

# DELMORE ♦ GREENE

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Employment Law Update

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## SUPREME COURT HOLDS PAGA CLAIMS SUBJECT TO ARBITRATION ON INDIVIDUAL BASIS

The U.S. Supreme Court recently delivered California employers a rare win. In *Viking River Cruises, Inc. v. Moriana*, the Court ruled that the Federal Arbitration Act (FAA) preempts California case law to the extent that it prevents claims filed pursuant to California's Private Attorneys General Act (PAGA) from being compelled to individual arbitration. The momentous ruling effectively allows employers with valid bilateral arbitration agreements to avoid costly representative PAGA claims by compelling PAGA plaintiffs to arbitrate their claims on an individual basis.

Prior to *Viking*, nearly all PAGA claims were filed as representative actions on behalf of all non-exempt California based employees who worked during the statutory period. Because California law prohibited employers from compelling these claims to arbitration, employers were trapped in costly representative litigation and deprived of the benefit of arbitration. Like class action claims, representative PAGA claims are more costly to litigate than individual claims and expose employers to far greater liability. However, unlike class action claims, PAGA claims are not subject to class certification requirements, leaving employers few mechanisms available to challenge the representative nature of PAGA actions.

The *Viking* decision provides a much needed break for California employers. Now, employers with valid bilateral arbitration agreements will be able to prevent these costly representative PAGA claims by compelling them to individual arbitration, thereby drastically reducing the potential exposure.

The *Viking* ruling is particularly important given the recent decision issued by the California Supreme Court in *Naranjo v. Spectrum Security Services, Inc.* In *Naranjo*, The California Supreme Court held that meal and rest period violations also trigger derivative claims for waiting time penalties and wage statement penalties. Because *Naranjo* opened the door for additional penalties and theories based on alleged meal and rest period violations, the ability handed to employers by *Viking* to avoid class and representative claims has never been more critical or opportune.

This is the second major change in law affecting arbitration agreements this year. As discussed in our February 2022 Employment Law Flash Update, the U.S. Congress passed the *Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021*, which bars pre-dispute arbitration agreements for all claims relating to a "sexual assault dispute" or "sexual harassment dispute."

Considering these developments, employers should immediately contact counsel to review and update their arbitration agreements.

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## **REMINDER: EMPLOYERS MUST REIMBURSE FOR WORK-RELATED EXPENSES**

California law has long required employers to “indemnify” employees for all necessary work-related expenditures. While this may seem like common knowledge, many employers inadvertently overlook various work-related expenses until it is too late, particularly as it relates to use of personal cellphones and home internet. Employer exposure to reimbursement claims is particularly high with the increase in remote work. Both exempt and non-exempt employees are entitled to such reimbursement.

For example, in most situations, an employee using a personal cellphone or home internet for work purposes is entitled to reimbursement for the portion of their home internet and personal cellphone usage that is associated with work. However, many employers operate with the misconception that if an employee already had an unlimited personal cellphone plan, or already had home internet regardless of work, that they are not required to reimburse the employee for these types of expenses. That is not the case. Regardless of whether an employee already had an unlimited personal cellphone/internet plan, when an employee is required to use those services for work purposes, they should be reimbursed for the usage associated with work.

Other circumstances where reimbursement may be required include when an employee is required to be reachable by personal cellphone (by the employer or other employees), when an employee is required to access work email with their personal cellphone, when an employee is required to clock in or out using their personal cellphone, or when an employee is required to access their schedule using their personal cellphones.

Reimbursement obligations, however, may be avoided when use of a personal device is voluntary and for the convenience of an employee. To avoid the reimbursement obligation, there must be a legitimate alternative available to the employee. For example, if an employee’s schedule is posted in the workplace and available to the employee, but they elect to view it on their personal cellphone for convenience, a reimbursement obligation may not arise.

Given the increase in wage and hour cases that include allegations of failure to reimburse business expenses, employers should contact counsel to evaluate potentially unrecognized reimbursement obligations, and to review their reimbursement policies and practices.

## **STATEWIDE MINIMUM WAGE AND MINIMUM SALARY INCREASE TO TAKE PLACE IN THE NEW YEAR**

Triggered by soaring inflation that has led to an increase in the cost of living, Governor Gavin Newsom announced that the hourly minimum wage across the State of California will increase from \$14.00 (for employers with 25 or fewer employees) and \$15.00 (for employers with 26 employees or more) to \$15.50 (for all employers) effective January 1, 2023. The increase, which is based on the Consumer Price Index (CPI), is required by a state law passed in 2016. Importantly, the increase in the state’s minimum wage triggers an increase in the minimum salary that must be paid to exempt employees. The current minimum salary of \$62,400 will increase to \$64,480 in the new year.

## SUMMER HEAT BRINGS RISING MINIMUM HOURLY WAGE RATES ACROSS CALIFORNIA

With the CPI showing the largest spike in 30 years, employers in several cities across California will need to prepare for minimum hourly wage increases tied to the CPI. Additionally, cities continue to adopt ordinances with minimum wage rates that exceed the state minimum wage. The following cities will see increases in the minimum wage on July 1, 2022:

Cities	Current Hourly Rate	Hourly Rate as of 7/1/22
Alameda	\$15.00	\$15.75
Berkeley	\$16.32	\$16.99
Emeryville	\$17.13	\$17.68
Foster City	State Rate	\$15.75
Fremont	\$15.25	\$16.00
City of Los Angeles	\$15.00	\$16.04
County of Los Angeles	\$15.00	\$15.96
Malibu	\$15.00	\$15.96
Milpitas	\$15.65	\$16.40
Pasadena	\$15.00	\$16.11
San Francisco (City and County)	\$16.32	\$16.99
Santa Monica	\$15.00	\$15.96
West Hollywood (50+ employees)	\$15.50	\$16.50
West Hollywood (fewer than 50 employees)	\$15.00	\$16.00