

FALL 2020

Law Bulletin from TERAOKA & PARTNERS LLP



Dear Clients and Friends:

Hello! It's now officially Fall 2020, and I hope this message finds you safe and healthy. The ongoing pandemic and current shelter-in-orders have made me feel so isolated from all of you. I have missed seeing so many of you at various businesses and club functions as well as community gatherings. On the bright side, we are just starting to see a gradual opening of our local economies, and I hope to get to see you in person again soon. With this newsletter, I want to take this opportunity to reach out to you, and to let you know that we are thinking about you and your well-being. We hope that you have managed to adapt to these unprecedented circumstances and have managed to keep your businesses operating at some functional level. We have, however, witnessed first-hand several of our clients who have gone through the painful process of downsizing, shuttering long standing businesses and having to make tough HR cuts. The tighter immigration restrictions continue and limited cross border exchanges in management personnel have continued to place severe pressure on the flow of new executive and management immigration opportunities. On the other hand, we have seen other businesses either adapt to their circumstances or change into other productive and profitable ventures. Some have maintained market share and in some cases, others have grown.

In this challenging time, we had to pivot. We were challenged to become nimble and more efficient during this pandemic era and to expand our firm's digital presence and capabilities. Digital media, such as Zoom, Webex, Bluejeans, Constant Contact, etc., have taken a front seat, and we have been using these technologies to enhance our practice and develop a dynamic means by which to stay in touch and maintain our relationships with many of you. Some of our firm members continue to work remotely, while our core group works in our San Francisco office. We are taking advantage of the new technologies to keep our law firm functioning and in a position to provide legal services to our valued clients. We are grateful for this opportunity to continue to provide services. Our attorneys are top notch and very dedicated professionals seeking to serve and provide quality services to you. This last month our firm was again featured in Super Lawyer Magazine and in San Francisco Magazine, under the section entitled "The Annual List of Top Lawyers."

In my 46 years of practicing law and being in business, I have not seen a year quite like this one. The year 2020 will be remembered as a strangely different, difficult and challenging one. As we enter the last 90 days of this year, I am so grateful that everyone on our team has remained safe and healthy and productive. Our intention is to be a ready source to help our clients get the results they are seeking.

Take good care and stay safe.

If your time permits, please send us a note to let us know how you are doing at steve@teraokalaw.com.

Steve Teraoka



BACK TO WORK! Considerations When Bringing Staff Back to the Work Site

As governments begin authorizing business openings, many employers are wrestling with how to manage the return to the workplace.

A recommended first step is to confirm what state and local governmental orders are permitting and what they require. This includes not only state, county and city orders regarding which businesses may resume operations, but also federal, state and local health department guidelines regarding safe work space requirements that may apply to businesses in your area.

Helpful resources to get started include these guidelines:

- Centers for Disease Control Prevention (CDC) - <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>
- Federal Occupational Safety and Health Administration (OSHA) -- <https://www.osha.gov/SLTC/covid-19/>
- CalOSHA - <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>

CalOSHA's website is a helpful resource, as it also breaks down safety protocols by industries including, to name a few, Hair Salons, Real Estate Operations, Grocery and Retail Stores, Gyms and Fitness Facilities, Hotels and Lodgings, Office Facilities and others.

Business tenants in multi-office projects and in work share spaces such as WeWork should consult with the landlord or the office space provider to confirm what protocols they have adopted that can be incorporated into each business's return to work plan.

Regulations and guidelines for managing COVID in the workplace are dynamic and subject to change. For specific guidance regarding the next steps to bring staff back to the workplace and keep them safe, we recommend you consult with legal counsel. ~end



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THE CALIFORNIA CONSUMER PRIVACY ACT (CCPA)

Like everyone who uses a computer, you have probably received numerous emails in recent months from various companies and websites indicating they have updated their privacy policies. Why? Because these companies are complying with California's new Consumer Privacy Act (CCPA), which took effect on January 1, 2020. The CCPA creates new consumer rights relating to the use, sharing and deletion of personal information that certain businesses collect. For consumers, the CCPA grants new rights, including:

- The right to **know** what personal information is collected, used, shared or sold, both as to the categories and specific pieces of personal information;
- The right to **delete** personal information held by businesses;
- The right to **opt-out** of sale of personal information.
- The right to **non-discrimination** in terms of price or service when a consumer exercises a privacy right under CCPA.

Does your company need to comply with the CCPA?

Businesses are subject to the CCPA if one or more of the following conditions are true:

- The business has gross annual revenues in excess of \$25 million;
- The business buys, receives, or sells the personal information of 50,000 or more consumers, households, or devices; and/or
- The business derives 50 percent or more of annual revenues from selling consumers' personal information.

Furthermore, as proposed by California's draft regulations, businesses that handle the personal information of more than 4 million consumers will have additional obligations.

