



# Managing an Unmanageable Mess

By Sheryl L. Skibbe

September 14, 2021

For many years now, individual plaintiffs, claiming to be deputized private attorneys general, have filed hundreds of lawsuits against employers seeking thousands or millions of dollars in civil penalties for alleged violations of the California Labor Code. The boilerplate complaints filed day after day are carbon copies, alleging supposed violations of statutes without description. But unlike class actions, these lawsuits filed under the Private Attorneys' General Act ("PAGA") contain no procedural protections that require the plaintiff to show some modicum of commonality among those being represented or how multitudes of diverse questions could result in a unitary answer for the myriad circumstances in any workplace setting.

In the first published California appellate decision on the issue, the Court of Appeal affirmed the trial court's inherent authority to strike claims brought under PAGA where the claims cannot be fairly and efficiently tried. To ensure the trial court's ability to function and protect the rights of litigants, the Court of Appeal in *Wesson v. Staples the Office Superstore LLC* affirmed the trial court's dismissal of the plaintiff's PAGA claims where the projected trial plan would require "individualized determinations as to hundreds or thousands of differently situated employees, requiring years of trial court time."

In *Wesson*, the plaintiff asserted both a class action and PAGA representative suit seeking damages and civil penalties resulting from Staples' alleged misclassification of 345 current and former General Managers. Following the denial of class certification, the court requested *Wesson* submit a plan for the trial of the PAGA claims. *Wesson* argued that the court had no authority to inquire into manageability but set out a plan to prove his prima facie case, ignoring Staples' due process rights to litigate its affirmative defense on the exemption issue. Unpersuaded, the court invoked its inherent authority to manage the litigation and struck the PAGA claim.

Although manageability concerns are not new and have served as the basis to dismiss allegations in both class actions and representative actions under California's Unfair Competition Law, this decision cements the ability of trial courts to manage PAGA litigation despite the lack of express statutory requirements to demonstrate manageability. And, as the Court of Appeal noted, manageability in PAGA cases may raise even more of a concern where class action procedural requirements are absent. The inherent authority to strike a PAGA claim exists because it is "not inconsistent with PAGA's procedures and objectives, or with applicable precedent." Although manageability has been argued by defendants in PAGA cases for years, this case provides citable appellate authority on which employers may now rely.

If you have any questions regarding the topics discussed in this article, please contact **Sheryl L. Skibbe** at +1 (424) 204 7799 or any other Vedder Price attorney with whom you have previously worked.

[vedderprice.com](http://vedderprice.com)