



KITAGAWA & EBERT, P.C.

LEGAL ALERT



(MAIN) 300 Spectrum Center Drive, Suite 960, Irvine, California 92618
(TEXAS) (By Appt) 5851 Legacy Circle, 6th Floor, Plano, Texas 75024

info@japanuslaw.com
(949) 788-9980

With Lawyers licensed in CALIFORNIA • GEORGIA • TEXAS • NEW YORK • NEVADA • ALABAMA • MICHIGAN

www.JAPANUSLAW.com

Advertisement

Copyright January 2021

We hope that you are safe and healthy. The COVID-19 pandemic has caused dramatic changes worldwide which are likely to continue for some time. The situation may improve with vaccinations and safety protocols, but the virus continues to mutate. We are honored to assist our clients with navigating through the rapid changes in the laws. Most of our clients are in essential industries. Our offices are open with health and safety precautions as well as telework. We are pleased to announce that Lisa Kitagawa and James Ebert were both admitted as Michigan lawyers, and both were chosen as “Lawyers of Distinction—Litigation.” We have an experienced and excellent team.

This Kitagawa & Ebert Legal Alert is to provide information about some of the recent U.S. federal and state law changes. The laws are constantly changing, so it is important for legal risk management to be aware of the changes, update your Handbook policies and follow the U.S. federal, state, county and city laws and regulations. This Kitagawa & Ebert Legal Alert is provided as a professional courtesy and does not constitute legal advice. Clients are welcome to contact us for experienced legal services.

LITIGATION CONTINUES ONLINE

We excel in complex business litigation with successful and effective representation of our clients in difficult disputes. We represent Japanese businesses in litigation in federal and state courts throughout the USA. We are successful in litigation involving a variety of disputes, including contracts, real property, licensing, collections, employment, and many other issues. Despite COVID-19 related restrictions on public physical access to court and government buildings, our law firm is busy with business litigation, arbitration, and trials which continue online. The courts are open online, although there are some delays and occasional technology issues. Some courts use Microsoft Teams, zoom, or the Court’s own online video systems. We continue to conduct online video Depositions, Court Hearings on Motions, Mediations, Arbitrations, and Trials. Thanks to online court video conferencing, our clients are saving travel costs and time. Some of our trials are still scheduled to proceed in person in courts, but may be postponed depending on the pandemic and travel restrictions. We represent Japan business clients including Japanese companies directly, as well as their subsidiary corporations throughout the USA and the world. We coordinate with interpreters in multiple languages. We are experienced and successful business lawyers for Japanese businesses in multiple courts throughout the USA.



FEDERAL - Families First Coronavirus Response Act (“FFCRA”)

The Families First Coronavirus Response Act (“FFCRA”) requires certain employers to provide their employees with Emergency Paid Sick Leave (“EPSL”) or expanded family and medical leave for specified reasons related to COVID-19. The FFCRA Emergency Paid Sick Leave and expanded Family and Medical Leave provisions apply to certain public employers, and private companies with fewer than 500 employees.

FFCRA provides that covered employers must provide to **all employees**:

1. *Up to two (2) weeks (up to 80 hours) of paid sick leave at the employee’s regular rate of pay (*)* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; OR
2. *Up to two (2) weeks (up to 80 hours) of paid sick leave at two-thirds the employee’s regular rate of pay (*)* because the employee is unable to work because of the need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; AND
3. Up to an additional 10 weeks of paid expanded Family and Medical Leave paid at two-thirds the employee’s regular rate of pay (*) where an employee, who has been employed for at least 30 calendar days is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

(*) The duration of leave and calculation of amounts paid vary and depend on the reasons for the leave, with certain minimums or limits per day and limits in the aggregate over a 2 week period.

Although FFCRA mandatory Emergency Paid Sick Leave expired on December 31, 2020, on December 27, 2020, the Consolidated Appropriations Act (“CAA-2021”) was signed by then President Trump which provided certain extensions through March 31, 2021. Under CCA-2021, the company is not required to continue mandatory FFCRA Emergency Paid Sick Leave (“EPSL”) or to carry over any unused EPSL. Under CCA-2021, the company can voluntarily choose to continue FFCRA EPSL and can choose but is not required to carryover unused FFCRA EPSL through March 31, 2021; the Company can then use tax credits associated with continued FFCRA benefits through March 31, 2021. The U.S. Congress and President Biden may make additional changes to the laws as the pandemic continues.

