

California Employers Win Major Damage Limitation in Wage and Hour Suits

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California employers just won a major victory this week when the California Supreme Court issued its long-awaited decision in *ZB, N.A. v. Superior Court*. The exposure in Private Attorneys General Act (PAGA) cases was dramatically reduced to only civil penalties (of which 75 percent must be paid to the state) and no right for individual employee wages under the PAGA umbrella. With that drop-off of potential damages, there will be less incentive for private contingency lawyers to bring PAGA suits against California employers.

Lawson resolved a split in the courts of appeal over what civil penalties are available to "aggrieved employees" in a representative action under PAGA. The California Supreme Court found that, despite references to unpaid wages and other variable amounts in some civil penalty statutes, a PAGA plaintiff is only eligible to recover a fixed penalty amount per pay period. This is a great holding for employers, as it significantly diminishes the potential value of PAGA cases.

However, building on its 2014 holding in *Iskanian v. CLS Transportation Los Angeles LLC* that PAGA claims are not subject to pre-dispute arbitration agreements, the court also concluded in *Lawson* that because there is no individual right of action for unpaid wages under those civil penalty statutes, there are no "individual claims" that can be arbitrated. (Employees can, of course, seek recovery of unpaid wages under other statutes; however, PAGA-only cases have become a popular choice for employees seeking to circumvent an arbitration agreement. This holding enhances their ability to do so.)

Lawson had asserted a single cause of action for civil penalties under PAGA against her employer based on various alleged wage and hour violations, including a claim for civil penalties under California Labor Code section 558. The PAGA statute itself, and most other civil penalty statutes in the Labor Code, provide for a fixed penalty amount per pay period. However, section 558 (and a similarly worded statute, section 1197.1) mention some additional items including, for example, "an

amount sufficient to recover underpaid wages." The courts of appeal had split over whether unpaid wages and the other non-fixed amounts were truly part of the civil penalty, or constituted individual relief outside the scope of a PAGA action.

Lawson and her employer had entered into an arbitration agreement. Although *Iskanian* precluded arbitration of the PAGA claim, the employer sought arbitration of Lawson's "individual claims" for unpaid wages under section 558.

Following an in-depth analysis of the Labor Code language and legislative history, the California Supreme Court concluded that only the fixed penalty amounts constitute civil penalties recoverable in a PAGA action. The other items, such as unpaid wages, are only recoverable pursuant to a citation issued by the state labor commissioner. The court also held that, because employees have no private right of action under section 558, there is no individual claim at all under that statute; thus, the employer's motion to compel arbitration should have been denied.

On balance, this is a very positive ruling for employers, as it removes the specter of liability for unpaid wages in a PAGA-only action.

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