

After 'Adolph,' Does an Employee's Arbitration Loss Defeat a PAGA Representative Claim?

Until the California Supreme Court resolves the split, in-house counsel and practitioners should plan for uncertainty and approach forum-selection, arbitration-agreement drafting, and employment arbitrations with the split in mind.

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A split has reemerged at the intersection of arbitration and the Private Attorneys General Act: when an arbitrator finds against an employee on her individual labor code claims, does that finding bind a court adjudicating her standing to pursue a representative PAGA action based on the same allegations?

In *Adolph v. Uber Technologies*, 14 Cal. 5th 1104 (2023), the court held that a plaintiff compelled to arbitrate individual labor code claims retains standing as an “aggrieved employee” to litigate non-individual PAGA claims in court, because only “the fact of the violation itself” ... is required for PAGA standing.” In a passage now central to the split, the court explained that if the arbitrator finds the plaintiff is *not* an aggrieved employee, the court “would give effect to that finding,” and the plaintiff “could no longer prosecute his non-individual claims due to lack of standing.” (citing *Rocha v. U-Haul Co. of Cal.*, 88 Cal. App. 5th 65, 76–82 (2023)).

But what if the arbitrator did not decide the aggrieved-employee question directly? When an arbitrator finds no labor code violation but makes no explicit aggrieved-employee finding, does that finding preclude the same employee's PAGA claim? After all, an employee who suffered no violation is not typically “aggrieved.” See Cal. Lab. Code Section 2699(c)(1) (“aggrieved employee” means one who “personally suffered each of the [alleged] violations”).

Before *Adolph*, the Fourth District (Division Two) held that an arbitrator's finding of no labor code violation did not bar the same employee's PAGA claim, because the employee acts in different capacities and asserts different rights in the two actions. *Gavriiloglou v. Prime Healthcare Mgmt.*, 83 Cal. App. 5th 595 (2022). In arbitration, she litigates her personal right to damages; under PAGA, she litigates the state's right to civil penalties as its proxy. see Restatement (Second) of Judgments Section 36(2).

The Second District (Division One) rejected *Gavriiloglou's* analysis in *Rocha*, 88 Cal. App. 5th 65. There, the arbitrator found no retaliation, and the court held that finding precluded the employees from relying on the same allegations for PAGA standing—though they could still cite their manager's minimum-wage violations. *Rocha* reasoned that *Gavriiloglou* conflated claim and issue preclusion: the “different capacity” authorities addressed whether a cause of action can be relitigated, not whether a specific factual finding binds the parties later. Even if an identical-capacity rule applied to issue preclusion, the “same right” exception would apply, because whether a labor code violation occurred turns on the same law and conduct regardless of posture. *Rocha* also held the employees were in privity with the state. Under *Rocha*, then, an employee who loses an individual labor code arbitration cannot take a second bite in a PAGA action.

The California Supreme Court denied review in *Gavriiloglou*, but in *Adolph* the court cited *Rocha* with apparent approval. *Adolph*, 14 Cal. 5th at 1124. The Second District (Division Three) read that citation as a signal. In *Rodriguez v. Lawrence Equipment*, 106 Cal. App. 5th 645 (2024), where the arbitrator ruled against the employee on wage-and-hour claims, the court

of appeal held: “The clear implication of *Adolph*’s analysis is that arbitral findings have a preclusive effect on standing in a stayed PAGA claim.”

Even so, the Fourth District (Division Two) has adhered to *Gavriiloglou*. See *Prime Healthcare Mgmt. v. Superior Court*, 117 Cal. App. 5th 127 (2025). *Prime Healthcare*, a writ proceeding from the same case as *Gavriiloglou*, held that *Adolph* did not overturn *Gavriiloglou*, at least for purposes of the law-of-the-case doctrine. Two grounds carried the analysis. First, whether a plaintiff is an aggrieved employee is a “gateway” issue for the court, not the arbitrator. Second, the *Gavriiloglou* arbitrator had ruled against the employee on exempt-employee status, not on whether a labor code violation occurred; because PAGA has its own definition of “aggrieved employee,” that exempt-status finding was not “tantamount to a gateway finding on the viability of the PAGA claims.”

Prime Healthcare relied principally on *Adolph*’s procedural posture: *Adolph* contemplated an arbitrator who had decided the aggrieved-employee question directly, whereas the *Gavriiloglou* arbitrator decided only the underlying Labor Code claims. On that reading, *Adolph*’s citation to *Rocha* governs a narrower fact pattern. But the *Rocha* arbitrator did not make an aggrieved-employee finding either; he decided whether the employer violated labor code Section 1102.5. If *Adolph*’s citation to *Rocha* governs only direct-finding cases, then *Adolph* cited a case that does not directly support the rule for which it is cited.

The First District (Division One) recently sided with *Rocha* but granted rehearing, leaving its opinion uncitable. *Sorokunov v. NetApp*, 342 Cal. Rptr. 3d 125, 147–49 (Ct. App. 2026), *reh’g gr., op. vacated*, No. A171964 (Mar. 30, 2026). No amended opinion has issued as of the time of this article’s publication.

The California Supreme Court may soon resolve the split in *Leeper v. Shipt*, though preclusion is not among the questions presented. In *Leeper*, 107 Cal. App. 5th 1001 (2024), the Second District held that “any PAGA action necessarily includes both an individual PAGA claim and a representative claim,” so plaintiffs cannot avoid arbitration by pleading only representative claims. In dicta, the court acknowledged that compelling individual claims to arbitration may “affect the outcome of [the representative claim] via issue preclusion.” (citing *Rocha*, 88 Cal. App. 5th at 69). The court granted review on its own motion to resolve whether every PAGA action necessarily includes both individual and non-individual claims, and whether a plaintiff can elect to bring only a non-individual claim. *Leeper v. Shipt*, 566 P.3d 234 (Cal. 2025). Those questions omit preclusion, but the parties and amici have briefed it in detail because preclusion is a major practical consequence if many PAGA actions must proceed in two-stage, two-fora adjudications—individual arbitration and a representative court action.

After the court granted review in *Leeper* on its own motion, the parties informed the court that the case had settled. The court retains discretion to decide it, but may dismiss review or, if it reaches the merits, confine its opinion to the questions presented. Either way, the preclusion issue may remain unsettled and continue to invite follow-on litigation.

Conclusion

Until the California Supreme Court resolves the split, in-house counsel and practitioners should plan for uncertainty and approach forum-selection, arbitration-agreement drafting, and employment arbitrations with the split in mind. For example, an employer-side drafter who wanted to maximize the preclusive effect of an arbitration win could require the arbitrator to make specific findings on each alleged labor code violation rather than a general award. If the preclusion question gets resolved in *Rocha*’s direction, granular findings become valuable; if it gets resolved in *Gavriiloglou*’s direction, their relevance diminishes. However, caution on both

sides is warranted. As AFL-CIO wrote in its *Leeper* amicus brief, issue preclusion can be a two-way street, and an employee could potentially leverage an arbitration win in the employee's representative PAGA suit to give the arbitrator's findings broader applicability.

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