GIBSON DUNN

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CALIFORNIA COURT OF APPEAL CONFIRMS THAT TRIAL COURTS HAVE THE AUTHORITY TO STRIKE PAGA CLAIMS THAT ARE UNMANAGEABLE

To Our Clients and Friends:

The California Court of Appeal last week issued the first published California appellate decision to expressly confirm that trial courts have the authority to strike an unmanageable Private Attorneys General Act ("PAGA") claim. In *Wesson v. Staples the Office Superstore, LLC*, No. B302988, — Cal.App.5th — (Sept. 9, 2021), the Court of Appeal held that trial courts have the inherent authority to manage complex litigation, and under this authority can evaluate whether PAGA claims can be manageably adjudicated at trial; if a PAGA claim cannot be manageably tried, the court may strike the claim. This is a critical ruling for California employers who are litigating PAGA actions in California state courts.

Wesson involved a PAGA claim on behalf of over 300 store managers who contended that Staples had misclassified them as exempt executive employees. After defeating class certification, Staples moved to strike the PAGA claim on the ground that individual variations in evidence relevant to each manager's proper classification also rendered the PAGA claim unmanageable. The trial court granted Staples's motion, and the Court of Appeal affirmed.

The Court of Appeal's opinion emphasized that courts have "inherent authority to fashion procedures and remedies as necessary to protect litigants' rights and the fairness of trial." Slip op. at 25. Representative claims under PAGA pose challenges for efficient and fair case management, particularly where adjudicating the claims would require "minitrials . . . with respect to each" represented person. *Id.* at 28–29. The Court of Appeal further explained that "PAGA claims may well present *more significant* manageability concerns than those involved in class actions," because PAGA lacks many of the protections associated with class litigation. *Id.* at 30 (emphasis added). The court also made clear that trial courts faced with those issues are not "powerless to address the challenges presented by large and complex PAGA actions" or "bound to hold dozens, hundreds, or thousands of minitrials involving diverse questions." *Id.* at 31. Instead, if a trial court determines that a PAGA claim would be unmanageable at trial, it "may preclude the use of th[at] procedural device." *Id.* at 32.

The California Supreme Court in *Williams v. Superior Court*, 3 Cal. 5th 531 (2017), had previously suggested in discussing the scope of discovery under PAGA that the "trial of the action" needed to be "manageable." *Id.* at 559. And a number of federal district court decisions have recognized that courts have the inherent authority to strike PAGA claims as unmanageable, often based on *Williams*; *Wesson*, however, is the first published California appellate decision expressly recognizing that authority. After *Wesson*, employers who have active PAGA litigation may consider whether to move to strike the PAGA claim on manageability grounds.

Gibson Dunn lawyers are available to assist in addressing any questions you may have about these matters. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Labor and Employment practice group, or the following authors:

Katherine V.A. Smith – Co-Chair, Los Angeles (+1 213-229-7107, ksmith@gibsondunn.com)
Bradley J. Hamburger – Los Angeles (+1 213-229-7658, bhamburger@gibsondunn.com)
Megan Cooney – Orange County (+1 949-451-4087, mcooney@gibsondunn.com)
Matt Aidan Getz – Los Angeles (+1 213-229-7754, mgetz@gibsondunn.com)