

Lawyer Insights

Not Worth a Try: Courts Can Strike Unmanageable PAGA Claims Before Trial

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Employment actions for penalties pursuant to the Private Attorneys General Act of 2004 (PAGA) have exploded in recent years. PAGA, which allows individual employees to step in the shoes of the California Labor Commissioner and recover civil penalties on behalf of themselves and other so-called “aggrieved employees,” is popular among the plaintiffs’ bar because (in addition to providing for attorneys’ fees) the PAGA statute does not require certification. For years, this has allowed the plaintiffs’ bar to use PAGA as a procedural vehicle to represent huge and disparate groups of employees without considering whether their claims could be proved using common proof.

But the proliferation of unruly PAGA actions may soon end, thanks to a recent decision from the California Court of Appeals in *Fred Wesson v. Staples The Office Superstore LLC*, which confirmed that courts have discretion to strike PAGA claims if such claims will be unmanageable at trial. This important decision provides California employers with a powerful tool to defeat PAGA actions that would require individualized inquiries instead of common proof.

The Case

Plaintiff Fred Wesson was a former store general manager (GM) of Staples retail stores in the Los Angeles area. In his lawsuit, he claimed that his employer failed to pay him overtime and denied him meal and rest breaks. Wesson sought PAGA penalties on behalf of himself and approximately 345 other GMs in California.

Staples asserted as an affirmative defense that Wesson and the other GMs he sought to represent were classified as exempt pursuant to the executive exemption, which meant that Wesson and the other GMs were not entitled to overtime or meal and rest breaks. Importantly, proof of that defense requires showing, among other things, that Wesson and the other GMs spent the majority of their working hours performing exempt job duties.

The retailer filed a motion to strike Wesson’s claims, arguing that the claims would be unmanageable at trial and would violate the company’s due process rights, because Staples could not prove its affirmative defense using common proof, but instead would need to establish the exemption as to each GM individually. Staples argued that this would require 346 mini trials, one for each GM.

In response to the motion to strike, the trial court invited Wesson to submit a trial plan explaining how the case could be tried fairly and efficiently. Wesson submitted a plan for how he would prove that Wesson

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and other GMs were not paid overtime or provided meal or rest breaks, but Wesson argued that he was not required to suggest a plan for how his employer could present its affirmative defense.

Key Takeaways

The trial court granted the employer's motion to strike Wesson's claims on the ground that they were unmanageable, and the Court of Appeals affirmed that ruling. Below are the three main takeaways from the Wesson Court's decision:

1. Courts have inherent authority to strike PAGA claims that cannot be tried fairly and efficiently.

A court's inherent authority comes from article VI, section I of the California Constitution. Pursuant to this inherent authority, courts have the power to manage complex litigation in order to prevent it from monopolizing court resources to the exclusion of other litigants, and the power to fashion procedures and remedies as necessary to protect litigants' rights. The Wesson Court confirmed that this power allows a trial court to intervene to ensure that representative PAGA actions can be managed fairly and efficiently at trial. Thus, defendants should consider asking courts to exercise their inherent authority and strike PAGA claims where PAGA plaintiffs cannot demonstrate an acceptable trial plan.

2. A PAGA trial plan should account for the defendant's affirmative defenses.

A defendant must be allowed a fair opportunity to present its defenses, which means that the trial plan must account for the defendant's affirmative defenses. Wesson presented a straightforward trial plan setting forth how he intended to establish wage and hour violations using common proof, but his trial plan did not address how the Court would try his employer's affirmative defense that Wesson and his fellow GMs were exempt under the executive exemption. At oral argument, counsel for the parties estimated that it would take six trial days per GM to litigate the GMs' classifications individually, which brought the estimated trial length to roughly eight years. The trial court concluded that such a long trial would "not meet any definition of manageability," and the Court of Appeals agreed. Following Wesson, defendants

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should confirm that any PAGA trial plan submitted by PAGA plaintiffs adequately accounts for affirmative defenses, such as exemption.

3. Not all PAGA claims will raise manageability concerns.

Wesson's employer persuasively argued that the Court would have to conduct individual trials for each of the GMs whom Wesson sought to represent, because the key question at the heart of the employer's exemption defense—how each GM spent his or her time—could not be answered based on common proof. While the Wesson Court affirmed the trial court's determination that Wesson's claims were unmanageable and noted that PAGA claims "involve comparable or greater manageability concerns than other representative claims," the Court observed that other PAGA claims may not present the same challenges, and courts may be able to narrow some claims to a manageable scope rather than striking the claims completely. Therefore, defendants will likely have more success striking PAGA claims if they can show that the claims would require individualized inquiries instead of common proof.

A Significant Win for California Employers

Federal district courts in California have issued divergent opinions regarding whether PAGA claims must be manageable, with some courts holding PAGA actions to a manageability requirement, and others refusing to impose such a requirement. Wesson is the first decision by a California Court of Appeals addressing PAGA manageability, and the decision will likely persuade more federal district courts in California to subject PAGA claims to a manageability analysis.

As more courts adopt the manageability requirement, employers in California will have greater success striking—and thereby defeating—unmanageable PAGA claims. The likely upshot is that the plaintiffs' bar will be forced to settle unmanageable cases early and cheaply, and future PAGA actions will focus on smaller groups of employees and narrower theories that are subject to common proof—a major win for California employers.

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