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Client Alerts

PAGA v. PAGA – When Plaintiffs in Multiple, Overlapping PAGA Lawsuits Want "A Seat at the Table"

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It's not always good to be popular. "Household name" employers are frequent targets in lawsuits filed under California's Private Attorneys General Act (PAGA). The same company may be sued over and over again by different "aggrieved employees," all of whom seek to recover penalties on behalf of a larger group based on alleged violations of the state's Labor Code. This is true even though the claims asserted in different lawsuits may "overlap" – asserting the same legal theories based on similar factual allegations.

To avoid fighting the same war on multiple fronts, employers often seek to resolve one of the lawsuits in a way that will bar the others from going forward. A recent decision of a panel of the First District of the California Court of Appeal in *Accurso v. In-N-Out Burgers* (No. A165320, Aug. 29, 2023) may make that more complicated, unfortunately. In that case, the court opened the door for non-party PAGA plaintiffs to *join other PAGA actions* even as it acknowledged that "difficult procedural problems [] arise when multiple [] PAGA claimants sue the same target employer in different courts."

PAGA – Background

PAGA is a procedural mechanism that delegates to individual employees the power to enforce the Labor Code as a proxy for the state. California's Supreme Court has said that a PAGA lawsuit "is fundamentally a law enforcement action," designed to benefit the public. At all times, the state of California is "the real party in interest." In other words, the dispute is between the employer and the state, although the action is asserted nominally by one or more individual employees.

If a PAGA claim is successful, the employer must pay civil penalties, which are divided between the state's Labor & Workforce Development Agency (75%) and the group of "aggrieved employees" (25%). Attorneys' fees also are recoverable by a prevailing plaintiff. PAGA cases are expensive to defend, and therefore most of them are resolved before trial. Although a PAGA suit is not a "class action" in the traditional sense, the settlement of a PAGA lawsuit also requires court approval. Courts review proposed settlements for fairness.

PAGA v. PAGA – Who Gets a "Seat at the Table?"

Like many California employers, In-N-Out Burgers has been a magnet for PAGA lawsuits. As the *Accurso* court noted, six complaints were filed in four different counties against the company between 2019-2021. Ryan Accurso filed the fifth PAGA suit against the company during that period. His complaint alleged, in conclusory fashion, that In-N-Out violated various wage and hour laws. Some of the other plaintiffs were more specific. Tom Piplack, who filed the first lawsuit, claimed the company failed to reimburse him for expenses he incurred because he was required to purchase and clean white pants he had to wear for work. The court noted, and the parties did not dispute, that Accurso's generic claims "might" therefore have overlapped with Piplack's.

In-N-Out – which had been defending all six lawsuits – agreed to mediate Accurso's claims. When Piplack learned that a settlement of Accurso's claims might be imminent, Piplack (together with the plaintiff from the second-filed PAGA case) moved to intervene in the Accurso action, arguing that they had protectable interests in the outcome (including any settlement) of the Accurso case, and therefore should be permitted to join the Accurso action as parties. The intervenors also moved to stay the Accurso case based on the doctrine of exclusive concurrent jurisdiction, since Piplack's case was first-filed.

The trial court denied both motions, but the Court of Appeal reversed and remanded. The appellate court held that the intervenors were not entitled to intervention as-of-right but concluded that the trial court didn't consider whether

permissive intervention would be appropriate, based on the intervenors’ claim that they should be given “a seat at the table” because their PAGA claims overlapped. Notably, although the Accurso case in fact had not been resolved by settlement, the court said: “permissive intervention *even before the settlement approval process begins* may be a way to ensure” that PAGA plaintiffs who have overlapping claims “are meaningfully involved in the settlement approval process.” The intervenors may be better able, as compared to the trial court, to spot “deficiencies in a proposed PAGA settlement,” the court reasoned.

PAGA After the Accurso Decision

Th *Accurso* decision may disappoint employers for at least two reasons. First, employees may not be dissuaded from filing duplicative PAGA lawsuits even when other employees already have sued the same employer on the same theories of relief. Second, obtaining court approval of the settlement of a PAGA claim may become more complicated in cases where intervenors seek to join a pending case to weigh in on the proposed settlement.

A silver lining is that the court confirmed an intervenor’s right to seek a stay of a PAGA action based on the doctrine of exclusive concurrent jurisdiction. In fact, the appellate court ordered the trial court, on remand, to consider the intervenor’s motion to stay Accurso’s case. The court was careful, however, not to express any view about whether a stay should be granted.

Going forward, employers facing multiple PAGA lawsuits may want to consider whether seeking to coordinate the actions under Code of Civil Procedure Section 404 would be preferable to defending individual actions in which multiple non-party PAGA plaintiffs seek to intervene.

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