

FALL 2023

Law Bulletin from TERAOKA & PARTNERS LLP



Greetings, Everyone!

Many writers and reporters have painted a very bleak picture of San Francisco and the many woes relating to homelessness, crime and drug abuse. I have been working in the Financial District of San Francisco for over 40 years, and fortunately for those of us working here in the Embarcadero, we still see and feel the vibrancy of the business district here. We recently experienced the active and excited crowds from the Dreamforce conference held here this last month. Restaurants were crowded, and streets were streaming with visitors and everyday workers. Ever since then, auto traffic is back and restaurants are packed and noisy with good energy. As an everyday observer, I can see the stark contrast to the empty streets of the Covid Era, which has receded into the background. There remains the constant energy in the Bay Area as the epicenter of technology, and the glorious seasons of our good weather. We are living and working in it.

The current buzz word in business development is “AI.” I for one, am trying to understand this revolutionary development. What is AI? How will it impact me? How can it improve what we do best...practice law? As we stay in our everyday pursuit to improve, we are working to learn more and determine how ChatGPT will help us reduce labor and boost efficiency, the benefits of which can then be passed on to those we serve, our clients. We view this as a very exciting time and can’t wait to see what positive changes will be realized.

Time seems to fly these days, and I am sure many of you reading this feel the same. Although we are embracing the digital age with Zoom, what I miss most is seeing many of you face to face and chatting and exchanging stories and ideas. That being said, I look forward to seeing you just to say hello and catch up.

Steve Teraoka

All the best for the remainder of 2023!

New Form I-9

The proper maintenance of and compliance with I-9 forms issued by the USCIS affects virtually every employer in the United States. The USCIS has published a new version of Form I-9 (Rev. 08/01/23). This form will become mandatory for all employers on November 1, 2023. Employers may continue using the previous edition of Form I-9 (Rev. 10/21/19) through October 31, 2023.

The new Form I-9 contains several significant changes including the following:

- Consolidates Sections 1 and 2 into a single-sided page;
- Moves the Section 1 Preparer/Translator Certification area to a separate, standalone supplement that employers can provide to employees as needed;
- Moves the Section 3 Reverification and Rehire area to a standalone supplement that employers may print when a rehire occurs or a reverification is required;
- Revises the Lists of Acceptable Documents page to include some acceptable receipts, and also provides guidelines and links to information on automatic extensions of employment authorization documentation;
- Includes a checkbox that eligible employers may use to indicate they examined an employee's Form I-9 documentation remotely under a DHS-authorized alternative procedure rather than via physical examination;
- Reduces the Form I-9 instructions from 15 pages to 8 pages; and
- Provides for a fillable form on tablets and mobile devices.

New Alternative Procedure for Qualifying E-Verify Employers

Good news for employers enrolled in the E-Verify program: DHS released a final rule that permits certain employers enrolled in E-Verify who are in good standing to continue verifying employee Form I-9 documents in a remote manner. This new rule became effective August 1, 2023.

To participate in the remote examination of Form I-9 documents under the new procedure, a qualifying employer must (1) be enrolled in E-Verify, (2) examine and retain clear and legible copies of all Form I-9 documents, (3) conduct a live video meeting with the employee, and (4) create an E-Verify case if the employee is a new hire. Employers who use this alternate method must also confirm such use by marking a checkbox on the new version of Form I-9.

Qualified employers are not required to use the alternative remote confirmation procedure and may opt to continue in-person physical document inspection. If an employee is unable or unwilling to submit documents following the alternative procedure, the employer must allow the employee to submit documents for physical examination. Qualified employers may not use the new alternative procedure for employees hired before August 1, 2023, with one exception: they may utilize the alternative remote procedure for employees hired before August 1st 2023 if they are doing so in satisfaction of the physical examination requirements of the COVID-19 temporary flexibilities.

Employers who used the COVID-19 temporary flexibilities and remotely inspected an employee's identity and employment authorization documents during the pandemic (March 20, 2020 – July 31, 2023) were given until August 30, 2023 to conduct an in-person physical inspection of the employee's documents. Under the new rule, employers who were already enrolled in E-Verify during the pandemic and used the temporary COVID-19 flexibilities for Form I-9 completion may now take advantage of the new alternative remote procedure to satisfy the physical examination requirement. In order to qualify for this option to use the alternative procedure for employees hired prior to August 1, 2023, an employer must have (1) been enrolled in E-Verify at the time the employer conducted the remote examination of documents under the COVID-19 flexibilities; (2) created an E-Verify case for the employee at the time of hire; and (3) performed the remote inspection between March 20, 2020 and July 31, 2023. Eligible employers may use the alternative remote procedure by annotating Form I-9 in the Additional Information field "alternative procedure" and the date of the live video interaction. Employers who were not enrolled in E-Verify at the time they completed Form I-9 using the COVID-19 temporary flexibilities may not use the alternative procedure and must have physically examined the employee's documents, in-person, by August 30, 2023. Eligible employers may opt to continue with the in-person physical examination of the employee's documents and are not required to use the alternative procedure.

