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When it *Reins*, it pours

PAGA TAKEAWAYS FROM THE SUPREME COURT'S DECISION IN *KIM v. REINS*

On March 12, 2020, the California Supreme Court issued its opinion in *Kim v. Reins*, landing a highly anticipated blow in favor of employees. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal.5th 73.) Most notably, the court took an "expansive approach" to standing under the California Private Attorneys General Act of 2004, Labor Code section 2698, et seq. ("PAGA"). Adopting the reasoning from the Court of Appeal's decision in *Huff v. Securitas Servs. USA, Inc.* (2018) 23 Cal.App.5th 745, the court found that a plaintiff who settles out his individual Labor Code claims still maintains standing to pursue a representative PAGA action for civil penalties as an "aggrieved employee." (*Kim*, 9 Cal.5th at p. 80.) In reaching this conclusion, the court clarified several ambiguities in the PAGA that California's legal community has grappled with for years. In this article, we highlight some of the key takeaways from the *Kim v. Reins* decision and its implications for employees in PAGA actions.

PAGA basics

The California Legislature enacted the PAGA in 2003 to achieve maximum compliance with state labor laws, given that resources and staffing levels and resources for labor law enforcement agencies had declined "and that it was therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations." (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 379-80; Lab. Code, § 2699(a).) Under the PAGA, employees (who comply with the PAGA's statutory notice requirements) may step into the shoes of the California Labor and Workforce Development Agency ("LWDA") and seek civil penalties for violations of enumerated Labor Code suffered by themselves and other "aggrieved employees." The PAGA defines an "aggrieved employee" as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." (Lab. Code, § 2699(c).)

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Unlike a class action, a PAGA representative action is "an enforcement action between the LWDA and the employer, with the PAGA plaintiff acting on behalf of the government." (*Kim*, 9 Cal.5th at p. 86, citing *Iskanian,* 59 Cal.4th at 382-384.) Of the civil penalties recovered in a PAGA action, 75 percent goes to the LWDA, and the remaining 25 percent is distributed to aggrieved employees. (Lab. Code, § 2699(i).) The civil penalties recovered in a PAGA action are intended to "remediate present violations and deter future ones, *not* to redress employees' injuries." (*Kim*, 9 Cal.5th at p. 86 (citations and internal quotations omitted) (emphasis in original).)

Kim v. Reins: The underlying facts

In *Kim v. Reins*, a restaurant training manager (Justin Kim) sued his employer, Reins International California, Inc. ("Reins"), alleging that training managers were misclassified as "exempt" employees. (*Kim v. Reins Int'l Cal., Inc.* (2017) 18 Cal.App.5th 1052, 1055, *rev'd sub nom.*) Kim's lawsuit asserted class claims for Labor Code violations for failure to pay regular and overtime wages (Lab. Code, § 1194); failure to provide meal and rest breaks (Lab. Code, § 226.7); failure to provide accurate, itemized wage statements (Lab. Code, § 226, subd. (a); and waiting time penalties (Lab. Code § 203); as well as a class claim for unfair competition under the California Business and Professions Code scetion 17200, et seq. (*Kim, supra,* 9 Cal.5th at p. 82.) Kim also sought civil penalties through a representative PAGA claim that was predicated on many of the same violations of the Labor Code alleged as class claims. (*Ibid.*)

Reins successfully moved to compel arbitration of Kim's individual claims and to dismiss the class claims, relying on an arbitration agreement and class action waiver that Kim signed at the time of hire. (*Id.* at p. 82.) With the individual claims ordered to arbitration, the court stayed the PAGA claim and the portion of the unfair competition claim seeking injunctive relief pending the completion of the arbitration. (*Ibid.*)

While the arbitration was pending, Reins served Kim with a Code of Civil Procedure section 998 offer to settle his individual claims for $20,000 plus attorney's fees and costs, with a carve-out of the PAGA claim. (*Ibid.*) Kim accepted the offer. (*Ibid.*) Based on the parties' settlement agreement, Kim dismissed his individual claims, leaving only the PAGA claim intact. (*Ibid.*)

Once the stay of the PAGA claim was lifted, Reins moved for summary adjudication of the PAGA claim. Reins argued that Kim had dismissed the individual Labor Code claims which underlay the PAGA claim, and he was therefore no longer an "aggrieved employee" with standing to sue under the PAGA. (*Ibid.*) The trial court agreed, finding that Kim's rights had "been completely redressed" and that he "ceased being an aggrieved employee" by virtue of the settlement and dismissal of his individual claims. (*Ibid.*) Judgment was entered in favor of Reins and affirmed on appeal, and the California Supreme Court granted review. (*Id.* at p. 83.)

