



California Fashion Association

# FIHRA DIGEST

Fashion Industry Human Resource Association

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## Introduction

The **California Fashion Association** implements the **Fashion Industry Human Resource Association ('FIHRA')**: an organization for the Human Resource Managers of manufacturing, distribution, and retailing groups within the fashion, apparel, and textile industry.

**FIHRA** organizes Roundtable meetings featuring experts in Labor and Employment, with emphasis on the application of state and federal laws for apparel manufacturers and retailers. Attendees have access to the latest and most specific information on pending legislation.

We are pleased to introduce you to **FIHRA Digest**. **FIHRA Digest** is aimed at delivering you up-to-date information from our 'experts' in the field of human resources and labor relations.

## THE *BRINKER* DECISION IS GOOD FOR BUSINESS, BUT ... THE US SUPREME COURT NOW PAVES THE WAY FOR PAGA CLAIMS

By Julie R. Trotter, Esq. and Jessica A. Boschee, Esq.

Background: Most employers agree that the *BRINKER* decision favorably (and finally) added clarity for California employers regarding their obligation to provide meal periods to employees, and added a few hurdles for plaintiffs to clear in trying to certify a class action. Thus, most employers had reason to celebrate the decision itself.

Just days later however, the United States Supreme Court paved the way for what may be the plaintiffs' bar's next big play. Specifically, the United States Supreme Court denied review of *Brown v. Ralphs*, in which the California Supreme Court held that PAGA waivers in arbitration agreements are not enforceable in California state courts.

### PAGA Background: The "Sue Your Boss" Law

Most employers in California have become familiar with PAGA - the "Sue Your Boss Law." PAGA allows an employee to file an action to recover penalties of the Labor Code on behalf of himself and others without having to establish the requirements of a class action. Historically, only the state administrative agency could recover those penalties.

Generally, under PAGA, employers are liable for a penalty of \$100 for each aggrieved employee per pay period for the first violation and \$200 for each aggrieved employee per pay period for each subsequent violation. Seventy-five percent of the penalty goes to the Labor and Workforce Development Agency, but 25% may be retained by the plaintiff employee as a bounty. In addition to the civil penalty, a prevailing employee may be awarded reasonable attorneys' fees and costs.

PAGA actions are dangerous for many reasons and can add up quickly.

One of the major questions surrounding PAGA claims is whether they are subject to arbitration agreements, and, if so, whether PAGA waivers are enforceable. On these issues, state and federal courts have disagreed. In light of the United States Supreme Court decision denying review in *Brown v. Ralphs*, however, the question in state court appears answered - arbitration provisions that waive PAGA claims are not enforceable.

Implications: Putting a PAGA waiver in your arbitration agreements will not preclude PAGA claims if you end up in State Court. Because of the more favorable decisional law in federal courts, employers should carefully consider any removal options where they are thinking of implementing PAGA waivers.

For Questions, Please Contact:

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