COVID-19 NOTICES

The Center for Disease Control (CDC) provides many free notices and information which you can download and post at your office. <https://www.cdc.gov/coronavirus/2019-ncov/communication/print-resources.html?Sort=Date%3A%3Adesc>

NOTICES & POSTERS

Please make sure that the company has all current required federal, state, county and city notices posted at the office. Professionally printed and laminated posters are available from your state and local business Chambers of Commerce or from various office supplies stores. Posters with notices should also be provided to employees who telework. Companies should be aware that an employee complaint to one government agency can result in multiple investigations from multiple government agencies.



CALIFORNIA MINIMUM WAGE INCREASES

As of January 1, 2021, [California's state minimum wage](#) increased to \$14 for employers with 26 or more employees and \$13 for employers with 25 or fewer employees. Local minimum wages may also increase. Check your local county and city rules for minimum wage requirements.

CALIFORNIA SEXUAL HARASSMENT TRAINING REQUIRED

California requires all companies with five (5) or more employees (including seasonal and temporary employees) to require sexual harassment prevention training every two (2) years:

1. By January 1, 2021 (meaning training must be completed in 2020) (was extended from December 2019)
2. Within six (6) months of new employees assuming their position (and once every two years thereafter)
3. At least two (2) hours for all supervisors; or
4. At least one (1) hour for all nonsupervisory employees.

Free online training is available on the California Department of Fair Employment and Housing link <https://www.dfeh.ca.gov/shpt/>. Companies must keep records of the training completion and pay the employees for their time to complete the training.

CALIFORNIA FAMILY RIGHTS ACT ("CFRA")

Effective January 1, 2021, the California Family Rights Act (CFRA) requires companies with five (5) or more employees to provide job-protected unpaid family and medical leave. An employee must work for 1,250 hours in the 12 months preceding leave to be eligible for leave under CFRA. Eligible employees are permitted to take up to 12 weeks of unpaid, job-protected leave to care for their own serious health condition; Bond with a newborn child or in connection with the adoption or foster care of a child; Care for a parent, minor child or dependent adult child, spouse with a serious health condition; grandparents, grandchildren, siblings, domestic partners, children of domestic partners, and nondependent adult children; Permit employees to take leave because of a qualifying exigency related to covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the U.S. Armed Forces; Removes the provision which permitted employers to deny reinstatement to "key employees" following leave; Requires an employer of both parents of a child to grant each parent up to 12 weeks of leave for baby-bonding. The new CFRA law will be costly for companies to administer.



California: COVID-19 Reporting

From January 1, 2021, new California Labor Code § 6409.6 provides new requirements for companies to notify their employees, employees of subcontracted workers, and union representatives of suspected and diagnosed cases of COVID-19 and also to report workplace "outbreaks" of COVID-19 to local health departments. Companies who receive "notice of potential exposure" that a "qualifying individual" (i.e. an employee who: (1) has a laboratory-confirmed positive case or a diagnosis from a licensed health care provider, (2) received an isolation order from a public health official, or (3) died due to COVID-19) must, within one business day, take the following actions:

1. *Notify employees and the employer of subcontracted workers that they may have been exposed to COVID-19:* Provide written notice to employees and the employer of subcontracted workers (e.g., temporary staffing agencies) who were at a "worksite" within the "infectious period" of any employee who may have been exposed to COVID-19. The company can inform workers of the dates that an individual with COVID-19 was at the worksite, but the company should not share information that could identify the affected individual.
2. The written notice can be hand-delivered or given by email or text message and should be in both English and any other language understood by the majority of employees.
3. *Notify union representatives:* Provide written notice to union representatives, if any.
4. *Provide information about benefits and other options:* Provide all employees who may have been exposed (and to employers of subcontracted employees and union representatives, if any) with information regarding COVID-19-related benefits to which they may be entitled, including but not limited to worker's compensation, COVID-19-related leave, and paid sick leave, as well as the employer's anti-discrimination and anti-retaliation policies.

