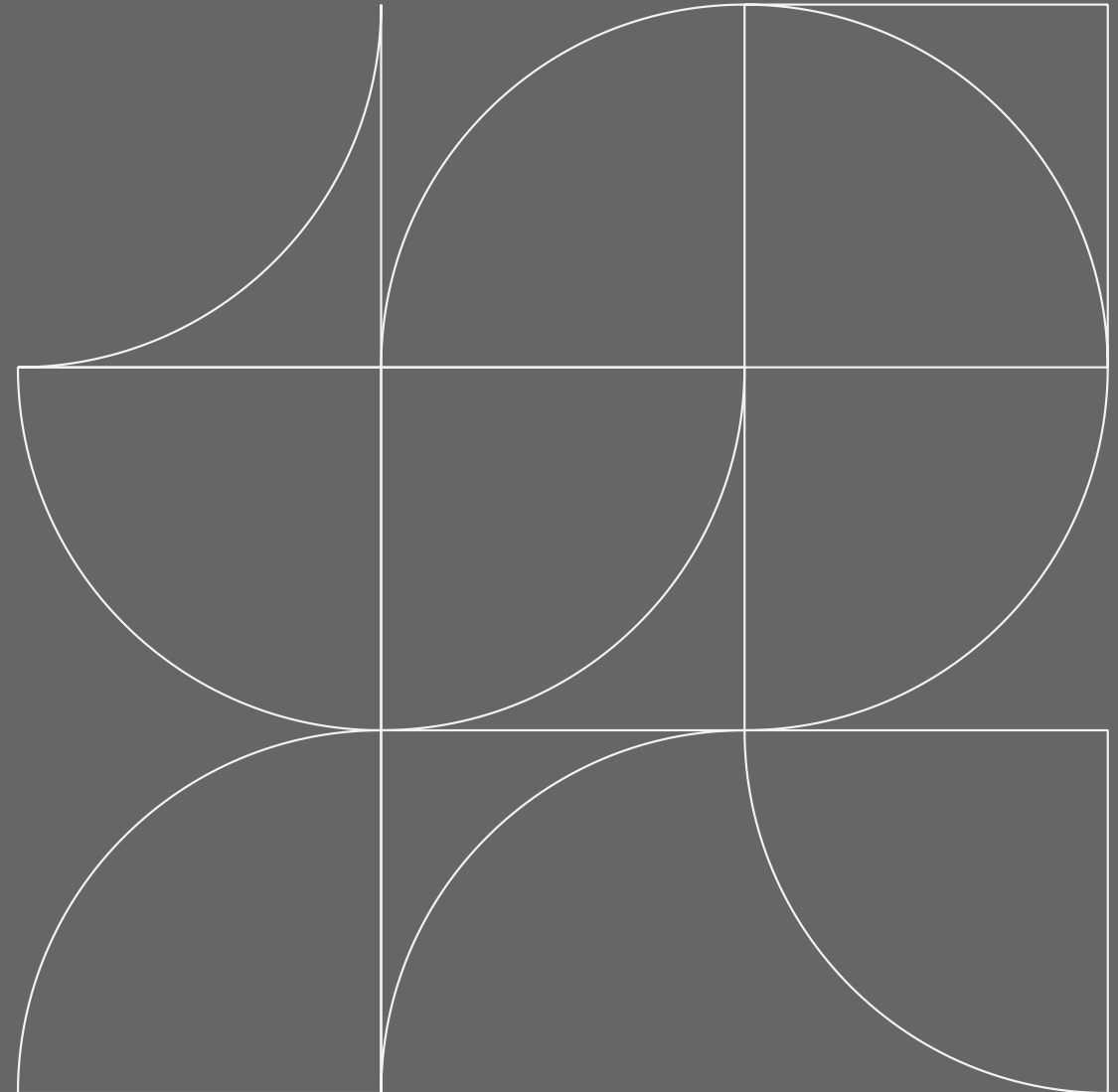
- In an unpublished portion of the ruling, the court notes that the parties to an arbitration agreement could specify that the issue of whether a PAGA plaintiff is an “aggrieved employee” who has been subjected to Labor Code violations is arbitrable (but they did not do so here).

