PACIFIC COUNSELOR™

FALL 2024

Law Bulletin from TERAOKA & PARTNERS LLP

Our business law practice covers not only domestic affairs, but also US-Japan commercial enterprises. We have helped many overseas companies launch and grow their operations here on the West Coast. I am personally committed to support our state government and non-profits that promote California as a good place to set up and do business. We want to attract more companies to come to California, invest here, create job opportunities and raise tax revenues to support our schools and social programs.

In June, I had the pleasure of visiting Sacramento with a select group of Japanese business leaders from Northern and Southern California, representing the two largest California non-profit organizations dedicated to promoting US-Japan commercial relations: the Japanese Chamber of Commerce of Northern California ("JCCNC") and the Japan Business Association of Southern California ("JBA"). The mission of the delegation was to promote goodwill between California and the Japan business communities. Most importantly, we expressed support for the California-Japan Legislative Forum, a new governmental framework formed to enhance cooperation between the legislatures of Japan and California in addressing shared priorities such as climate change, clean energy, and innovation. This is one of many different programs committed to keep the California-Japan business relationship vibrant.

In July, I had the chance to greet Mayor Hiroyasu Chiyomatsu of Izumisano (a city near Osaka) and Mayor Juslyn Manalo of Daly City to celebrate their new sister city relationship. Daly City became the 110th city in California to form a relationship with a sister city in Japan. We have shared a couple of photos in this newsletter to remember the occasion. I mention this because I feel that relationships like this, people to people, working on a grass roots level, provide a forum for meaningful exchanges that can create mutual understanding and friendship.

Other organizations have similar objectives-- the Japan Society of Northern California is another example. This year I was pleased to participate in Japan Society's California-Japan Friendship Cup Tennis Tournament. I didn't win much, but I got through 8 long competitive sets without injury, which is a win for me. I am happy to support this organization and its efforts.

The events of the JCCNC, JBA and the Japan Society are reminders for our friends and clients of the many different government and community efforts working to enhance the friendship between California and Japan. Commercial enterprises tend to come and flourish in a calm and welcoming environment. We should never take this for granted, and we all need to be mindful that strong and vital friendships take lots of work and nurturing – and they are worth it.

Hope to see you soon,

Steve Teraoka

Deadline Approaching for Beneficial Ownership Information Reporting under the Corporate Transparency Act

Companies should be aware of the upcoming deadline for reporting beneficial ownership information under the Corporate Transparency Act ("CTA"). A reporting company that was created or registered on or before January 1, 2024 will need to file its initial beneficial ownership information ("BOI") report by **January 1, 2025**, unless it qualifies for an exemption. Companies registered in 2024 must file this report within 90 days after registration.

The CTA was passed as a measure to allow the U.S. government to combat crimes involving the use of shell companies and opaque ownership structures. BOI collected under the CTA includes the names of beneficial owners of a company, their dates of birth, residential addresses and identifying numbers from valid identification. The intention is to have a database that may be accessed by government agencies for authorized activities related to national security, intelligence and law enforcement.

The Financial Crimes Enforcement Network (referred to as FinCEN), is the Department of the Treasury agency that works to prevent financial crimes and money laundering. FinCEN is tasked with overseeing the BOI reporting and maintenance of the BOI database.

Given the sensitive nature of BOI, some have expressed concerns regarding the security and use of this information. FinCEN issued a final rule implementing the access and safeguard provisions of the CTA called the "Access Rule." Under the Access Rule, FinCEN is authorized to disclose BOI to six categories of recipients: (1) U.S. Federal agencies engaged in national security, intelligence, or law enforcement activity; (2) U.S. State, local, and Tribal law enforcement agencies; (3) foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities (foreign requesters); (4) financial institutions using BOI to facilitate compliance with customer due diligence (CDD) requirements under applicable law; (5) Federal functional regulators and other appropriate regulatory agencies acting in a supervisory capacity assessing financial institutions for compliance with CDD requirements under applicable law; and (6) Treasury officers and employees.

The foregoing authorized recipients must follow certain procedures to ensure that the BOI is being accessed only for permitted reasons such as to investigate a crime or in furtherance of law enforcement. Authorized BOI recipients must also satisfy certain security and confidentiality requirements to ensure protection of the information from further disclosure.

Under the CTA, unauthorized disclosure of BOI obtained by a person is subject to civil penalties in the amount of $500 for each day a violation continues or has not been remedied. There may also be criminal penalties that may include a fine of not more than $250,000 or imprisonment upto 5 years. While the Access Rule and the protocols and protections provided therein should allay some concerns, FinCEN has alerted the public that there are fraudulent scams related to BOI reporting that may put reporting information a risk.

