

News & Types: Michigan Legal Update

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URGENT LEGAL REMINDERS

URGENT LEGAL REMINDER (1) – MANDATORY FEDERAL FILING REQUIREMENTS FOR THE CORPORATE TRANSPARENCY ACT (“ACT”) ARE DUE BY JANUARY 1, 2025. COMPANIES SHOULD CONFIRM WHETHER THEY ARE REQUIRED TO FILE UNDER THE ACT. PENALTIES AND FINES MAY APPLY.

URGENT LEGAL REMINDER (2) – Employers in the state of Michigan must comply with the expanded sick leave provisions and minimum wage increase starting in 2025 under the "Earned Sick Time Act (ESTA)" and the "Improved Workforce Opportunity Wage Act (IWOWA)," which go into effect on February 21, 2025. If employers have not yet familiarized themselves with these laws or reviewed their employee handbooks and workplace policies, we recommend prompt action.

DELAYED PAYMENTS TO SUPPLIERS CONTINUE WITH AUTOMAKERS AND TIER 1 COMPANIES

In the last issue, we briefly discussed the trend of automakers and Tier 1 companies requesting modified payment terms or payment delays from their suppliers. As lawyers, we have seen this trend continuing specifically with respect to those auto makers and Tier 1 companies that have implemented or are considering implementing costly electric vehicle programs. Generally, in these types of negotiations/discussions between the automaker/Tier 1 companies and their suppliers, we suggest consideration of the following points:

- 1. Supplier Considerations:** In the event that a supplier is requested to modify or delay payments from an automaker or Tier 1 company, each case should be reviewed on a case-by-case basis. The supplier should consider: (1) their overall relationship (for example, the length of specific relationship or any relationship between the parent or group companies) with the automaker or Tier 1 company, (2) the importance of the automaker or Tier 1 company as a customer; and (3) the supplier’s overall cash flow situation in the event that it agrees to the modified or delayed payments.
- 2. Documenting the Terms of Repayment:** If a supplier agrees to modified or delayed payments, it’s critical that the terms of the modified or delayed payments be documented in a writing signed by authorized individuals of both parties. This document should include all terms of repayment including when these modified payments will be due and when the original payment terms will resume.
- 3. Opportunity for Supplier to Negotiate Supply Terms:** If an automaker or Tier 1 is requesting modified or delayed payments from the supplier, this may be an opportunity for the supplier to possibly renegotiate unfavorable terms of the supply agreement with the automaker/Tier 1 company in exchange for agreeing to the delayed or modified payment terms.

Again, these are only some of the issues that should be considered in these situations and each situation should be evaluated on a case-by-case basis.

THE LEGAL RISKS OF TEXT MESSAGING IN BUSINESS: WHAT JAPANESE COMPANIES NEED TO KNOW

Text messaging has become an integral part of business communication, with more employees using personal and work smartphones to interact with colleagues, clients, and customers. In many industries, conducting business through text messages and social media platforms (SNS) is now routine. However, few people realize that text messages related to business matters may be used as evidence in legal disputes, including litigation. This highlights the importance of employers establishing clear guidelines for employees' use of text messaging in work-related activities.

In our experience, the following are three of the most common misconceptions we have heard with regard to text messaging in the workplace:

1. Text messages written in Japanese (or any foreign language) cannot be used in U.S. litigation.

This is false. Text messages in any language, including Japanese, can be translated and submitted as evidence in U.S. courts. Language barriers do not exempt business-related text messages from being used in litigation.

2. Deleted text messages cannot be recovered or used in litigation.

This is also false. Many believe that once a text message is deleted, it is gone forever. However, even deleted messages can often be retrieved through forensic analysis or backups, and may still be admissible in court if relevant to the case.

3. Text messages sent on personal smartphones/personal accounts cannot be used in work-related litigation.

Another misconception is that personal devices and accounts are off-limits in legal disputes. If business-related conversations occur on personal smartphones, those messages can be subject to discovery in litigation, regardless of who owns the device or the account.

To minimize legal risks, employers should implement clear policies regarding text messaging in the workplace. These guidelines should cover the use of both personal and work-issued smartphones, proper retention of communications, and the handling of business-related messages across different platforms. Clear policies will help protect both the company and its employees from unintended legal consequences.

FORM I-9 COMPLIANCE: BEWARE OF INCREASED PENALTIES!

Employers are required to complete Form I-9 (Employment Eligibility Verification) when hiring employees in the U.S. This form is essential to verify the identity and employment eligibility of all employees, whether they are U.S. citizens or foreign nationals.

Starting in 2024, penalties for Form I-9 compliance violations by employers have been significantly increased in some cases. The key increases are as follows:

Violations Related to Form I-9 Documentation:

Penalties for failure to properly complete or retain Form I-9, or for failing to present it during an audit by authorities, have been raised to between \$281 and \$2,789 per document.

Violations for Knowingly Employing Unauthorized Workers:

- First offense: Fines increased to between \$698 and \$5,579 per unauthorized worker.
- Third and subsequent offenses: Fines increased to between \$8,369 and \$27,894 per unauthorized worker.
- Second offense: Fines increased to between \$5,579 and \$13,946 per unauthorized worker.

Discrimination Based on Immigration Status or U.S. Citizenship and Improper Handling of Documents:

- Discrimination based on immigration status or U.S. citizenship: Fines increased to between \$230 and \$2,304 per affected employee.
- Improper handling of documents (e.g., requesting documents beyond what is required to prove identity and work authorization, or rejecting reasonably genuine documents): Fines increased to between \$575 and \$4,610 per document for the first offense. Penalties increase for repeated violations.

What Can Employers Do to Avoid Penalties for Form I-9 Compliance Violations?

1. Regularly review internal processes related to Form I-9.
2. Conduct internal audits with the help of professionals.
3. Provide regular training to HR personnel.

For further details on Form I-9, consult an attorney experienced in employment law.

DIVERSITY VISA OPENING**Diversity Visa Program (Green Card Lottery) Application Period Starting Soon**

The application period for the Diversity Visa (DV) Program, commonly known as the Green Card Lottery, is approaching. The dates have now been announced, with the registration period running from October 2, 2024, at noon (EST) to November 5, 2024, at noon (EST). Last year's application period was similarly held for 34 days, and this year's timeline follows the same format.

The program aims to promote diversity in the U.S. by offering 55,000 green cards annually to countries with low immigration rates to the U.S. Applicants submit their entries online, with results announced in May of the following year. However, this application is only possible during a very limited timeframe and only once a year. For questions, feel free to contact Masuda, Funai, Eifert & Mitchell Ltd.

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