Impact and Considerations of New Policy

The DHS finalized regulation creates a permanent remote Form I-9 document inspection process – a move towards modernizing the employment eligibility verification process in recognition of the post-COVID realities where Americans are working remotely more than ever before.

For questions regarding the new I-9 or other questions about business and executive immigration, please contact your attorney.

Prop 65 Future Trends and Challenges

The Safe Drinking Water & Toxic Enforcement Act of 1986 (commonly known as “Proposition 65” or “Prop 65”) prohibits businesses from exposing Californians to certain toxic chemicals on the “Proposition 65 List” without warning. With over 900 chemicals currently on the Prop 65 List, compliance with these regulations is a daunting and difficult challenge for businesses.

While lead and phthalates such as DEHP continue to be the focus of countless Notices of Violation under Prop 65, experts in the industry foresee the proliferation of cases involving PFAS. PFAS (per and polyfluoroalkyl substances) are a group of chemicals, often called “forever chemicals” for their persistence and resistance to breaking down, are widely used in a broad range of consumer products. PFAS are often used for their water and oil repelling properties in things like water resistant clothing and upholstery, food packaging, electronics, various equipment and manufacturing processes etc. There are thousands of PFAS chemicals, three of which (PFNA, PFOS, and PFOA) are currently on the Prop 65 list.

There is currently no safe harbor level set for PFAS chemicals listed on the Prop 65 list. This makes defending a claim involving these chemicals extremely difficult. The situation is further exacerbated by the fact that testing and risk analysis for PFAS in the Prop 65 context is complicated and a highly contested issue in the industry. Testing laboratories can test for total fluorine but those results may include PFAS chemicals not listed on the Prop 65 list. A second level of testing may test for specific PFAS compounds but this type of testing is often too expensive and labs that are able to handle such specialized tested are extremely limited. Even if a test could identify the concentration of a specific PFAS chemical in a consumer product subject to a Notice of Violation, mounting a defense in litigation based on the science is complicated and cost prohibitive for many businesses.

Given this framework, businesses should endeavor to strengthen compliance efforts to protect against Prop 65 claims for PFAS chemicals. We recommend that companies have a comprehensive compliance policy that includes a testing process to identify chemicals in the products.

Businesses should also try to work to eliminate these chemicals and find alternatives for reformulation. This may be challenging with a complicated supply chain with products are coming from foreign countries where these chemicals are commonly used. As such, it is important that businesses know their supply chain and to the extent possible, negotiate contracts to include a restricted chemicals list and robust indemnification provisions to cover the risks of claims or violations. If these chemicals cannot be eliminated, then business should ensure that warnings complying with Prop 65 are placed on their products.

We continue to monitor case trends in this area and counsel clients on Prop 65 claims and compliance.

THE INFORMATION DESCRIBED ABOVE IS FOR GENERAL INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSTRUED OR RELIED UPON AS LEGAL ADVICE OR LEGAL OPINION ON SPECIFIC FACTS OR CIRCUMSTANCES. EACH PERSON HAS PARTICULAR SITUATIONS, CIRCUMSTANCES AND ISSUES UNIQUE TO HIM OR HER. YOU SHOULD CONSULT WITH YOUR LEGAL AND/OR TAX EXPERTS IN ORDER TO DETERMINE WHAT IS SUITABLE FOR YOUR BUSINESS.

In Memoriam--Margaret Thurman

May 4, 1967 – September 15, 2023



We were deeply saddened to learn that Margaret Thurman, Chief Manager of Human Resources at JFC International Inc., passed away on September 15. Margaret had a remarkable career in Japan and the United States, and served at JFC for over 16 years. She maintained a profound and abiding respect for JFC’s executive management and their commitment to its mission. She cared deeply about JFC employees, and navigated their challenges with compassion and vision, often thinking outside the box to create solutions to support their success. Margaret loved celebrating the light and joy of life, sharing good food at work and with family, and a passion for bringing people together. She especially loved birthdays, holidays, and any activity that ignited children’s enthusiasm. Her decorative cakes appeared at nearly every birthday. She created gingerbread houses and villages –assembled with children amidst mounds of candy, much of which got eaten in the building process. The gingerbread houses were dazzling, complete with stained glass windows and lights – their creation is a legacy that lives on with the next generation. Most importantly, Margaret lived her life with courage, grace, humor, positivity, patience, integrity and kindness. She is profoundly missed, both as a colleague and as a friend.

Photos



Mr. and Mrs. Frank Suzuya with Catherine Gormley and Steve Teraoka at Randy Arimoto's Celebration of Life.



Kikkoman Foods, Inc. 50th Anniversary Dinner.



Mr. Shimada and Mr. Imai with Steve and Marsha, Golfing in Wisconsin.



Jack Sakazaki & Steve Teraoka at PGCC Green Carpet Tournament.



Andrew Cherng of Panda Express, Mr. Mogi, Honorary Chairman of Kikkoman, and Mr. Shimada, President of KSU, at KFI's 50th Anniversary.

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