

IMMIGRATION EDGE



ATTY. DANIEL HANLON

New rules for religious workers

ganization in the US in the same religious denomination. Those applicants seeking Special Immigrant admission would have to establish that they had not only been members of the denomination for two years, but that they had been performing duties as a minister or in a religious occupation for the two years preceding the filing of the petition. The USCIS frequently took issue with Petitioners' designations of various denominations, since the regulation was flexible--and consequently somewhat unclear--to avoid discriminating against newer and less traditional religious organizations.

Under the new rule, the petitioning organization must show that the Petitioner and the denomination to which the religious worker belonged share the same "ecclesiastical government." This requires a detailed description of the organization's internal structure, even if the organization does not have a "central government," such as is found in the Catholic Church and other traditionally recognized religious denominations.

Prior to the new rule, an individual seeking admission as an R-1 Religious worker could apply directly for the R-1 Visa at the US State Department (DOS) Embassy or Consulate in his home country. Provided he met the requirements, he could be issued a visa rather swiftly and be admitted to the US. The new rule requires that all R-1 Visa applicants first obtain approval of an I-129R Visa Petition from the USCIS in the United States prior to applying for a visa at the Embassy. This requirement will add several months to the process, but the USCIS apparently changed the rule because the

USCIS' local offices in the US are better able to investigate petitions and root out fraud than the DOS offices overseas.

The rule also amends the definition of "religious occupation" by eliminating the basic examples of "religious occupations" offered in the previous rule. Now, Petitioners must be prepared to show how the proposed occupation relates to a "traditional religious function" as recognized within the religious denomination. How this change will affect new Petitions in practice remains to be seen and any abrupt departure from the USCIS' previous policies in the adjudication of such petitions will most likely be met with fierce protest from the religious communities.

The new rule appears at best to be an overreaction to a spate of fraud in the filings of religious worker petitions over the past several years. There seems to be no legitimate basis for the additional requirements and restrictions in the case of large, traditional religious organizations with readily confirmable physical locations and legitimate worker needs in the US. Nonetheless, the new rule puts a premium on Petitioners' due diligence in seeking qualified counsel to understand the changes, avoid pitfalls and prepare petitions in observance of all applicable rules.

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(Advertising Supplement)

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

It is standard practice for some businesses to require employees to work 24-hour shifts and reside within the work-site. This is especially true where the nature of the job requires a minimum number of employees to be available 24 hours a day, seven days a week. Employees who work under mandatory live-in arrangements include caregivers in residential care homes, construction trailer guards, staff of senior assisted living residences, and ambulance drivers. These employees are usually provided specific sleep periods during the shift. However, the demands of the job may occasionally or even regularly require them to interrupt their sleep and attend to their work.

Questions commonly arise on how a 24-hour shift employee should be compensated. To avoid costly litigation of claims of this nature, it is important that both the employer and employee acquire a better understanding of the law governing sleep time compensation.

The general rule stated in the California Wage Orders provides that "hours worked means the time during which an employee is subject to the control of an employer. It includes all the time the employee is suffered or permitted to work, whether or not required to do so." The overtime rule states that a non-exempt employee who works in excess of 8 hours per day, and 40 hours per week must be paid the overtime rate of (1) 1.5 times the regular rate for all hours over 8 up to 12 hours, and for the first 8 hours of the 7th consecutive work day, and (2) twice the regular rate for all hours over twelve, and for all the hours over 8 on the 7th consecutive work day.

Should live-in employees be paid for sleep time?

The daily overtime provisions stated above does not apply to ambulance drivers and attendants (caregivers, babysitters, or similar occupations) scheduled for 24-hour shifts of duty. These are employees who have agreed in writing to exclude from their daily time worked not more than 3 meal periods of not more than 1 hour each and a regularly scheduled uninterrupted sleeping period of not more than 8 hours. The employer must provide adequate dormitory and kitchen facilities

hours of sleep time provided that adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. Even where there is an agreement to exclude sleep time, if the employee's sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleeping period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire sleeping period must be counted as hours worked. For enforcement purposes, if an employee cannot get at least five hours' sleep during the scheduled period, the entire time is considered working time. Courts have held that if an employee resides on the premises on a permanent basis or for an extended period of time, any reasonable agreement which compensates the employee for actual hours worked which takes into consideration all of the pertinent facts will be accepted.

