Epic Systems Decision May Not Ease California Employers' Pain

What does the PAGA Act say?

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Recently, a proverbial sigh of relief could be felt amongst employers and employment defense attorneys across the country. At that time, in *Epic Systems Corp. v. Lewis* 138 S.Ct. 1612 (2018), the United States Supreme Court upheld class action waivers as enforceable in employment arbitrations.

Many saw this as the break employers needed from the wave of class actions seeking to extort money out of employers. In California, however, it was largely business as usual. In reality, many California employers had already implemented class action waivers through arbitration and they were being upheld by the California courts.[1] As a result, many opportunistic plaintiff's attorneys had already started adjusting their strategies to a unique procedure allowing employees to circumvent the class action procedure to their own personal benefit. This procedure is known as PAGA.

In 2004, California enacted the Private Attorney General Act (PAGA). *Cal. Labor Code*, §§ 2698-2699.5. This act authorizes employees to bring enforcement actions on the state's behalf for alleged violations of the California Labor Code. PAGA actions come with some substantial benefits including the fact that they are not subject to employment arbitration clauses, do not require class certification procedures, and can even enforce violations that the named plaintiff did not suffer.

In essence, this allows an employee who experienced a single labor code violation (even minor technical violations) to sue for violations for hundreds or thousands of other violations that had nothing to do with him/her. The typical result is litigation burdens that are so great that employers are extorted into paying large settlements that benefit opportunistic plaintiff's attorneys and the state of California.

To add insult to injury, even the few defenses to PAGA are being eroded by some federal courts. Specifically, the law provides employers essentially one month upon receiving notice of a PAGA allegation to remedy any violations. *Cal. Labor Code*, § 2699.3(c)(2)(A). Additionally, there are other timing requirements potential plaintiffs must satisfy in order to properly raise the claim in court.

However, certain district courts have refused to enforce these filing prerequisites calling into question the very purpose of any administrative procedures to begin with. *See Bradescu v. Hillstone Restaurant Group, Inc.,* 2014 WL 5312546, at 10 (C.D. Cal. 2014); *Azpeitia v. Tesoro Refining and Marketing Company LLC,* 2017 WL 3115168 at 10-11 (N.D. Cal. 2017).

Therefore, while much of the country's employers rejoice, those in California are merely bracing themselves for the new windfall of employment extortion fads – PAGA only claims. Even employers trying their absolute best to comply with every employment provision find such compliance near impossible.

When facing these issues and the occasional factual dispute regarding whether an employee actually received every rest break when they will attest to the opposite creates a situation ripe for exploitation. Simply put, there are a very few answers and defenses available in these situations but employers who do not consult with counsel quickly may waste the few at their disposal.

Notes
This is not meant to minimize class action waivers which are fundamentally important to employers and whose benefits often necessitate their adoption.

Author Bio

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