



Employment, Labor & Benefits

We understand the challenges of managing a U.S. workforce

Masuda Funai's Employment, Labor & Benefits group offers the full range of employment counseling, investigations, negotiations and litigation services on behalf of management. In addition to representing domestic companies, our firm is known for advising foreign-owned companies wanting to establish a legal entity in the United States and those doing business in the U.S. We help our clients navigate the myriad of U.S. employment, labor and benefit laws which can present a formidable challenge to even the most sophisticated global company. Our attorneys understand the unique questions, problems and concerns both domestic and foreign companies have when attracting, retaining and managing their workforce as well as in defending their rights in the face of disputes and litigation.

The firm's wide-ranging and in-depth experience covers employment, union and benefit law issues from human resource counseling, wage payment, and mergers and acquisitions, to risk management and working with management to find solutions to difficult problems. We guide our clients through every phase of the employment relationship, beginning with advice and assistance on recruitment and hiring. We assist our clients in drafting employment agreements, employee handbooks and policies as well as conducting training programs for employees and supervisors in such areas as the prevention of sexual harassment, union avoidance and wrongful termination. Given today's economic climate, we work diligently with management to audit and implement agreements, policies and procedures to protect a company's intellectual property and their near-permanent business and customer relationships.

As employers face an ever increasing number of employment-based agency claims and lawsuits, we continue to deliver a focused and aggressive approach to problem-solving as demonstrated by our track record of resolving legal actions for clients throughout the U.S. We have handled and resolved complex litigation pertaining to discrimination, harassment, wage and hour, wrongful termination, employee privacy, breach of restrictive covenants, and the defense of OSHA citations, union campaigns and unfair labor practices. We prosecute and defend unfair competition claims including the misappropriation of trade secrets, employee raiding and customer solicitation. We vigorously advocate our client's position in administrative hearings before state and federal agencies, in mediation and arbitration, and in state and federal lower and appellate courts.

We know, from decades of serving as U.S. employment, labor and benefits legal counsel to our clients, that workforce conflict and "people problems" are never fully addressed with a one-size-fits-all approach. Whether a challenge involves discrete negotiation, litigation, arbitration, strategic planning, M&A due diligence, a reduction in force, or the day-to-day advice businesses need to succeed, our goal is to ensure that each client understands its options so that an informed decision can be made. We design cost effective human resource solutions that achieve "bigger picture" business objectives grounded in sound legal theory.

Range of Services

Employment Litigation

Unfortunately, litigation cannot always be avoided and companies are too often forced into the position of aggressively defending themselves and enforcing their rights. Masuda Funai represents businesses of all sizes on employment, labor and benefit claims and lawsuits. Many employment disputes are highly-charged, often filled with emotion, and have the potential to become public. These disputes may harm a company's reputation even if allegations are totally false. We understand what is at stake in terms of business reputation, financial exposure, and workforce moral problems associated with employees' complaints and litigation.

Our employment litigators aggressively defend companies against claims of discrimination, harassment, wrongful discharge, breach of contract and unpaid regular and overtime wages as well as alleged violations of federal, state and local labor and employment laws such as unfair labor practices and OSHA citations. We take the requisite action when and where it is needed to protect companies from the misappropriation of trade secrets as well as employee theft and embezzlement. Our lawyers regularly appear before federal and state agencies and courts throughout the country. In addition, we actively promote the use of alternative dispute resolution methods, such as mediation and arbitration, to achieve cost-effective and fair solutions.

Our firm is well-versed in the many laws that govern the employer/employee relationship, including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), whistleblower claims under the Sarbanes-Oxley Act (SOX) or Dodd-Frank Act, the National Labor Relations Act (NLRA), the Occupational Safety and Health Act (OSHA), and the Employee Retirement Income Security Act (ERISA). Our lawyers have extensive knowledge of these laws and regulations, a critical component to initially fending off, diplomatically resolving or aggressively fighting employment disputes.

The firm represents companies in the increasing number of individual and class action wage and hour claims. We work diligently with clients to review payroll, timekeeping, meal period, rest break, minimum wage, job classification practices to identify potential compliance issues and offer "best practices" recommendations, policies and procedures. These efforts can greatly reduce our clients' risks of exposure to costly minimum wage and overtime claims. However, we have also defended large wage and hour single plaintiff, multi-plaintiff and collective action lawsuits on a national scale. We have proven time and again a company's ability to defend actions brought by private parties and the federal government as we negotiate, settle and, if necessary, litigation such claims in our clients' best interests.