“Headless” PAGA Actions

What can employers do to improve chances of enforcing arbitration agreements in connection with supposed “non-individual” claims?

- Have arbitration agreements expressly state that the question of whether an individual is an “aggrieved employee” under PAGA who has been subjected to Labor Code violations by the employer is a covered claim that must be decided by an arbitrator.

Legal Developments Affecting Employment Arbitration Agreements



Timely Payment of Arbitration Fees

***Hohenshelt v. Golden State Food Corp.*, 18 Cal. 5th 310 (2025)**

- The California Supreme Court ruled that the Federal Arbitration Act (FAA) does not preempt the California Arbitration Act (CAA) provisions that require the drafter of the arbitration agreement to pay all arbitration invoices within thirty days of the due date in employment and consumer arbitrations.
- However, the California Supreme Court clarified that a party's failure to timely pay for arbitration only extinguishes the other party's obligation to arbitrate when the untimely payment is willful, grossly negligent, or fraudulent, but not where it is the result of a good faith mistake, inadvertence, or other excusable neglect.

Arbitration Agreement Terms

Ramirez v. Charter Comm., 16 Cal. 5th 478 (2024)

- **Lack of Mutuality:** The arbitration agreement required employees to arbitrate most employment-related claims but allowed Charter to litigate its preferred claims (e.g., trade secrets, IP, contracts). This imbalance was deemed unfair and one-sided.
- **Shortened Limitations Period:** The agreement reduced the time to file FEHA claims from three years to one year, which the Court found unreasonable and unconscionable.
- **Attorney Fee Shifting:** A clause requiring the losing party to pay attorney's fees for failed challenges to arbitration was contrary to FEHA protections and thus unconscionable.
- **Discovery:** The agreement limited depositions to four. The Court held this was not unconscionable, as arbitrators could allow more discovery if needed to vindicate statutory rights.
- The Supreme Court remanded the case to determine whether the unconscionable provisions could be severed to preserve the rest of the agreement. It emphasized that severability analysis should be qualitative, focusing on whether the core purpose of the contract is tainted.

Overbroad Scope of Arbitration Agreement

***Cook v. Univ. of Southern California*, 102 Cal. App. 5th 312 (2024)**

- **Too Broad.** The agreement requires the arbitration of “all claims, whether or not arising out of Employee's University employment, remuneration or termination, that Employee may have against the University or any of its related entities, including but not limited to faculty practice plans, or its or their officers, trustees, administrators, employees or agents, in their capacity as such or otherwise; and all claims that the University may have against Employee.” The plain language of the agreement requires Cook to arbitrate claims that are unrelated to her employment with USC.
- **Too Long.** The arbitration agreement specifically provides that it will survive unless and until Cook and USC's president specifically terminate the agreement in a writing, signed by both parties. Not termination at will after a reasonable time.
- **Lack of Mutuality.** The agreement requires Cook to arbitrate any and all claims she may have against USC “or any of its related entities, including but not limited to faculty practice plans, or its or their officers, trustees, administrators, employees or agents, in their capacity as such or otherwise.” However, the agreement does not require USC's “related entities” to arbitrate their claims against Cook.

Electronic Signatures

Garcia v. Stoneledge Furniture LLC, 102 Cal. App. 5th 41 (2024)

- Defendant bears the burden of proving authenticity of signature.
- Here, RAC failed to carry its burden because the evidence it provided—which rested entirely on Dale's declaration—did not show that *only* Garcia could have placed the electronic signature on the arbitration agreement. Although Dale declared that Garcia created a unique user ID and confidential password using Taleo, he did not explain how he knew that the name “Maria Isabel Izzy Garcia” could have only been placed on the agreement using Garcia's user ID and password and not the other onboarding documents. Instead, Dale summarily concluded that Garcia electronically signed and acknowledged the agreement before exiting out of Taleo, with the only purported evidence being her name on the agreement.
- The trial court found that the declaration did not detail the security precautions regarding the use of the Taleo username and password; the arbitration agreement lacked a date, time, or IP address; and the agreement contained no indication it was created within Taleo.
- A trial court may—but is not required to—hold an evidentiary hearing on a petition to compel arbitration.