These fraudulent scams may include:

- Correspondence requesting payment. There is NO fee to file BOI directly with FinCEN. FinCEN does NOT send correspondence requesting payment to file BOI. Do not send money in response to any mailing that claims to be from FinCEN or another government agency.
- Correspondence that asks the recipient to click on a URL or to scan a QR code. Those e-mails or letters are fraudulent. Do not click any suspicious links or attachments or scan any QR codes in emails, on websites, or in any unsolicited mailings.
- Correspondence that references a "Form 4022," or an "Important Compliance Notice." This correspondence is fraudulent. FinCEN does not have a "Form 4022." Do not send BOI to anyone by completing these forms.
- Correspondence or other documents referencing a "US Business Regulations Dept." This correspondence is fraudulent; there is no government entity by this name.

As the compliance deadline approaches, companies should make sure they have fulfilled their reporting obligations or confirmed that they fall under an exemption. In filing the reports, please be aware of the scams described above and ensure all BOI reporting is completed directly with the BOI E-Filing System overseen by FinCEN. Should you have any questions regarding CTA reporting requirements, please contact us.

PAGA Reform a Welcome Path for Compliant Employers

Laws reforming the California Private Attorneys General Act (PAGA) are now in effect (AB2288 and SB92). PAGA has in historically imposed substantial civil penalties for technical wage-and-hour violations. The PAGA reform laws attempt to strike the balance between the good faith efforts of employers to comply with law and the desire that employees be treated fairly.

The PAGA reform takes effect immediately and **applies to cases filed after June 19, 2024**.

Previously, PAGA allowed an employee who suffered one kind of wage-and-hour violation to sue for all possible wage and hour violations. Thus, where one employee was deprived of certain rest periods, she could sue the employer for any PAGA violation suffered by all employees, which could include meal period violations, overtime violations and wage statement violations, even though the plaintiff did not herself suffer those violations. Needless to say the potential exposure under the old law could be extremely high. Now, a PAGA plaintiff must have "personally suffered" the alleged violation to sue for that violation. In other words an employee cannot sue under PAGA for meal period violations if she never suffered a meal period violation. This significantly limits the scope of PAGA going forward.

In addition, PAGA claims are now locked into a one-year statute of limitation (which is one year and 65 days before the PAGA claim is filed).

Further, PAGA reform limits penalties under certain circumstances and also eliminates PAGA penalties if the employer sought to implement its policies in good faith effort to comply with the law. Specifically, PAGA penalties can be eliminated for: (1) failure to pay all wages due and owing upon separation (known as "waiting time penalties"); (2) failure to timely pay wages; and (3) wage statement violations that were not willful or intentional if these practices were implemented in good faith. This gives employers a viable argument that a court would not impose, or would significantly reduce, PAGA penalties for these claims.

Under the new laws, PAGA will allow courts to reduce cascading penalties for violations arising from the same payroll/policy error for failure to timely pay wages upon separation, failure to timely pay wages during employment, and derivative wage statement violations.

PAGA reform corrects some of the extreme and high-stakes results of PAGA litigation from the past, and rewards employers who promptly fix wage-and-hour practices.

Some of the most disastrous aspects of PAGA have been resolved, including requiring an employee to have suffered the types of violations to bring claims and clarifying the statute of limitations period. Employers who immediately take "all reasonable steps" to come into compliance, will be rewarded by triggering the new caps on PAGA penalties. If an employer receives a PAGA notice, timely correction and close compliance with the new cure procedure will pay significant dividends.

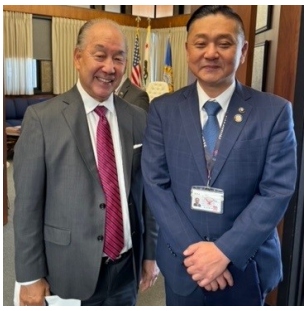
Even with these new reforms, PAGA litigation in California is not going anywhere in the near future. Now more than ever, it's important to ensure compliant wage-and-hour practices. Doing so can help limit the scope of who can bring claims and will limit potential penalties. Conducting a preemptive wage-and-hour audit (ideally with the help of legal counsel) is core to this protective measure.

Featured in Northern California 2024 Super Lawyer Magazine

Photos

JCCNC and JBA Sacramento Delegation, June 2024

Mayor Hiroyasu Chiyomatsu of Izumisano and Mayor Juslyn Manalo of Daly City formally launch their Sister City relationship, July 2024



Steve with Izumisano Mayor Hiroyasu Chiyomatsu

Japan Society of Northern California's California-Japan Friendship Cup Tennis Tournament

Steve Celebrates with his Doubles Partner at the Tournament

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