The California Supreme Court's "expansive approach" to PAGA standing

The issue before the California Supreme Court was whether "employees lose standing to pursue a claim under the [PAGA] if they settle and dismiss their individual claims for Labor Code violations[.]" (*Kim,* 9 Cal.5th at p. 80.) A unanimous court answered "no" – the "[s]ettlement of individual claims does not strip an aggrieved employee of standing, as the state's authorized representative, to pursue PAGA remedies." (*Ibid.*)

Focusing on the PAGA's statutory language, the court reasoned that "[t]he Legislature defined PAGA standing in terms of violations, not injury." (*Id.* at p. 84.) As such, it concluded that Kim "became an aggrieved employee, and had PAGA standing, when one or more Labor Code violations were committed against him[,]" and that Kim did not lose that standing merely because he accepted compensation for his injuries. (*Ibid.*) In other words, "[s]ettlement did not nullify the violations that occurred." (*Ibid.*) The court determined that "[t]his expansive approach to standing serves the state's interest in vigorous enforcement." (*Ibid.*)

Key takeaways from *Kim v. Reins*

A PAGA plaintiff does not lose standing by settling individual claims

The primary takeaway from *Kim v. Reins* is that an employer may not extinguish a PAGA claim by settling out an aggrieved employee's individual claims. Critical to the court's decision was the concern that employers would use stratagems like Code of Civil Procedure section 998 offers to insulate themselves from representative liability. (*Kim,* 9 Cal.5th at 92, fn. 7.) Allowing the employers to evade liability under the PAGA by settling out an individual employee's claims would frustrate the PAGA's "remedial purpose" to "enhance enforcement of provisions punishable only through government-initiated proceedings." (*Id.* at p. 89.)

In the past, employers in class and PAGA actions attempted to limit their liability by obtaining individual releases from employees. (See *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796). In *Reins,* however, the California Supreme Court explained that allowing an employer in a PAGA action to "pick off" aggrieved employees in this manner would undermine the PAGA's purpose of ensuring "effective prosecution of representative PAGA actions[,]" as well as the State's ability to collect PAGA penalties and enforce the Labor Code. (*Kim,* 9 Cal.5th at p. 87.) The court also noted that Reins's position (i.e., that an employee who settles out his or her individual claims has no standing to pursue a PAGA representative action) was inconsistent with the statutory definition of an "aggrieved employee" as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was

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committed" – as the definition does "not require the employee to claim that *any* economic injury resulted from the alleged violations" at all. (*Id.* at 84, citing Lab. Code, § 2699, subd. (c).)

As a cautionary note, employees should remain wary of settlement offers which *explicitly* release PAGA claims (as distinguished from underlying Labor Code violations). One might expect that future employers seeking to free themselves of the *Reins* decision will try to differentiate an explicit release of a PAGA claim, including those made outside of the section 998 context, from a release of only the underlying Labor Code claims, as was before the court in *Reins*.

A PAGA plaintiff may pursue penalties for Labor Code violations he or she did not personally suffer

For years, defendants have argued that a PAGA plaintiff lacks "standing" to pursue civil penalties for violations which he or she did not personally suffer. Although it is settled that PAGA actions do not need to meet class certification commonality and typicality requirements (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 975), some courts have interpreted PAGA's standing requirement as having the same practical effect. Defendants continued to argue that the issue was not settled even after a 2018 appellate decision held that a PAGA plaintiff who suffered "at least one Labor Code violation" could "pursue penalties for all the Labor Code violations committed by that employer." (*Huff, supra,* 23 Cal. App.5th at 751.)

