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PAGA: Trial Court May Limit Scope Of Discovery To Plaintiff's "Local Claims" Before Plaintiff Makes Showing Of Statewide Practices

By Damien P. DeLaney on May 26, 2015

In the uncertain world of the California Labor Code Private Attorneys General Act ("PAGA"), employers enjoyed a significant victory in *Williams v. Superior Court (Marshalls)* (Ct. App. 2d Dist. May 15, 2015), Case No. B259967. In *Williams*, the California Court of Appeal upheld a lower court order limiting a plaintiff's request for the names and contact information of other non-exempt employees to those employees in the plaintiff's work location until after he had "been deposed 'for at least six productive hours'" regarding the facts supporting his statewide allegations. *Williams* is a significant limitation on a plaintiff's ability to impose burdensome discovery obligations on an employer before the plaintiff makes a factual showing that "some reason exists to suspect [the employer's] local practices extend statewide."

As is common in many PAGA actions, the plaintiff in *Williams* demanded that defendant Marshalls of California ("Marshalls") produce the names and contact information of all of its nonexempt employees in California. Marshalls objected to this request on relevance, overbreadth, undue burden, and third party privacy grounds. The plaintiff offered to compromise with a *Belaire-West* privacy notice, but Marshalls refused. The plaintiff then moved to compel. The trial court granted the motion in part, ordering Marshalls to produce only contact information for the employees in its Costa Mesa location. The court further ordered that, after plaintiff submitted to a deposition of "at least six productive hours," he could renew his motion for statewide discovery, but also that Marshalls could oppose the renewed motion on the ground that there was no merit to the plaintiff's claims.

The court of appeal agreed with the trial court's fundamental reasoning that statewide discovery at this stage of the proceedings was premature. The court noted that, at the early stage of proceedings, the "litigation . . . consists solely of the allegations in [plaintiff's] complaint," and consequently, he had not yet shown "any knowledge of the practices of Marshalls at other stores, nor any fact that would lead a reasonable person to believe he knows whether Marshalls has a uniform statewide policy." Noting the costliness of conducting statewide discovery, the Court concluded that "first requiring that plaintiff provide some support for his own, local claims and then perhaps later broadening the inquiry to discover whether some reason exists to suspect Marshalls' local practices extend statewide" was an "eminently reasonable" approach for the trial court to take.

The court of appeal also approved Marshalls' third party privacy objections to the statewide disclosure of contact

information, holding that "Marshalls' employees' privacy interests outweigh plaintiff's need to discover their identity at this time." The court reasoned that, while the absent employees' had a clear interest in being left alone, the plaintiff's need for the discovery he sought was "practically nonexistent." Instead, the court concluded, the plaintiff needed first to show that "he himself was subjected to violations of the Labor Code." After making that showing, the plaintiff could then move forward to showing that Marshalls' practices were "uniform throughout the company." Only after making those showings, the court concluded, could the plaintiff obtain statewide discovery.

The court of appeal also rejected a relatively novel argument that a PAGA plaintiff is entitled to the same discovery that the Department of Labor Standards Enforcement ("DLSE") could obtain in an enforcement action. Latching on to language in *Arias v. Superior Court*, the plaintiff argue that his role as "proxy" for California's labor law enforcement agency means that he could obtain "free access to all places of labor," pursuant to Labor Code section 90. The court of appeal disagreed, finding that nothing in the plain language of PAGA entitles a PAGA plaintiff to any discovery beyond that available in all civil actions.

Williams provides—finally—clear guidance to superior court judges on the management of discovery in PAGA actions. Because PAGA theoretically enables a plaintiff to obtain penalties on behalf of allegedly aggrieved employees not before the court, plaintiff's attorneys have taken it as *carte blanche* to seek broad, class action-type, discovery on the basis of thin factual allegations pertaining to the circumstances of an individual plaintiff. Because of the absence of a class certification process in PAGA cases, there has been no clear mechanism enabling the courts to manage the extent of this discovery. *Williams* articulates a clear limiting principle: that the PAGA plaintiff must make a threshold showing that he or she is aggrieved by a uniform, statewide policy or practice before he or she can delve into statewide discovery. This result is very good news for employers facing PAGA litigation.

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