



# Top 10 US Workplace Surprises Japanese Companies Must Prepare For – and Action Steps to Address Concerns

Insights

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Japanese businesses expanding into the United States often focus on customers, site selection, and supply chains. But the greater shock usually comes from US workplace law. Labor and employment law in the States is decentralized, aggressively enforced, and often counterintuitive to Japanese executives accustomed to centralized and consensus-driven practices. And missteps can quickly escalate into costly litigation or reputational harm. Here are 10 critical employment law differences, each with a real-world example and a practical action item you can take to help ease your organization's transition.

## 1. “At-Will” Employment Doesn’t Always Mean You Are Free to Terminate Workers

**What to Know:** Most US workers are employed “at will,” meaning they can be terminated at any time for almost any lawful reason. But exceptions – such as alleged discrimination or retaliation – create frequent lawsuits.

**Example:** In *Brown v. Daikin America*, a US employee sued his employer in New York claiming race and national origin discrimination after his employment was terminated during a reduction-in-force. He claimed that Japanese employees received preferential treatment over him and that he was fired because he wasn't Japanese. The appeals court not only allowed his claim to proceed to trial but ruled that the employer's Japanese parent company could be liable as well.

**Action Item:** Draft offer letters and handbooks confirming that your employees are serving “at-will” while clearly respecting the many legal exceptions that might restrict your ability to fire employees (or at least could create legal risks).

## 2. The US Has a Patchwork of Federal, State, and Local Rules Across the Country

**What to Know:** Federal law sets the floor, but states and cities add their own rules. And this is true across the country, where traditionally progressive states like California, New York, Massachusetts, and Washington have strict and complex laws, while conservative states like Texas, Florida, North Carolina, and South Carolina are much more flexible for employers. For this reason, compliance in California looks nothing like Texas, just as one example.

**Example:** A Japanese-owned restaurant chain with operations in the US faced a consolidated California class action covering unpaid wages, meal and rest period violations, unreimbursed expenses, and PAGA (Private Attorneys General Act) penalties. In 2023, the company agreed to a

*\$700,000 class settlement to resolve these claims, covering multiple lawsuits coordinated in Los Angeles and Orange County.*

**Action Item:** Before selecting the location of your operations, work with your employment counsel to build a compliance “heat map” showing all relevant labor laws in your target jurisdictions.

### **3. Overtime and Other Wage and Hour Laws Can Create Strict Rules**

**What to Know:** Overtime pay – where you are required to compensate workers at 1.5 times their regular pay – generally applies after the employee works 40 hours/week. Only a narrow set of employees are exempt from these laws, and the rules applying this system are often complex and easily misapplied. Worse still, misclassifying workers as exempt is a top cause of lawsuits. US law also requires compensation for all hours worked. Permitting workers to clean and organize their workplace pre- or post-shift can also lead to costly liability for uncompensated time.

**Example:** *The same California case included overtime and wage-statement claims, illustrating how wage/hour issues are fertile ground for class actions.*

**Action Item:** Work with your legal counsel to carefully audit job classifications and actual work performance. When in doubt, compensate hourly employees for all hours worked and treat employees as overtime-eligible.

### **4. Anti-Discrimination Laws Create Legal Obligations**

**What to Know:** US law at both the federal and state level protects employees against discrimination on many bases: race, sex, age, disability, religion, sexual orientation, gender identity, and more. In addition, even if the alleged discrimination is meritless, an employer is prohibited from retaliating against (disciplining, suspending, terminating, etc.) the employee for bringing the claim.

**Example:** *Mitsuwa Marketplace, a large Japanese market located in New Jersey, paid \$250,000 to settle an EEOC case alleging Latino employees were paid less than others for the same work.*

**Action Item:** Provide anti-harassment, anti-bias, and prohibited retaliation training to all managers – in English and Japanese – to ensure cultural alignment with US law.

### **5. Be Aware of Strong Union Rights and Labor Relations Issues**

**What to Know:** Employees across the country have rights to organize into workplace unions, and even non-unionized workers are protected by law if they engage in “concerted activity” (such as discussing pay or protesting working conditions). In addition, protected “concerted activity” includes negative speech about the company as long as it addresses the terms and conditions of employment. Even small US worksites (or a portion of a larger worksite) can unionize, so you are never immune from a potential organizing drive.