Sexual Harassment Claims

Liu v. Miniso Depot CA, Inc., 105 Cal. App. 5th 791 (2024)

- Under the EFAA, Plaintiff may not be compelled to arbitrate any of her claims because the “case” she filed under state law (her superior court lawsuit) “relates to ... the sexual harassment dispute” in that her complaint contains claims premised on conduct that is alleged to constitute sexual harassment under state law.
- What are some workarounds here?

Mandatory Stay Pending Appeal

***Smith v. Spizzirri*, 601 U.S. 472 (2024)**

- In a unanimous opinion, the Supreme Court held that when a federal court finds that a dispute is subject to arbitration and a party has requested a stay of the court proceeding pending arbitration, the FAA compels the court to stay the proceeding.
- BUT (of course) – compare to California.
- On January 1, 2024, the California Legislature eliminated the automatic stay of state court actions, with new language in CCP section 1294(a).

Delegation of Arbitrability

Villalobos v. Maersk, Inc., 2025 WL 2827951 (Cal. Ct. App., Oct. 6, 2025)

- In the context of a mandatory arbitration agreement between an employer and an hourly worker, the incorporation of the rules of an arbitration provider – without expressly specifying in the parties’ agreement that under those rules the arbitrator will decide the scope and validity of the arbitration agreement – is **not** clear and unmistakable evidence of the parties’ intent to have those issues decided by the arbitrator.
- Absent unusual circumstances, an employer who intends to delegate issues of arbitrability to the arbitrator must express that intent in the arbitration agreement itself. Anything less is not clear and unmistakable evidence that both parties understood and intended that the arbitrator would decide arbitrability questions.

Too Much At Once?

***Velarde v. Monroe Operations*, 111 Cal. App. 5th 1009 (2025)**

- There was extensive evidence of procedural unconscionability, with an adhesive contract, buried in a stack of 31 documents to be signed as quickly as possible while a human resources (HR) manager waited, before Velarde could start work that same day. Most problematically, in response to Velarde's statements that she was uncomfortable signing the arbitration agreement as she did not understand it, false representations were made by Newport Healthcare's HR manager to Velarde about the nature and terms of the agreement. These representations, which specifically and directly contradicted the written terms of the agreement, rendered aspects of the agreement substantively unconscionable. These procedural and substantively unconscionable aspects, taken together, render the agreement unenforceable.

