

Law Bulletin from TERAOKA & PARTNERS LLP



Greetings!

So what's happening in San Francisco's Financial District where we come to work daily? Traffic coming into San Francisco is approaching pre-pandemic levels. Pedestrians are moving about. Yet, many small restaurants and shops remain shuttered. It's going to take some time before smaller independent restaurant operators are able to gather capital and gear up for their operations. The larger restaurants that were resilient enough to weather the pandemic are busy, as they are still the only culinary sanctuaries for the growing number of returnees to the Financial District who wish to dine out. This scenario is quite a contrast to just 6 months ago when the Embarcadero office complex was like a ghost town.

As we move from Spring into our Summer, we have seen an uptick in new business inquiries and established businesses seeking to solidify and expand their markets. This is happening despite the Fed's decision to raise interest rates to curb inflation, soaring gas prices caused by Russia's invasion into Ukraine and supply chain shortages, all happening in the back-drop of lingering Covid fears. All of these issues give rise for one to pause and hesitate.

The businesses that continue to persist and grow are the ones that have stuck to their basics of doing their businesses, growing the top line revenues, and cutting expenses where possible, but keeping valued employees happy. In our law business, we have seen an overhaul in thinking on office space needs and questioning on other high overhead expenses and evaluating whether or not they are essential to providing quality legal services. Today, we have been operating from our new location for a year, and we continue to strive to provide high quality legal services in a timely manner at reasonable rates. We are sticking to our basics, and we hope to be able to work with and see many of you soon!

Best regards,

Steve Teraoka



CONSUMER PRICE INDEX:

Valuable Business Provision

With supply chain issues and volatility in the market, many are faced with difficulties navigating price increases in existing and new contracts. Many contracts, including commercial contracts, rental agreements, collective bargaining agreements and insurance policies, may have price adjustment clauses that reference the Consumer Price Index (CPI) which is published and maintained by the U.S. Bureau of Labor Statistics. While the CPI may often be a useful tool to account for inflation, any price adjustment clause using or referencing the CPI should be drafted with caution, ensuring the appropriate CPI is referenced with specificity and accuracy to avoid the pitfalls of an ambiguous contract term.

What is the CPI?

The CPI is a publicly available resource that provides a measure of the average change over time in the prices paid by urban consumers for consumer goods and services. The U.S. Bureau of Labor Statistics publishes thousands of CPIs each month covering different population groups, different geographic areas, different item categories, and different reference bases.

How is the CPI used in price adjustment clauses in contracts?

Many contracts are negotiated to set expectations for future price increases. For instance, they may set limits on the frequency of a price increase or the rate at which a price increase may occur. While some contracts may set out a flat rate percentage limit for a price increase, the CPI may be used as an objective measure to tie a price increase to the realities of market trends especially in times of volatility. One way parties may do this is to tie the price adjustment to the annual increase in the CPI. Another way parties may decide to incorporate the CPI is to have a fixed percentage increase but in the event the CPI exceeds that fixed percentage, the parties would agree to the higher percentage increase as shown in the applicable CPI.

What are some considerations in using the CPI for a price adjustment/escalation clause?

- Base price – Make sure that the base payment that is subject to the adjustment is clearly defined. Many contracts have a number of different components and it is important that the specific payment and base price from which an increase is calculated is clear in the contract.
- Population Index – There are two index groups for which price changes are published: 1) All Urban Wage Earners (CPI-U), and 2) Urban Wage Earners and Clerical Workers (CPI-W). The CPI-U represents approximately 93 percent of the U.S. population and covers residents of urban or metropolitan areas.
- Geographic Area – The CPI provides indexes for many different geographic areas including U.S. city, metropolitan area, regional and national.
- Category – The CPI provides different indexes for specific items, categories of items and all-items. In most cases the broadest item category which includes everything that a consumer buys out of pocket may be the appropriate reference.
- Reference Period – Not all indexes are published at the same frequency. Parties seeking to reference a CPI should make sure to check the frequency at which that specific index is published and make reference to the exact period from which a price adjustment is to be made.

The forgoing provides only a short overview of some of the issues to consider when using the CPI as a reference for a price adjustment term in a contract. There are many other factors to consider that will depend on the nature and subject of the contract. While the CPI can be a useful tool to address and plan for future cost increases and the realities of a volatile market, parties should be careful to ensure an agreement is clear with regard to which CPI is used and how it is to be used in the calculation of a price adjustment. – *end*

NEW REQUIREMENT FOR FILING STATEMENT OF INFORMATION IN CALIFORNIA

Corporations and Limited Liability Companies that do business in California must file a Statement of Information periodically with the California Secretary of State. Often, if the information disclosed on that form has not changed since the last filing, one can simply check a box indicating no changes and complete the filing.

For 2022, checking the box for “no change” is not permitted. There is a new question that needs to be answered, as follows:

“Does a Manager or Member have an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code?”

YES or NO

Corporations and LLCs must answer this question on the next Statement of Information that is due after January 1, 2022.

Effective January 1, 2022, Assembly Bill (AB) 3075 took effect. It amends the California Labor Code to allow employees to collect wage and hour judgments not only from their employers, but also from certain successor businesses that take over operations when the employers have failed to pay judgment debts.

The new law provides that “a successor to any judgment debtor shall be liable for any wages, damages, and penalties owed to any of the judgment debtor’s former workforce pursuant to a final judgment.”

“Successor” is defined to cover several circumstances where one business takes over another. “Successor” includes any business that uses “substantially the same facilities or substantially the same workforce to offer substantially the same services as the judgment debtor.”

It also includes any business that employs as a managing agent “any person who directly controlled the wages, hours, or working conditions of the affected workforce of the judgment debtor.” Further, it includes “a business in the same industry [that] has an owner, partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the judgment debtor.”

One purpose of the law is to prevent business owners who violate the Labor Code from escaping liability by discarding one business only to form a new one.

Consistent with this purpose, the new law requires businesses to disclose whether certain key owners or managers have wage judgments against them. This disclosure is being handled through the new form of Statement of Information that each entity is required to file with the California Secretary of State.

- end



Yaeri Yamamoto, Steve Teraoka and Catherine Gormley enjoying our new offices at Four Embarcadero Center, Suite 1400, San Francisco, CA 94111.

RELOCATION NEWS
 Please note: Effective June 1, we are relocating within the Embarcadero Center to:
 4 Embarcadero Center, Suite 1400
 San Francisco, CA 4111



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Photos



Steve Teraoka & Jack Sakazaki at the JCCNC Napa Golf Tournament.



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

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PACIFIC COUNSELOR NEWSLETTER

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