Employee Benefits & Executive Compensation

Masuda Funai works with business clients to design, establish and maintain a variety of employee benefit plans, including 401(k), profit sharing and other tax-qualified plans, executive compensation programs, and welfare and cafeteria plans. We routinely advise clients on complying with state and federal laws governing employee benefits, such as the employer's fiduciary duty, group health insurance continuation (COBRA), and the requirements of the Employment Retirement Income Security Act (ERISA). We also assist in drafting and

filing plan corrections utilizing the Internal Revenue Service and Department of Labor plan correction programs.

Our lawyers advise businesses from many different industries on all areas of benefits and executive compensation. Our experience includes legal counsel pertaining to plan administration, fiduciary responsibilities, corporate governance, investment fund matters, tax-qualification, disclosures and reporting, participation, funding and benefit accrual. We also advise on the benefit and compensation issues that arise in even the most large-scale and sophisticated mergers, acquisitions and divestitures, including cross-border transactions.

Our firm has many decades of experience in executive compensation agreements and programs. We are retained to review, negotiate and draft executive and deferred compensation arrangements including stock-based plans, employment agreements, severance programs, non-stock related incentive agreements, SARs, option plans and supplemental retirement and savings plans.

Employment Counseling, Compliance & Training

Masuda Funai is dedicated to creating and implementing human resource programs, policies and procedures to prevent problems and mitigate risks. These “best practices” are grounded in sound policies and procedures designed to avert disputes before a problem can arise. We advise clients on the day-to-day issues pertaining to employee recruiting, retention, performance evaluation, discipline, termination, safety and union avoidance. We carefully navigate our clients through staff reductions, separations and terminations due to misconduct, poor performance, layoffs and early retirement.

Our firm advises employers on disability accommodations, requests for leave, as well as resolving issues of discrimination, harassment, retaliation, employee misconduct, immigration compliance, social media, and privacy matters. Our employment lawyers partner with the firm’s corporate group to assist with due diligence, drafting executive employment agreements and avoiding successorship issues relating to litigation as well as union representation. We offer answers to the everyday questions that arise in the course of human resource management on challenges involving worker classifications as employees or independent contractors or exempt or non-exempt, harassment, internal investigations, stock option plans, leaves of absence, affirmative action. In addition, we advise on the regulations and agencies that govern human resources, including the federal Equal Employment Opportunity Commission, state fair employment practices agencies, federal and state departments of labor, the Occupational Safety & Health Commission and the National Labor Relations Board.

In order to ensure our clients’ workforce policies and practices comply with constantly changing local, state and federal employment laws, maximize employee performance and morale, and minimize the risk of litigation, we routinely review, audit and revise individual policies, employee handbooks, procedural manuals, and clients’ record-keeping practices. Our attorneys audit client employment procedures and records, including recruitment, performance management, discipline and terminations, immigration/I-9 compliance, policies and union avoidance. We provide practical legal counsel with regard to improving compliance with state and federal laws, maximizing employee performance and morale, and minimizing the risk of litigation.

We also offer training to supervisors and managers on a variety of employment-related issues, such as drafting and implementing ethical codes of conduct, understanding cross-cultural issues in a diverse workforce, preventing harassment and discrimination, union avoidance, responding to employee performance problems, working with ill, injured and disabled employees and complying with wage and hour rules. By engaging supervisors and managers in interactive training and ongoing education, our clients effectively reduce their potential liability. Along with training supervisors and managers, training employees regarding harassment helps provide an affirmative defense to companies when lawsuits are filed against them.

Employment Agreements

Well-drafted employment agreements are critical to protecting the many interests of employers. A clearly written employment agreement will establish the relationship between the employer and the executive or other employee. These agreements include standard terms of employment – length of the agreement, compensation, commissions and reasons for termination. Equally important, provisions protecting the employer's intellectual property and confidential information, as well as non-competes and restrictive covenants limiting the rights of current and former employees to compete with the employer or solicit the employer's customers and employees can be included. Employment agreements may also address tuition reimbursement, training and processing of visas and green cards.

In this age of telecommuting, secondments and working digitally, employment agreements set the parameters for job duties and expected results. Masuda Funai reviews, negotiates and drafts all types of employment agreements, practices and procedures that lay the foundation for a productive work environment and positive business culture.

