
Law Bulletin from TERAOKA & PARTNERS LLP



Hi Everyone,

It was a Tuesday morning in late April, and I was driving from the Peninsula to my Financial District office, under heavy traffic similar to pre-pandemic times. It took me a full hour to get in, and the parking lot was full. By contrast, the Friday before, with the same commute, it took 35 minutes and the parking lot had many open spots; in fact, it was almost empty. The question for the moment was “where is everybody?” In short, this is all about the “hybrid work from home” custom that is widely followed in downtown San Francisco. Mid-week is office time. Fridays and Mondays are work from home days.

It is very clear that the business world has changed and is continuing to change at a rapid pace. In our world of providing legal services, we remain mindful of the need to stay apace with change and where possible stay at the forefront. We have made adjustments in our office space needs and reallocated capital expenditures to enhance our technology and digital presence. Although we seldom meet with clients at our office, we do so regularly over video conferencing. What a contrast to just 4 years ago! We have been thinking of creative ways to stay in touch with our base. Over the next quarter we will be launching a new introductory video of our firm as well as providing digital updates on important law changes. Our intention is to let our clients know how we can better serve them, as well as keep them current on some of the new and coming changes in the law. So please stay tuned in for some of the things we have planned.

As we move into the thick of 2023, we hope to see you soon.

Steve Teraoka

SELECT UPDATES TO EMPLOYMENT LAW FOR 2023

With the 2023 new year came new laws or changes to existing laws affecting employers throughout California. Here is a brief summary of a few of those laws.

[Pay Scale and Record Keeping](#)

Effective January 1, 2023, Labor Code Section 432.3 now requires employers with 15 or more employees to list the pay scale in any job posting, including those where the employer uses a third party to announce, post, publish, or otherwise communicate a job posting. “Pay scale” is defined as the “salary or hourly wage range that the employer reasonably expects to pay for the position.” Also, *existing employees* will have the right to request pay scale information for the position in which they are currently employed.

For compliance with record keeping, all employers are now required to maintain records of job title and wage rate history for each employee for the duration of their employment, plus three years after that employee separates, and these records shall be open to Labor Commissioner inspection as a means of monitoring efforts to eliminate wage discrepancy. Employers’ document retention policies should be modified to take this record keeping requirement into effect.

[Expanding Who Can be Cared for under PSL and CFRA](#)

AB 1041 amends California’s Paid Sick Leave (PSL) and Family Rights Act (CFRA) laws to allow employees to use their time to tend to the medical needs of a “designated person.” Under both laws, employees are limited to one “designated person” each 12-month period (beginning from the first date the employee takes time off to care for such person).

CFRA currently allows eligible employees to use their 12 weeks of unpaid leave to care for a spouse, domestic partner, child, grandchild, parent, grandparent, or sibling. The PSL law has a similar list.

Under this new law CFRA is revised to provide that a “designated person” includes “any individual related by blood or whose association with the employee is the equivalent of a family relationship and may be identified at the time the employee requests CFRA leave.”

The term “designated person,” as under the Paid Sick Leave law is “a person identified by the employee at the time the employee requests paid sick days.”

[Bereavement Leave](#)

Effective January 1, 2023, employers with five or more employees are now required to provide employees who have been employed for at least 30 days up to five days of unpaid bereavement leave for the death of a family member. Under the law, “family member” means a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. This bereavement leave is separate from any other right to leave the employee may have under CFRA, and the employee need not take the five days consecutively. The leave must be completed within three months of the death of the family member. Employers have the right to request documentation of the family member’s death. To compensate for the fact that the leave is unpaid, employees may use existing vacation, personal leave, and accrued and available paid sick leave to compensate for unpaid bereavement leave. For employers with an existing paid bereavement leave policy of fewer than five days, the employee remains entitled to receive pay pursuant to the employer’s existing policy and may take the remaining days (up to five) as unpaid time off.

[State Minimum Wage Increase](#)

On January 1, 2023, California’s minimum wage will increase to \$15.50 per hour and apply to *all* employers, including those with 25 or fewer employees. Minimum salaries for California’s white-collar exemptions, which must be equivalent to “no less than two times the state minimum wage for full-time employment”, will also increase. Thus, those employers seeking to confirm that an employee is exempt under the administrative, executive or professional exemption should reconfirm that the salary paid falls within the increased minimum amount to qualify for the exemption. Employers should also check local minimum wage laws as many require higher hourly rates

The foregoing represents a very brief summary of a few of the laws that have been introduced or amended in California for 2023. It is not comprehensive or exhaustive. Employers should contact their attorneys to determine whether any new legal developments may affect their business operations.