The *Reins* opinion puts an end to any ambiguity. The California Supreme Court adopted *Huff* and confirmed that employees "who were subjected to at least one unlawful practice have standing to serve as PAGA representatives even if they did not personally experience each and every alleged violation." (*Kim, supra,* 9 Cal.5th at p. 85, citing Lab. Code, § 2699, subd. (c).) The court explained that its interpretation was consistent with the statute's plain language defining an "aggrieved employee" as "any person who was employed by the alleged violator and against whom *one or more* of the alleged violations was committed." (*Ibid.* (emphasis in original).) The court concluded that its "expansive approach to standing serves the state's interest in vigorous enforcement." (*Id.*, citing *Arias, supra,*
46 Cal.4th at pp. 980-981.)

In the wake of *Reins,* employees should be mindful of *all* potential Labor Code violations – even those that they may not have personally suffered – from the outset of the case (e.g., when providing notice to the employer and the LWDA of the alleged violations. (See, Lab. Code, § 2699.3.) Employees should also be sure to account for *all* potential Labor Code violations when valuing cases for mediation or settlement purposes.

Employers who provide meal and rest break premiums may still be liable for PAGA penalties

Under the Labor Code and applicable Industrial Welfare Commission Wage Orders, an employer who fails to provide an employee with a lawful meal or rest break must pay the employee one additional hour of pay for each workday that the meal or rest break is not provided. (Lab. Code, § 226.7; see also, e.g., IWC Wage Order 7-2001 (tit. 8 Cal. Code Regs., § 11070, subds. 11(D) & 12(B)).) In the past, employers who paid premiums argued that they complied with the Labor Code and were not liable for additional civil penalties under the PAGA. The *Reins* decision should dissuade employers from adopting this untenable position.

As the California Supreme Court explained in *Reins*, even where an employer pays "an additional hour of wages as a remedy for failing to provide meal and rest breaks[,]" the payment of this statutory remedy "does not *excuse* a section 226.7 violation." (*Kim,* 9 Cal.5th at p. 84, citing *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244, 1256.) As with individual settlements, the payment of a premium does not "nullify the fact that a violation occurred" – "[t]he *remedy* for a Labor Code violation, through settlement or other means, is distinct from the *fact* of the violation itself." (*Kim,* 9 Cal.5th at p. 84.)

Reins provides clear authority that employees can use to argue that a noncompliant employer is liable for both PAGA penalties for meal or rest break violations *and* the premium payment that an employer must pay under section 226.7 and/or the applicable Wage Order. (*Ibid.*) This is an important consideration when valuing PAGA cases for litigation and settlement, particularly where an employer argues that they remedied meal or rest break violations by paying the required premiums.

A plaintiff need not show 'injury' to recover PAGA penalties for wage statement violations

In both class and individual proceedings, establishing a wage statement violation generally requires a showing of "injury" as a result of the employer's failure to provide accurate, itemized wage statements. (Lab. Code, § 226, subd. (e).) Often, proving the "injury" is the most significant hurdle to successfully pursuing these claims.

Recently, several appellate courts ruled that an aggrieved employee in a PAGA action is *not* required to demonstrate "injury" as a pre-requisite to recovering civil penalties for wage statement violations. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 784-785; *Raines v. Coastal Pacific Food Distrib., Inc.* (2018) 23 Cal.App.5th 667, 670.) In *Raines v. Coastal Pacific*, the court of appeal reasoned that "damages and civil penalties have different purposes […] Damages are intended to be compensatory, to make one whole. (See Civ. Code, § 3281.) Accordingly, there must be an injury to compensate." (*Raines,* 23 Cal.App.5th at p. 681.) In contrast, civil penalties, "like punitive damages, are intended to punish the wrongdoer and to deter future misconduct. […] An act may be wrongful and subject to civil penalties even if it does not result in injury." (*Id.* (internal citations omitted).)

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In *Kim v. Reins*, the California Supreme Court affirmed these lower court decisions in holding that a plaintiff's inability to obtain individual relief is *not* "fatal to the maintenance of a PAGA claim." (*Kim*, 9 Cal.5th at p. 85.) This makes the PAGA a powerful tool for employees bringing claims for wage statement violations, particularly where they face challenges to demonstrating that the violations resulted in actual injury.

The Bottom Line

Kim v. Reins confirms the PAGA's importance as a mechanism to enforce the Labor Code and combat abusive workplace practices. By strengthening aggrieved employees' ability to pursue representative actions, the decision marks a "win" for PAGA plaintiffs and redounds to the benefit of all California employees.

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