Whether an employment agreement is for an executive, high-level professional or an entry-level employee, the wording of such agreements can have a serious impact on an employer's bottom line years and even decades after the initial signing. Our firm's lawyers provide both the experience and ability to draft, negotiate, enforce and litigate the documents' key terms pertaining to compensation, termination, severance and non-competition. Clients appreciate our attorneys' business-centered guidance and advice on developing defensible agreements that will meet the employers' goals and withstand efforts by employees to avoid or violate their obligations.

Trade Secrets, Restrictive Covenants & Unfair Competition

In today's economic environment, employee mobility is a challenge for employers and protecting their proprietary information, trade secrets, inventions and relationships with customers is critical. Confidentiality is an imperative, and protecting customer goodwill is central to any multi-dimensional business strategy. Masuda Funai advises business owners, supervisors and managers on all aspects of trade secrets, restrictive covenants and unfair competition law and litigation.

Our attorneys draft employee confidentiality, non-disclosure, inventions, non-competition and non-solicitation agreements. Properly written agreements aid in protecting the employer's assets and proprietary information from disclosure, misuse and theft, as well as prohibit former employees from disclosing trade secrets, starting a new and competing venture and soliciting the employer's customers and employees. In addition, we advise on the creation of policies and procedures that prevent the migration of confidential information before potential damage can occur. This includes onsite training programs covering such topics as safeguarding sensitive trade secrets, hiring and termination policies and practices.

Our firm has a track record of success in enforcing such agreements both in and out of court. Our litigators are skilled in prosecuting and defending claims of the misappropriation of trade secrets, disclosure of confidential information and breach of non-compete and non-solicitation agreements in state and federal courts across the country. Such claims frequently require decisive action and rapid response, so we act quickly and precisely to fortify our clients' position and assets by pursuing temporary restraining orders and injunctions.

Union Relations & Avoidance

Both the American labor movement and the National Labor Relations Board continue to be forces both non-unionized and unionized companies must confront. Practically every business decision includes a labor relations issue because the National Labor Relations Act applies to all companies in the U.S., except those exempted for various reasons. One wrong step may have a tremendous impact on a company's operations and its bottom line. Masuda Funai is appreciated for providing practical and proactive advice regarding union-related activity. We are known for legal solutions that support, rather than hinder, constructive employee relations even in the most competitive and/or distressed market segments.

Our attorneys advise on and assist employers with developing union avoidance strategies, organizing and implementing pro-company/anti-union campaigns, protecting companies during union elections and, if a union represents employees in a company, negotiating and implementing collective bargaining agreements as well as representing companies during the grievance/arbitration process. We help clients initiate effective workplace communications and develop the constructive work atmosphere that is paramount to remaining union-free. We have been successful in preventing and responding to union campaigns as well as negotiating collective bargaining agreements, dealing with grievances, and guiding employers in establishing a harmonious relationship with existing unions.

We know, from hands-on experience, what can influence employees to turn to unions, how unions target and organize a workforce, and how unions organize and represent employees. As a result, whether union-free or unionized, we work in collaboration with employers to design and execute measures that consider and address employee concerns and foster a productive and mutually beneficial business culture. We also offer management and supervisor training programs on the topic of lawfully maintaining a union-free work place, as well as regularly design, review and update policies and procedures that are congruent with union relations objectives.

Internal Fraud & Harassment Investigations

Conducting a thorough and effective workplace investigation and responding appropriately based on the results of the investigation is a tremendous responsibility for employers today. Masuda Funai works closely with business clients to investigate and respond to fraud and employee complaints of harassment and discrimination based on the employee's age, citizenship, disability, gender, national origin, pregnancy, race, religion, sexual orientation or other prohibited basis.

Our firm offers proven success in navigating employers through and beyond all types of workforce investigations. We have conducted extensive and independent investigations of the full array of complaints, as well as prepared reports and recommended plans of action as needed. We consistently provide legal advice and practical solutions for even the most complex and sensitive employment matters while safeguarding our client's bottom line. We offer proven investigative tactics in identifying and taking witness statements, gathering all pertinent facts, and analyzing any relevant data including, but not limited to, offensive emails and/or performance reviews.

Because of our truly extensive experience in litigating employment claims, we bring a steadfastly balanced perspective to every matter in which we are involved. Our impartiality, careful and diplomatic approach to difficult and/or highly emotionally charged situations, and veteran people skills allow us to create comprehensive reports and viable paths to resolution that help employers make difficult but informed decisions.