FDA NEW FOOD TRACEABILITY RULE

The Food and Drug Administration has issued a final rule under the Food Safety Modernization Act, called the Food Traceability Rule (the “Rule”), establishing recordkeeping requirements for any party who manufactures, processes, packs or holds foods included on the Food Traceability List (“FTL”). The FTL includes foods such as soft cheeses, leafy greens, nut butters, fruits, certain seafoods etc. The entire FTL may be found on the FDA website. Future updates to the list, if any, will be made by the FDA with notice to the public and solicitation for feedback. The Food Traceability Rule became effective January 20, 2023 and compliance will be required by January 20, 2026.

Parties subject to this rule will be required to maintain and provide to supply chain partners, certain records containing key data elements (KDE) for critical tracking events (CTE). CTEs are different stages of the food supply chain such as harvesting, cooling, initial packing, first land-based receiver, shipping, receiving and transformation. At each CTE, certain records of certain KDEs must be maintained. The Rule is designed to allow for effective and efficient tracing through the entire supply chain to help with faster identification and removal of contaminated food to try to combat foodborne illnesses and deaths.

All participants in the food supply chain should be aware of this FTL and work with supply chain partners to ensure timely compliance with this new rule.

RATIFICATION UNDER CALIFORNIA CORPORATIONS CODE SECTION 119

California corporations now have a clear statutorily prescribed ratification process to cure defects associated with corporate acts taken without proper documented approval. California Corporations Code Section 119, which became effective January 1, 2023, makes clear that California corporations can now ratify or validate past corporate actions so that the approval of such actions may be retroactively effective.

Up until now, California did not have an explicit statute setting forth a clear, legal ratification process. The lack of a clarity often gave rise to uncertainty and concerns about risks associated with past corporate actions that failed to strictly comply with requirements under the California Corporations

Code, Articles of Incorporation or Bylaws. For instance, if a corporation failed to validly issue stock, then that calls into question the shareholders who have the right to vote on major corporate transactions. If a Board of Directors is not duly elected, then that could also affect the validity of past corporate actions approved and taken by that Board. These types of defective actions are especially problematic when a corporation faces a significant transaction whether in an M&A context of when seeking large outside investment, as legal risks are closely reviewed and considered by outsiders.

Section 119 will provide relief to many California corporations to remedy defects and to allow for retroactive approval of past corporate actions. The statute provides both an internal “self-help” ratifications process and a judicial validation process to resolve certain defective acts. The requirements will depend on the type of action subject to ratification or validation. There are also certain notice requirements that will need to be followed in order to ensure ratification is done effectively. When seeking to cure past corporate defects, you should consult an attorney to ensure compliance with the applicable statutory requirements.

In Memoriam--Randall Arimoto

We wish to remember our long time friend and business colleague, Mr. Randall Arimoto, who unexpectedly passed away January 27, 2023 at age 68. Randy was a very accomplished CPA who over the course of his long career, worked with many top of the line businesses while he was at Arthur Andersen & Co. in Tokyo and at his CPA firm of Arimoto, Ogasawara & Mo. We worked with Randy for over 30 years as we had many common clients, Randy readily handling their tax matters. He was very smart and quick to spot key tax issues and provided very competent and reliable advice. Randy was such a kind and caring person, always easy going, and very mild mannered with an unforgettable gentle laugh. Above his career, Randy loved and enjoyed his family most, his wife Yoko and his three adult children, Jenny, Deanne and Brent. He was a very happy and proud father. We will truly miss this genuinely fine person. Our heartfelt condolences are once again extended to his family.



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Photos



Mr. Sam Kitadai, former President of Sumitomo America, visits Steve Teraoka at the University Club in San Francisco.



Teraoka & Partners assists in sponsorship at JCCNC Napa Golf Tournament.



Teraoka & Partners, a sponsor for Keizai Silicon Valley, handing out its raffle prize at Keizai's New Year's Gala.



Teraoka & Partners' annual holiday luncheon at the San Francisco City Club.

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