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# CALIFORNIA: COURT HAS INHERENT AUTHORITY TO STRIKE PAGA CLAIMS AS UNMANAGEABLE

## Case Updates

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In a case of first impression, a California appellate court held trial courts possess the inherent authority to dismiss Private Attorney General's Act (PAGA) of 2004 (Lab. Code §2698 et. seq.) ("PAGA") claims as unmanageable. This decision reinforces and breathes new life into a profound employer defense in PAGA litigation.

## WHY THIS CASE IS IMPORTANT

PAGA claims have long been a point of contention among businesses who find themselves at odds with employees asserting large-scale, sweeping PAGA claims. Years ago, the California Supreme Court held PAGA actions were not subject to the due process limitations of class certification. At the core of the issue is the ability of employers to fairly present defenses to potentially sweeping employee litigation that, in pertinent respects here, looks and feels like a class action. With this case, employers now have a determinative ruling in their favor that requires the employee to provide a reasonable trial management plan, or risk their PAGA claim being dismissed by the court.

## FACTS

Plaintiff worked as a General Manager ("GM") at one Staples store location. He initiated this PAGA claim for himself and 345 other GMs. Plaintiff claimed Staples had misclassified GMs as executives and therefore, improperly treated them as exempt from overtime and other laws. On this basis, Plaintiff sought \$36 million in civil penalties. Staples moved to dismiss the claim, asserting that due to the number of employees and the individualized nature of their exemption defense, the lawsuit would be unmanageable and therefore violated Staples due process rights. It argued that having to prove proper classification for each and every general manger was required and uncontrollably arduous, thus making the matter inherently unmanageable. The trial court asked Plaintiff to submit a trial plan explaining how the defense could be manageably litigated, but Wesson refused, claiming instead

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that the court lacked authority to require "manageability," and arguing the manageability of Staples's defense was irrelevant. The trial court found trial would take approximately eight years, based on the parties' collective estimates, and struck the claim as unmanageable. Plaintiff appealed, and the Court of Appeal affirmed.

### **HOW DO PAGA CLAIMS DIFFER FROM CLASS ACTION LAWSUITS AND WHAT POTENTIAL PROBLEMS DOES THAT POSE?**

PAGA allows employees allegedly subject to Labor Code violations to sue on behalf of the State and other employees for civil penalties. Some employees choose to file a PAGA claim instead of a class action because PAGA claims have less requirements and are easier to bring before the court. This distinction previously exacerbated PAGA manageability concerns. Although a PAGA claim looked and felt like a class case in its sweeping scope, employers and the courts often lacked any definitive authority for consistently challenging those inherent shortcomings. Unlike putative class actions, PAGA claims do not technically require a showing that common issues predominate over individual concerns. Such claims also do not, for instance, require the showing of a uniform, allegedly violative policy that applies equally or in similar fashion to all employees, which would make key liability issues subject to common proof applicable to all. Previously, trial courts were extremely reticent to meaningfully address these shortcomings in PAGA litigation, which dramatically undermined an employer's ability to fairly defend itself in far-reaching litigation. Employees often presented trial plans proposing proof of sweeping liability through limited representative proof, such as samplings or statistical evidence, but broadly applied across hundreds or even thousands of employees. This truncated offering can materially ignore the truly individualized nature of the issues, and hence can severely undermine an employer's ability to meaningfully refute liability in a truly representative fashion.

### **THE COURT POSSESSES INHERENT AUTHORITY TO DETERMINE THE MANAGEABILITY OF PAGA CLAIMS, AND CAN DISMISS UNMANAGEABLE CLAIMS**

The *Wesson* case is an important recognition of an employer's right to present a fair defense. The court reinforced the power of all trial courts to manage litigation through its inherent powers, even to the point of dismissing unmanageable claims. In doing so, the ruling brings PAGA claims closer to the procedural mechanisms affiliated with class action cases. It holds that, in appropriate circumstances, PAGA claims can suffer the same fatal defects that make similar such claims and theories inappropriate for class treatment. Although viable California Supreme Court precedent still exempts PAGA claims from official class certification requirements, this ruling nevertheless meaningfully aligns PAGA claims with the predominance element of that analysis. Class certification is, at its heart, a procedural analysis simply determining whether a potential group claim can be fairly and efficiently litigated. The *Wesson* ruling recognizes that PAGA claims do, in some general respects, need to fulfill some form of manageability as well.

The case is also a resounding endorsement of a trial court's inherent authority to manage its cases, regardless of the case type. Employees often argue – and Plaintiff argued here – that, in effect, due to PAGA's unique nature, such claims are exempt from standard trial court rules of procedure. *Wesson* rejects that notion, and reinforced the courts' inherent powers as to *all* claims, including those under PAGA. In doing so, the *Wesson* court reiterated that this ruling did not bar anyone's ability to pursue certain *substantive* claims, but simply, in limited circumstances, their ability to do so through *aggregate* litigation. No one individual would, by virtue of the case, lose their substantive claim. Any individual, including the State – who is the real party in interest in a PAGA claim – remained free to pursue that claim. They just could not *always* combine the claims of many into one single proceeding.

This presents employers a powerful defense to PAGA litigation. The claims often purport to aggregate the claims of hundreds, or more. Often, however, core liability issues pivot upon highly individualized issues, such as, for instance, whether an employee had the opportunity to take a proper meal or rest break on a particular occasion. This essential liability question, however, often

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turns on an employee's particular circumstances on a particular date at a particular time, such as whether the press of business in that employee's store precluded a proper break at that moment in time. However, PAGA claims often purport to aggregate break claims of hundreds across scores of different locations, raising the somewhat self-evident question of how such issues can be fairly litigated for the group without the input of every employee as to every date in question. This case strongly endorses the notion that such issues must be fairly and manageably litigated, and that such a defect can be fatal.

Although the case is an important check on PAGA litigation, it is not, however, without its limits. The *Wesson* court noted dismissal is often the "last resort." The outcome also substantially derived from Plaintiff's refusal in the case to meaningfully address the issue head-on. He instead simply declined, and claimed the court lacked legal authority to act, and that the issue was simply 'irrelevant.' Having declined the opportunity for real input, the court moved on without it and held against him. The parties also agreed an 8-year trial estimate was appropriate. Although this is not entirely uncommon estimate in large-scale PAGA litigation, employees will argue this makes *Wesson* factually inapplicable (and extreme) as compared to most PAGA cases. They will on that basis attempt to minimize the ruling's impact and applicability.