The CCPA Imposes New Business Obligations

Businesses subject to the CCPA must, among other obligations, provide **notice** to consumers at the time of, or before, the business collects data. Businesses also must create **procedures** to respond to requests from consumers to opt-out, know, and delete. For requests to opt-out, businesses must provide a "Do Not Sell My Info" link on their website or mobile application.

Businesses must also respond to requests from consumers to know, delete, and opt-out within specific timeframes. As proposed by the draft regulations, businesses must maintain records of requests and how they responded for 24 months in order to demonstrate their compliance.

In the beginning of October 2020, Governor Gavin Newsom signed **AB 1281** into law. This law extends the deadline for business to publish guidelines for how they collect and use **employee/contractor data**. This deadline has been extended one year, from January 1, 2021 until January 2, 2022.

Moreover, **Proposition 24**, a ballot measure on this November's general election, would further strengthen regulations for data usage in a number of important ways. Proposition 24 would establish a new California Privacy Protection Agency, would prohibit businesses from retaining personal data longer than reasonably necessary, would triple the maximum penalty for violations concerning consumers under the age of sixteen, and would authorize civil penalties for theft of consumer login information.

And, importantly, Proposition 24 would *further* extend the deadline for employee/contractor data guidelines until January 1, 2023.

In short, Proposition 24 will change the CCPA in some very important and significant ways. So, if you are a registered voter in California, please review the arguments for and against Proposition 24 (and all of the ballot measures), such that you can make an informed choice at the ballot box.

The limits and contours of the CCPA continue to evolve, as lawmakers and privacy advocates explore the appropriate balance between commercial data usage and legitimate privacy concerns. As such, precise compliance with this new law may be tricky to implement. If you have any questions or concerns about compliance with the CCPA, please contact legal counsel. ~end

IMMIGRATION POLICIES DURING THE PANDEMIC

The COVID-19 pandemic has affected nonimmigrant visas for employees seeking to work in the United States. A number of employers have probably had to review or change their business plans as a result of the changed immigration policies that are coping with the pandemic. We will touch briefly on some changes that employers are wrestling with in these times.

First, changes in immigration policies have had a major effect on the companies who are seeking applications of H-1B, H-2B, J and L nonimmigrant visas. On June 22, 2020, President Trump signed a Presidential Proclamation suspending entry into the US of certain immigrants and nonimmigrants who present a risk to the U.S. labor market following the coronavirus outbreak. This Proclamation is currently effective through December 31, 2020, unless it is extended further by the President.

U.S. citizens, lawful permanent residents, and aliens who are inside the United States, and those holding valid, nonimmigrant or immigrant visas as of June 24, are not subject to the June 22 Proclamation. However, those whose visas expire after that time are subject to the Proclamation, with the result that the standard renewal process for those visa holders may not be available for the duration of this Proclamation.

Employers seeking to bring employees to the U. S., must wait to submit visa applications until after the period set out in this Proclamation expires.

For those visa holders who are exempt because they were in the United States, or held an H, L or restricted J visa on June 24, then those visa holders' dependents are not subject to the Proclamation.

There are currently no proclamations creating official restrictions on E visas. However, US Embassies and the Consulates in some cities have been suspending their routine nonimmigrant visa appointments. Therefore, E visa applicants must wait to apply for their visas until the US Embassy where they apply resumes visa immigrant and nonimmigrant visa services.

Employees who hold valid E visas that will expire during the period covered by the Proclamation may be able to use an alternate way to remain validly in the United States. A petition submitted directly to the USCIS seeking to extend the right to stay in the US may be available. Employers who wish to pursue such a petition on behalf of their current employees holding E visas should start preparing the petition well in advance of the expiration date, to ensure that the application is completed and filed, and a Receipt Notice is provided by the USCIS prior to the date the visa is scheduled to expire.

It should be noted that petitions to extend the right to stay are not visas, and do not give the visa holder the right to leave and re-enter the United States. But it does allow the visa holder to remain in the United States without violating immigration laws, thus making it possible to pursue other visa options when immigration opportunities open up again in the future.

Employers or employees who have questions about their visa status and strategies to pursue working arrangements over the next 18 months should contact legal counsel for guidance in this area. ~end

Photos

STEVEN J. DOI

JUNE 28, 1928 – AUGUST 3, 2020



We wish to pay tribute to a long-time friend, **Steven J. Doi**, prominent San Francisco attorney and colleague who recently passed away at 92. Steve Teraoka looked to Steve as a role model for his law practice and admired him for his unselfish commitment to the many civic and community non-profit organizations in which he was involved. Mr. Doi and his late wife, Charlotte, frequented our holiday parties, gracing us with his warmth and good cheer. He was a good friend to our firm, and we will miss him.

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