Third Party Subpoenas

***Vo v. Technology Credit Union*, 108 Cal. App. 5th 632 (2025)**

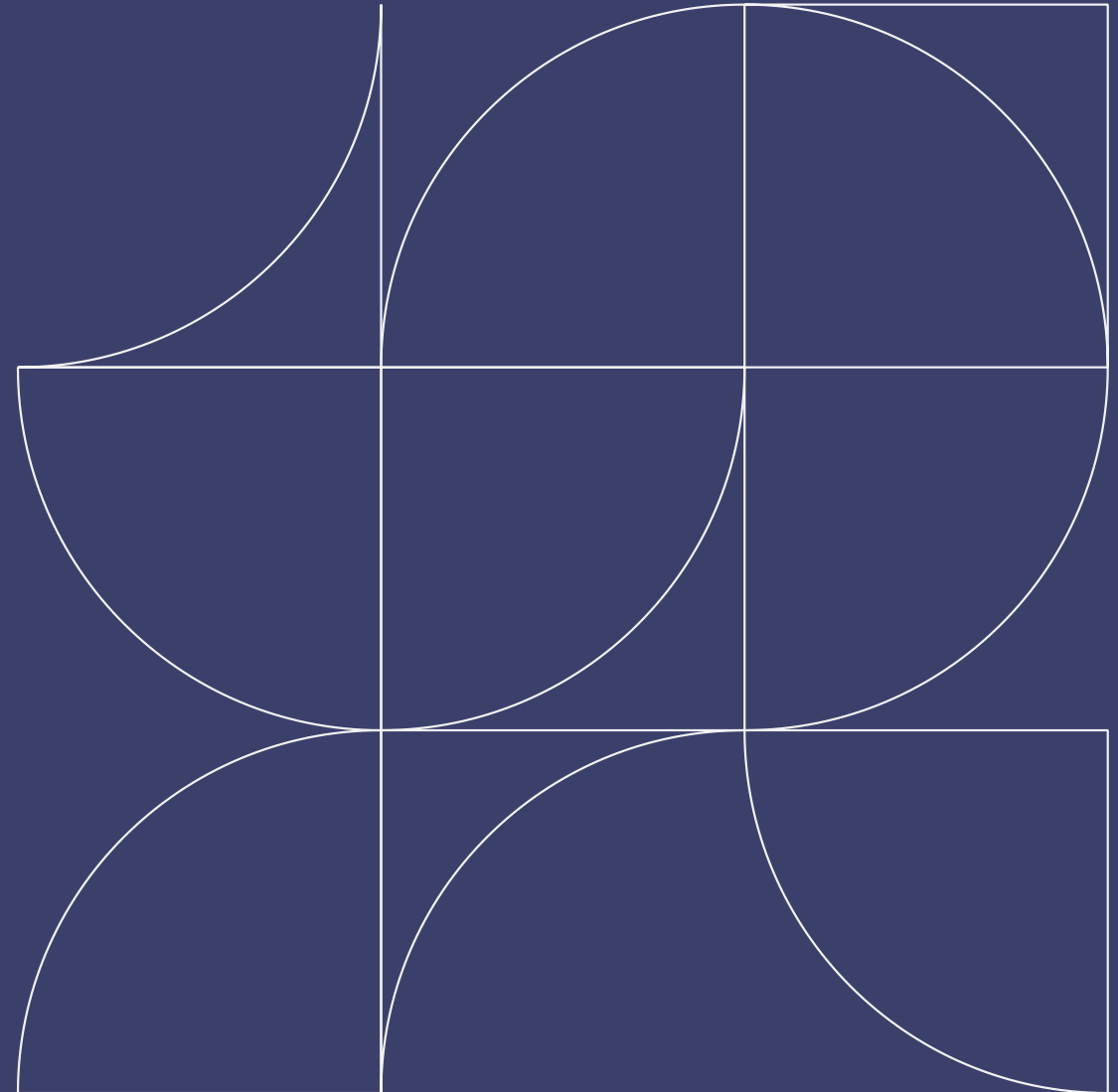
- Here, the parties agreed when the agreement was executed that the incorporated JAMS Rules would control the arbitration procedures. Examining those rules with the reasoning of *Ramirez* in mind, we observe that Rule 17(b) allows both parties to take one deposition of the opposing party or individual under the control of the opposing party without the arbitrator's approval. It then gives the arbitrator the authority to expand discovery, permitting Vo the opportunity to obtain the third party discovery required to adequately arbitrate his claims.
- This language could have been more precise but does not limit expanded discovery to parties to the arbitration agreement or those under their control and does not preclude an arbitrator from making nonparty discovery available to the parties. As we note above, the Supreme Court recently clarified that we should not construe discovery provisions defining the scope of an arbitrator's authority “in ... a limited way” and instead should select an interpretation that renders an agreement valid. ... We thus disapprove of *Aixtron* to the extent it interpreted the scope of an arbitrator's authority narrowly. In accordance with *Ramirez*, we construe the rule to provide the arbitrator the authority to make available additional nonparty discovery if necessary to allow fair arbitration of the claim.

