



Rutan & Tucker, LLP Scores Major Victory For California Employers

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In one of the most anticipated and important employment law decisions this year, the California Supreme Court unanimously decided on September 12, 2019, that employees cannot circumvent their arbitration agreements by using the California Private Attorneys General Act of 2004 (more commonly known as PAGA) to pursue a claim for unpaid wages. The California Supreme Court's decision is a huge victory for employers because it limits the scope of recovery employees can seek under PAGA.

In *ZB, N.A. v. Superior Court (Lawson)*, the plaintiff, Kalethia Lawson, formerly worked for California Bank & Trust. She filed a PAGA claim seeking to recover not only civil penalties, but also unpaid wages, under Labor Code section 558. She asserted this claim on behalf of all non-exempt employees of the Bank throughout California.

Because Lawson had signed an arbitration agreement, the Bank moved to compel individual arbitration of the portion of her claim seeking unpaid wages. The trial court granted the motion and compelled arbitration. The appellate court reversed the trial court, holding that because Lawson was seeking to recover unpaid wages under PAGA, the unpaid wages claim was not subject to arbitration. (A 2014 California Supreme Court decision, commonly known as "*Iskanian*," had held that PAGA claims are not subject to arbitration, with the possible exception of claims for "victim-specific relief.") The appellate court's decision, if allowed to stand, would have allowed employees to circumvent their arbitration agreements and seek recovery of unpaid wages by using PAGA, despite their agreements to arbitrate all damages claims on an individual basis.

The Bank sought review in the California Supreme Court. The Bank argued that PAGA does not permit the recovery of unpaid wages, but rather is limited to the recovery of civil penalties. Therefore, Lawson had no right to recover unpaid wages under PAGA; and, if PAGA did allow such right, the claim should be compelled to individual arbitration. The California Supreme Court agreed with the Bank, holding that employees *cannot* recover unpaid wages as part of a PAGA action: "Simply put, Lawson's complaint alleges entitlement to relief she cannot seek because she lacks a cause of action: an amount for unpaid wages under section 558."

The Bank's position before the California Supreme Court was an uphill battle, as six appellate courts had held that employees *could* recover unpaid wages as part of the civil penalties allowed under PAGA. Attorneys for Rutan & Tucker argued that the appellate courts had misinterpreted Labor Code section 558 by allowing employees to recover unpaid wages as part of a PAGA action. In the end, the California Supreme Court agreed – unanimously.

The Bank was represented by Rutan & Tucker partners James L. Morris and Brian C. Sinclair. Mr. Sinclair argued the case before the California Supreme Court. Gerard Mooney, Chair of Rutan's Appellate Practice Group, assisted in successfully obtaining review by the California Supreme Court, and on the multiple other briefs in the case.

A copy of the Court's decision can be viewed [here](#).

Should you have any questions, please contact [Brian Sinclair](#) or [Jim Morris](#).

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