

## Sungaila, Pulido in Law360: The Arbitrability of Claims Arising Under PAGA

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**PRACTICES** Appellate, Class Action Defense, Litigation

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If an employee asserts representative claims seeking civil penalties from his employer under California's Labor Code Private Attorneys General Act of 2004, colloquially known as PAGA, are such claims arbitrable by agreement of the parties?

This question — left open by the California Supreme Court's decision in *Iskanian* and the Ninth Circuit's in *Sakkab* — has since eluded a uniform answer from the courts. The Ninth Circuit, in several unpublished decisions, has held that parties may agree to arbitrate, but not completely waive the right to bring, a representative PAGA claim. But at least one unpublished Ninth Circuit decision and several from the California courts of appeal have taken a broader view of *Iskanian*, concluding that certain PAGA claims are not subject to arbitration.

Courts should adopt a unified approach to this open question and allow representative PAGA claims to be arbitrated, so long as such claims are not outright waived. This view is the most faithful to *Iskanian*, *Sakkab* and the Federal Arbitration Act. ...

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