Transportation Worker Exemption Under FAA

- “[N]othing herein contained shall apply to contracts of employment of seamen, railroad employees, **or any other class of workers engaged in foreign or interstate commerce.**” 9 U.S.C. § 1
- This exclusion has historically been limited to “**transportation workers,**” meaning those workers “actually engaged in the movement of goods in interstate commerce.”
- Intended to be **narrow** and cannot be construed to exclude **all employment contracts.**
- *Southwest Airlines v. Saxon* (SCOTUS, 2022) -- A class of workers who physically load and unload cargo on and off airplanes on a frequent basis is engaged in interstate commerce under § 1.
- *Bissonnette v. LePage Bakeries Park St.*, 144 S. Ct. 905 (2024) -- “A transportation worker need not work in the transportation industry to fall within the exemption“
- *Ortiz v. Randstad*, 95 F.4th 1152 (9th Cir. 2024) -- Workers who move products within a warehouse are covered by § 1’s residual clause if the products have not “come to rest.”

Other Key Recent Wage & Hour Legal Developments

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- 3
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Recent Key Wage & Hour Legal Developments

Osuna v. Spectrum Security Services, 111 Cal. App. 5th 516 (2025)(Review granted)

- Holds that, under the “old” PAGA statute, an individual employee need not have been employed or experienced a Labor Code violation during the one-year PAGA limitations period to have standing to assert a PAGA claim.
- The court found that PAGA standing only requires an employee to allege that the Defendant (1) employed them and (2) subjected them to Labor Code violations.
- Because Plaintiff had alleged these elements, he had standing to pursue a PAGA claim.
- As for the statute of limitations, this precluded Plaintiff from recovering penalties for violations occurring more than one year prior to filing his complaint, but not from pursuing a PAGA representative action.

Recent Key Wage & Hour Legal Developments

Iloff v. LaPaille, 18 Cal. 5th 551 (2025)

- Plaintiff brought a claim for unpaid minimum wages, along with liquidated damages under Labor Code sec. 1194.2, for maintenance work performed in exchange for free housing (but no wages).
- Trial court and Court of Appeal ruled against Plaintiff, finding the Defendant had a good faith belief that no wages were due.
- Supreme Court reversed, holding that to establish a good faith defense, an employer must demonstrate that it made a reasonable attempt to determine what the law requires, and ignorance of the law, even if mutual, is not sufficient for a “good faith” defense.

