

News You Can Use



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Supreme Court Action

PAGA Ruling a Big Win for Employers

THE U.S. Supreme Court has put a significant dent in California's Private Attorneys General Act, which in recent years has resulted in a surge in legal actions against California employers by their workers.

The law has been a huge thorn in the side of employers, who have been on the receiving end of litigation by workers who allege Labor Code violations.

The high court ruled that employers can compel arbitrations for employee-initiated PAGA actions. The court also held that if a plaintiff in a PAGA action is bound to arbitration, they automatically lose standing to prosecute claims on behalf of other "aggrieved" employees and remaining PAGA claims must be dismissed.

This is good news for businesses. Those that move to cement policies that comport with the new decision, will have a chance to drastically reduce their exposure should they be targeted by one of these actions. And because various court rulings have expanded the law's breadth, PAGA has been a source of confusion among employers. The new ruling provides clarity.

The history of PAGA

The law was enacted in 2004, after the Legislature grew concerned that the state lacked the resources to fully enforce the California Labor Code.

PAGA permits employees to sue for civil penalties on behalf of themselves, fellow employees and the State of California for alleged Labor Code violations. If they are filing on behalf of other employees, the other workers do not participate in the lawsuit.

The employee in essence acts as the state's watchdog; they need not suffer any actual harm from an alleged violation in order to file a lawsuit. One employee has the ability to file a suit alleging multiple Labor Code violations.

For any provision of the Labor Code that does not specify a civil penalty, PAGA permits employees to seek a default penalty of up to \$100 for each aggrieved employee per pay period for an initial violation, and up to \$200 for each aggrieved employee per pay period for a subsequent violation.

If a suit is successful, the state receives 75% of the damages and the rest is distributed among the aggrieved employees.

The number of PAGA lawsuits filed in California on behalf of groups of workers has skyrocketed since 2014, when the California Supreme Court held that because PAGA plaintiffs step into the state's shoes, their claims cannot be forced into individual arbitration.

A resounding decision

The U.S. Supreme Court's 8-1 ruling in the case of *Viking River Cruises Inc. vs. Moriana* is likely to stem a flood of lawsuits filed in recent years accusing companies of widespread wage law violations.

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Insurance Trends

The Story Behind Increasing Commercial Auto Rates

COMMERCIAL AUTO insurance rates have been on the rise since 2011, increasing often by more than 10% a year as accidents and claims costs have soared.

The trucking industry has been the hardest hit by the steep increases, and there are a number of factors contributing to the rate hikes, according to a recent study by Risk Placement Services.

One of the biggest factors is that insurers have had trouble keeping up with increasing accidents and spiraling claims costs, leaving them in the red for most of the past decade. But there are other less-known factors, including the following:

Good drivers are aging and retiring – Half of all long-haul truck drivers are over 46 years old; they are aging and retiring, leaving a dearth of experienced drivers.

As the industry rushes to hire more drivers, it has to contend with having more inexperienced drivers who are more likely to be involved in accidents.

Large jury verdicts growing – The number of transportation sector damage awards exceeding \$10 million for injuries and property damage has been increasing since 2012.

Claims for bodily injuries can take years to resolve, causing insurers to initially underestimate the eventual loss amounts.

High maintenance costs – While advanced technology has made trucks safer, that tech is expensive to maintain, repair or replace. On the flip side, skimping on maintenance can lead to more accidents.

Distracted driving – Truck drivers and those they're sharing the road with continue looking at their phones, eating, looking at their navigation systems, and taking their eyes off the road with increasing regularity. This increases the frequency of accidents.

Dangers of crumbling infrastructure – America's deteriorating roads and bridges are increasing wear and tear on trucks, making accidents more likely.

Expensive cargo – The goods inside the trucks are also requiring larger amounts of insurance at higher rates. For example, shipments of electronics and medicine are magnets for thieves. And if a flatbed trailer carrying expensive machinery flips over, the cargo will likely be damaged beyond repair and the insurer has to pay to replace it.

Products like food, flowers and some medicines must be refrigerated; if the driver makes a mistake or something goes wrong with the refrigeration in the trailer, the entire lot may be ruined.

The takeaway

Because of these high costs, some companies are opting to forgo buying essential coverages such as excess liability (which can protect against those \$10 million lawsuits).

The Risk Placement Services report concludes that businesses with larger vehicle fleets, someone responsible for safety and that hire quality drivers and practice regular maintenance, will find insurance more affordable and available.

For the rest, the rate increases will likely continue. ❖



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Revisit Any Arbitration Agreements You Have with Workers

The court ruled that the Federal Arbitration Act, which states that in employer-worker agreements employees are required to arbitrate legal claims, trumps the earlier California Supreme Court decision barring forced arbitration.

SCOTUS ruled that PAGA plaintiffs can only establish standing to sue by first alleging an individual claim. And since the FAA requires individual claims to go to arbitration if a worker has signed an arbitration agreement, the plaintiff cannot add additional claims for other employees, Justice Samuel Alito wrote in the decision.

Here's what employers should take away from the decision:

- Individual PAGA claims can be arbitrated if an employee has signed a contract agreeing to arbitrate Labor Code and other employment-related actions.
- PAGA claims for other alleged aggrieved employees that the complaining employee includes in the lawsuit are not subject to arbitration, and those claims should be dismissed.
- If you have arbitration agreements for your workers, you should revisit them to ensure they allow you to compel arbitration of PAGA claims. ❖