

California Employers May Wish to Update Their Arbitration Agreements in Light of New California Court of Appeals Decision Involving PAGA

March 10, 2023

The debate over the right to waive California Private Attorneys General Act (PAGA) claims continues.

The most recent rule, as stated by the California Court of Appeal for the Fourth District this week, is:

“Arbitration agreements between employers and employees that require arbitration of the individual portion of a PAGA claim are enforceable, but arbitration agreements that require arbitration (or waiver) of the representative portion of a PAGA claim are **not enforceable.**”

This holding comes on the heels of several recent landmark decisions involving PAGA, including the U.S. Supreme Court case of *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906, where the class plaintiff, who had signed an arbitration agreement with a class waiver, was ordered to arbitrate her “individual” PAGA claims, but her “representative” PAGA claims were dismissed for lack of standing.

However, since *Viking River*, California courts have been less than inclined to follow the U.S. Supreme Court’s guidance on how to handle PAGA claims when an arbitration agreement is involved.

This week’s decision against In-N-Out Burgers is no different.

“Despite the deep deference we afford the United States Supreme Court, even on purely state law questions where the United States Supreme Court’s opinions are only persuasive, not binding, we conclude we must follow [*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73] and hold that plaintiffs *retain standing* to pursue representative PAGA claims in court even if their individual PAGA claims are compelled to arbitration,” stated the court.

While these issues have rapidly evolved over the past several years — and are far from settled — many California employers and courts await guidance from the highly anticipated ruling of *Adolph v. Uber Technologies, Inc.* by the California Supreme Court, which involves many of these issues, and is set to be decided later this year.

In the meantime, in light of this decision and most recent rule, employers may wish to update the language in their arbitration agreements with respect to PAGA to increase the likelihood of their enforceability.

The case is [*Piplack et al. v. In-N-Out Burgers* G061098 \(March 7, 2023\)](#)

Authored By



Justin R. Peters

Related Practices

[Labor & Employment](#)

[Appellate & Trial Support](#)

[Alternative Dispute Resolution Services](#)

[Litigation and Trials](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.