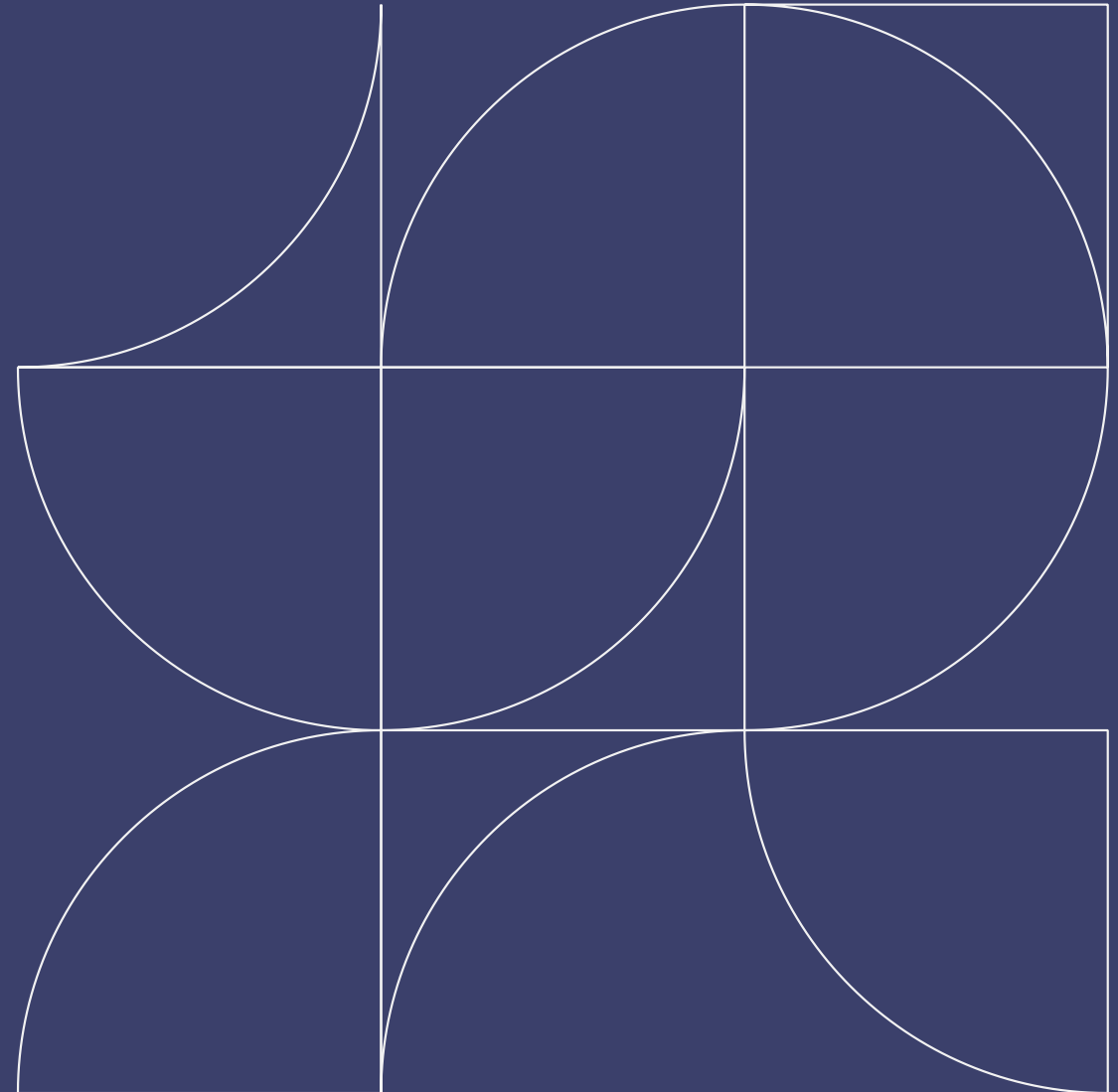
Recent Key Wage & Hour Legal Developments

Bradsbery v. Vicar Operating, 110 Cal. App. 5th 899 (2025)

- The Court of Appeal upheld the validity of prospective, blanket waivers of meal periods during shifts between five and six hours in length.
- In order to be valid, meal period waivers must be:
 - In writing and signed by the employee;
 - Be a standalone document;
 - State that the waiver is voluntary and was signed without coercion by the employer;
 - State that it is revocable at any time, and how to revoke.

Cases to Watch from the California Supreme Court

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- 2
- 3
- 4
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Final Blow To Rounding?

Camp v. Home Depot

- This case presents the following issue: Under California law, are employers permitted to use neutral time-rounding practices to calculate employees' work time for payroll purposes?
- Case fully briefed as of 9/25/23.
- Expect to have this set for oral argument in the next couple of months (per 9/10/25 docket entry).
- *Woodworth v. Loma Linda Univ. Med. Ctr.* is also on appeal; briefing deferred and on hold pending ruling in *Camp*.

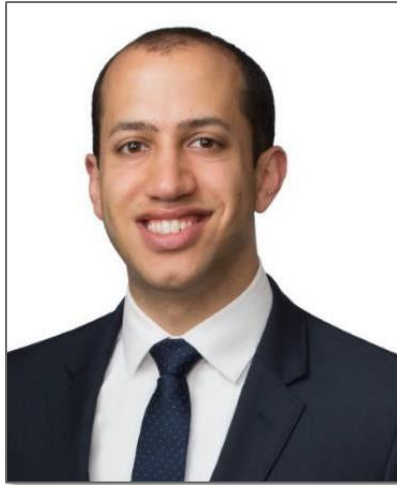
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