"The general rule stated in the California Wage Orders provides that 'hours worked means the time during which an employee is subject to the control of an employer. It includes all the time the employee is suffered or permitted to work, whether or not required to do so.'"

Therefore, employees will not be compensated for sleep time only if all the following conditions are met:

- 1) The employee is either an ambulance driver or an attendant;
- 2) The employee is assigned to a 24-hour shift;
- 3) The employee signed a written agreement stating that sleep time is not compensable; and
- 4) The non-compensable sleep time does not exceed 8 hours and is regularly scheduled and uninterrupted.

Aside from the California rules, the federal regulations of the Department of Labor's Wage and Hour Division also address this question. These regulations provide that an employee who works less than 24 hours per shift is considered to be working for the entire shift, even if some of the time is spent sleeping and even if facilities are furnished for sleeping.

Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude eight

C. Joe Sayas, Jr., Esq. is an experienced trial attorney who has successfully obtained significant results, including several million dollar recoveries for consumers against insurance companies and big business. He is a member of the Million Dollar Advocates Forum--a prestigious group of trial lawyers whose membership is limited to those who have demonstrated exceptional skill, experience and excellence in advocacy. He has been featured in the cover of Los Angeles Daily Journal's Verdicts and Settlements for his professional accomplishments and recipient of numerous awards from community and media organizations. His litigation practice concentrates in the following areas: serious personal injuries, wrongful death, insurance claims, unfair business practices, wage and hour (overtime) litigation. You can visit his website at www.joesayaslaw.com or contact his office by telephone at (818) 291-0088.

(Advertising Supplement)

CONSUMER LAW AND YOU



CAESAR S. NATIVIDAD, ESQ

Caregivers are protected by wage and hour laws

their employees pay stubs that detail the gross pay, the number of hours worked, the rates of pay, and the deductions. These employers are in violation of the wage and hour laws of California, not to mention federal labor laws. What the operators of these facilities seem to forget is that the laws governing minimum wages and overtime premiums apply to caregivers, too.

California law sets a minimum wage of \$8.00 per hours beginning on January 1, 2008. In addition, if an employee works more than eight hours a day, then he or she must be paid overtime premiums. If an employee works more than eight hours in a day, she must be paid time and a half for work in excess of eight hours, up to twelve hours. Beyond twelve hours, the employee should be paid double the hourly rate. THESE WAGE AND HOUR LAWS APPLY TO CAREGIVERS!

What I learned is that most of the caregivers are paid a fixed amount, ranging from \$800 to \$1,800 per month. In return, the caregiver usually works six to seven days a week, starting at 5:00 a.m. when the residents start waking up, until 10:00 p.m. when the residents go to sleep. In some cases, the caretaker wakes up several times in the night to take care of a resident customer. In such a situation, the caregiver has not been paid the proper wages, and the caregiver is entitled to back pay of regular pay and overtime premiums.

A caregiver who has worked a few years in a board and care facility who was not paid properly may be owed tens, if not hundreds of thousands of dollars.

Some caregivers do not have the proper authorization to work in the United States. Thus, they wrongly believe that the California wage and hour laws do not apply to them. That is incorrect. The California wage and hour laws protect everybody, even those who do not have the proper authorization to work.

If you work now or have worked in the past as a caregiver in a board and care facility, and have not been paid for work beyond eight hours, you probably are entitled to payment of unpaid wages, interests, various penalties, as well as attorney fees and costs.

The above article is not a legal advice. Each matter involves specific facts upon which different laws may be applicable. If you, a family member or a friend worked as a caregiver in a board and care facility and think that you may not have been paid the proper wages and overtime premiums, it is wise to consult with an attorney right away. You may call our office The Natividad Law Firm at (909) 348-5970 or (213) 355-2885 for a free initial consultation.

Caesar S. Natividad, Esq. is an attorney licensed to practice in California. The Natividad Law Firm practices in the areas of Employee Rights, Personal Injury, Class Actions and Immigration. