



Matthew J. Fletcher  
Partner

## The US Supreme Court Gives California Employers A Way to Minimize PAGA Exposure.

On June 15, 2022, while most mainstream media was waiting for a decision in *Dobbs*, the US Supreme Court issued a blow to employees' ability to pursue representative lawsuits under California's Private Attorney General Act.

PAGA claims have cost California employers hundreds of millions of dollars in penalties for technical defects on calculating regular and overtime pay, as well as defects in information placed on paystubs. Because a single employee has standing to bring claims for all other aggrieved employees as a private attorney general, plaintiffs' lawyers have aggressively pursued these claims due to the ease of recovery, massive statutory penalties, and recovery of attorney's fees. Unsuspecting businesses, often acting in the best interest of their employees, have been hit with PAGA claims. More importantly, the plaintiffs' bar knew that under California law these claims were not subject to arbitration. That was true until this recent Supreme Court decision.

Today's 8-1 opinion in [\*Viking River Cruises, Inc. v. Moriana\*](#) was drafted by Justice Alito and held that the Federal Arbitration Act partially preempts California's PAGA law, and employers may compel an employee to arbitrate an individual PAGA claim. Once the employee arbitrates his or her own claim, the employee cannot bring a representative claim on behalf of other aggrieved employees, because they lack standing. In other words, an employer who falls under the FAA can greatly reduce, if not eliminate, exposure to PAGA claims under a properly drafted arbitration clause.

Given the importance of this ruling, employers may want to consider adding or changing arbitration provisions in employment contracts.



Matt Fletcher is a partner in at CFH and may be reached at [mfletcher@businesslit.com](mailto:mfletcher@businesslit.com) or (949) 622-2600. You can learn more about our practice at [www.businesslit.com](http://www.businesslit.com). Our address is 2211 Michelson Drive, Suite 1100, Irvine, CA 92612.