**Example:** *Large Japanese automakers have repeatedly faced union organizing drives in their US plants, especially in the South and Southeastern US.*

**Action Item:** Train managers early on legal union-avoidance practices and unfair labor practices.

Also, adopt open communication systems to resolve grievances quickly. These could help to forestall unionization efforts.

## 6. Employees Expect Benefits Offerings – and Are Entitled to Protected Work Leave

**What to Know:** The US has no national paid leave mandate, but a federal law protects workers for taking up to several months of unpaid leave for medical or family caregiving reasons, if certain conditions are met. Moreover, many states and cities require paid sick or family leave. Finally, benefits like health insurance are expected by US workers and are necessary in order to stay competitive with other employers.

**Example:** *Japanese employers in California have had to rapidly adapt to the state's strict paid sick leave laws, which go well beyond federal standards – and the same is true for many locations across the US.*

**Action Item:** Benchmark local competitors and ensure benefits and leave policies satisfy both legal requirements and talent expectations.

## 7. Compliance With Federal Immigration and Work Authorization Laws are More Critical Than Ever

**What to Know:** The current Trump administration has been aggressively enforcing the nation's strict immigration laws, so compliance is now more important than ever. All of your employees must be authorized to work in the US. Japanese personnel can enter the US under the Visa Waiver program; however, they cannot perform productive “hands-on” work while there. While there are a variety of mechanisms that would allow you to legally employ foreign national workers in various capacities, sponsoring expatriates from Japan or elsewhere requires careful visa planning. Employers in the US must ensure every employee correctly completes a Form I-9 – or you could risk a workplace audit, enforcement action, or raid.

**Example:** *Japanese manufacturers have relied heavily on E-2 and L-1 visas to transfer key staff to US operations – but delays can hinder your expansion plans.*

**Action Item:** Begin immigration planning months in advance, aligning visa strategy with site selection and workforce needs. Review our playbook for ICE audits and workplace raids, and take note of the Fisher Phillips Employers' Rapid Response Team (877-483-7781 or [DHSRaid@fisherphillips.com](mailto:DHSRaid@fisherphillips.com)) if you need immediate legal counsel when a raid occurs.

## 8. Workplace Safety is a Critical Component to Your Compliance Plan

**What to Know:** The Occupational Safety and Health Administration (OSHA) enforces workplace safety standards across industries, and many states have local-level safety agencies that can act even more aggressively. Safety inspectors can arrive at worksites without notice and their inspections can lead to large fines and punishments.

**Example:** *In a two-year period between 2022 and 2024, a Japanese-owned manufacturing plant located in Texas received two fines from OSHA totaling over \$630,000. The government found that*

*Kyoei Steel LTD failed to properly guard machinery, did not ensure workplace respirators correctly fit workers, and failed to keep workers clear of dangerous loads of material.*

**Action Item:** Conduct equipment acceptance safety approvals, facility-wide pre-opening safety audits, and implement OSHA-compliant policies and training.

## 9. Litigation and Class Action Risks

**What to Know:** The US litigation climate is far more aggressive than Japan's. Wage/hour and discrimination claims are most common. Class actions – where one or a small group of employees seek to recover damages on behalf of hundreds or thousands of similarly situated workers – are the costliest and can quickly lead to million-dollar liability.

**Example:** *The California restaurant case shows how small errors in meal/rest breaks and payroll records can balloon into a class action with major settlement costs.*

**Action Item:** Invest in HR compliance systems, work closely with legal counsel, and consider employment practices liability insurance (EPLI) to mitigate risk.

## 10. Privacy and Data Rules in Employment

**What to Know:** Data privacy rules are notoriously fragmented around the US, with no federal requirement but dozens of strict state laws that all add their own differences and nuances. And to make matters worse, some states (like California and Colorado) are amending their data privacy laws to also regulate HR data, creating compliance traps for unwary employers.

**Example:** *The California Consumer Privacy Act (CCPA) is the nation's strictest law that requires employers to disclose HR data practices, catching many foreign companies off guard.*

**Action Item:** Create a written employee data privacy policy tailored to the states where you operate, and train staff on proper data use and storage.

## Conclusion

We will continue to monitor developments related to US workplace law and offer updates as necessary, so make sure you are subscribed to Fisher Phillips' Insight System to track the most up-to-date information. Please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our International Practice Group or in our Tokyo office with any questions.

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