California: COVID-19 Reporting (continued)

5. *Notify employees of your disinfection and safety plan:* Notify all employees, the employers of subcontracted employees, and union representatives, if any, of the company's COVID-19 disinfection protocols and safety plan that the company plans to implement and complete to prevent further exposures, per federal Centers for Disease Control and Prevention ("CDC") guidelines.

If there is an "outbreak" of COVID-19 cases at the same worksite within a 14-day period, the company must also notify the local health department. The company must report the "outbreak" to the local health department within 48 hours. The company must update the local health department with subsequent COVID-19 cases thereafter.

CALIFORNIA WORKERS' COMPENSATION: COVID-19

Effective immediately to codify the California Governor's May 6, 2020, Executive Order N-62-20 (Automatically repealed January 1, 2023). For employees who test COVID-19 positive during an "outbreak" at the employee's "specific place of employment." Applies to companies with five or more employees for all dates of injury on or after July 6, 2020; employees may be awarded: Full hospital, surgical, and medical treatment; disability indemnity (only after exhausting any COVID-specific paid sick leave); and death benefits. Very few states include COVID-19 in workers compensation benefits.



CALIFORNIA EMPLOYMENT VIOLATION COMPLAINTS

Effective January 1, 2021, California Labor Section Code 98.7 extends the deadline to one year after the occurrence of the violation for individuals who believe that they have been discharged or otherwise discriminated against in violation of any law under the Labor Commissioner's jurisdiction to file a complaint with the California Division of Labor Standards Enforcement (DLSE). A court can also award reasonable attorney's fees to a plaintiff who prevails in a "whistleblower" action.

CALIFORNIA PAID FAMILY LEAVE ("CPFL")

As of July 1, 2020, California's Paid Family Leave ("CPFL"), provides up to eight (8) weeks of wage replacement benefits through the California State Disability Insurance Program ("SDI") to employees who take time off to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. Paid Family Leave is a component of SDI. The wage replacement benefits are paid by employee contributions to the SDI program. The CPFL law applies to all employers in California regardless of the number of employees.

CALIFORNIA ORGAN AND BONE MARROW DONOR LEAVE

California requires private employers with 15 or more employees to provide employees thirty (30) days of paid leave in a one-year period when an employee participates in an organ donation program. Employers also are currently required to provide bone marrow donors five (5) days of paid leave. The new law now requires a maximum of an additional 30 business days of unpaid leave.

CALIFORNIA LACTATION ACCOMMODATION

California now provides greater protections for nursing mothers. Prior law required employers to provide a private area other than the bathroom for nursing mothers to breastfeed or pump breastmilk. New requirements specify acceptable worksite spaces for nursing mothers. Employers must have a written lactation policy which affirms an employee's right to request accommodation, how they may request such an accommodation, the employer's obligation to respond to the request for accommodation and the employee's right to file a complaint regarding any violation of the law. There are a few instances where an employer may seek an exemption, but only employers with 50 or fewer employees may seek an exemption.

DISCLAIMER: *Kitagawa & Ebert's Legal Alert Newsletter is prepared as a professional courtesy to our clients, business and professional colleagues for information purposes only and does not constitute legal advice or tax advice. This newsletter does not create an attorney-client relationship between you and our firm. We do not provide free legal consultation and we do not represent individuals in employment matters. If you are not a client of our firm and you communicate with our firm, we are under no obligation to keep confidential your communication nor will the communication invoke the attorney client privilege. Unless you have a pre-existing documented attorney-client relationship or establish an attorney client relationship with our firm with a signed engagement letter and paid retainer, you should not communicate confidential information and any information cannot be guaranteed to be securely transmitted or confidential.*

COPYRIGHT JANUARY 2021. All Rights Reserved. No portion of this newsletter may be copied or reproduced without the prior written permission of Kitagawa & Ebert, P.C.