Iskanian v. CLS Transportation: California Class-Action Waivers Survive (but With a Catch)

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After much debate, on Monday, June 23, 2014, the California Supreme Court, in a 4-3 opinion, held that class-action waivers in employment arbitration agreements are valid. The opinion, authored by Justice Liu, held that the Federal Arbitration Act (FAA) preempted earlier state rulings refusing to enforce class waivers. The Court also rejected plaintiff's arguments that the class-action waiver in the case was unlawful under the National Labor Relations Act.

The enforceability of class-action waivers in arbitration agreements has been a source of contention between California employee plaintiffs and employer defendants. Employers have argued that such waivers and arbitration agreements are enforceable and further the goals of the Federal Arbitration Act. On the other hand, plaintiff employees have argued that class waivers are unconscionable and unenforceable. After years of conflicting rulings throughout California, the California Supreme Court in *Iskanian v. CLS Transportation Los Angeles, LLC*, upheld the enforceability of class-action waivers in arbitration agreements in the employment context. This ruling essentially bars individuals who sign class waivers from bringing a class-action suit against employers, for such things as overtime, meal break violations, and other wage and hour claims.

The ruling was not without some bad news for California employers. The Court specifically carved out claims based on the Private Attorney General Act (PAGA) and held that employees could pursue such representative claims even with a valid class-action waiver. Justice Liu explained in the opinion that under PAGA, employee plaintiffs step into the shoes of state labor law enforcement agencies, and the Act allows them to seek recovery of civil penalties that otherwise would have been assessed and collected by the Labor Workforce Development Agency. The Court held that an arbitration agreement that requires employees to give up the right to bring representative PAGA actions as a condition of employment is contrary to public policy and the right to bring such an action is not preempted by the FAA.

While the validation of class-action waivers is a boost to employers seeking to use such waivers within arbitration agreements as a means to avoid wage and hour class actions, California employers should expect to see an increase in the number of representative PAGA claims. Employers should evaluate their arbitration agreements with these thoughts in mind and consider the implications to pending and future

litigation of wage and hour claims in California.

If you have questions about how this ruling may affect your business, contact your Lathrop Gage attorney or one of the attorneys listed above.