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Calif. Appeals Court Says Uber Can't Arbitrate PAGA Claims

By **Bonnie Eslinger**

Law360 (April 12, 2022, 6:39 PM EDT) -- Uber cannot force a former driver to arbitrate his worker-misclassification lawsuit or even the initial question of whether he is an employee entitled to bring a representative claim under California's Private Attorneys General Act, a state appeals court said Monday.

Plaintiff Erik Adolph, a former driver for Uber's meal delivery service, UberEats, sued the company in Orange County Superior Court in 2019, claiming it misclassified employees as independent contractors. He later amended his complaint to seek civil penalties against Uber under PAGA.

Uber urged the trial court to send the matter to arbitration, pointing to a provision in the contract that Adolph signed when he was hired agreeing that any disputes between the driver and the company would be resolved in arbitration.

In its Monday ruling, the state appellate court affirmed the trial court's denial of Uber's petition to compel arbitration, underscoring the California Supreme Court's decision in **Iskanian v. CLS Transportation**, holding that an agreement waiving the right to bring a representative claim under PAGA is unenforceable because such claims are brought on behalf of the state.

Uber also argued on appeal that if Adolph is an independent contractor – as the company maintains – he would not be able to bring a PAGA claim, which under the labor code is only open to an "aggrieved employee." Therefore, the company said, the initial question of whether Adolph is an employee must be determined in arbitration as per his contract with Uber.

The appellate court disagreed.

"California case law is clear that the threshold issue of whether a plaintiff is an aggrieved employee in a PAGA case is not subject to arbitration," Monday's decision states. "Therefore, we affirm."

Iskanian and cases that followed it obstruct the goals of the Federal Arbitration Act, Uber maintained. The company urged the California appellate court to reconsider those cases in light of the U.S. Supreme Court's subsequent **2018 Epic decision**, holding that under the FAA mandatory arbitration agreements must be enforced according to their terms.

The appellate panel was not persuaded, particularly since the arbitration provision in Uber's agreement with Adolph still lets Uber bring any concerns about whether the waiver is valid into court.

"Although the arbitration provision does not explicitly grant to the courts the authority to determine whether a PAGA claimant is an aggrieved employee, the provision's retention of all other authority over a PAGA claim in the court makes this a fair inference," the appellate court panel stated.

Monday's decision also notes that the U.S. Supreme Court, in *Viking River Cruises Inc. v. Angie Moriana*, is presently mulling over whether labor violation claims workers bring through PAGA **can dodge arbitration**.

"Unless and until the United States Supreme Court or the California Supreme Court directly overrules it, the courts of this state must follow the rule of *Iskanian*," the appellate court stated in its Monday decision.

Adolph's suit claimed that by classifying employees as independent contractors, Uber unlawfully escaped reimbursing drivers for work expenses that would be covered if they were employees.

One of Adolph's lawyers, Aashish Desai of Desai Law Firm APC, Tuesday said he was confident his client's case would hold up, even after the Supreme Court's ruling in Viking.

"It's a win today and I think it's going to be a win tomorrow," Desai said, saying that he believes the issue of state's rights will play heavily into the high court's decision.

Also, he said, even if Viking wins in that case, it will have to go back to California's Supreme Court and he didn't believe it would "actually do away with all parts of Iskanian."

Representatives for Uber did not respond to Law360's request for comment.

California Court of Appeal Justices Kathleen E. O'Leary, Eileen C. Moore and Thomas M. Goethals sat on the panel that issued Monday's decision.

Uber is represented by Andrew Spurchise, Sophia Behnia and Anthony Ly of Littler Mendelson PC.

Adolph is represented by Aashish Y. Desai and Maria Adrienne De Castro of Desai Law Firm APC, and Andrew Paul Lee and Mengfei Sun of Goldstein Borgen Dardarian & Ho.

The case is Erik Adolph v. Uber Technologies, case number G059860, in the Court of Appeal of the State of California, Fourth Appellate District.

--Editing by Patrick Reagan.

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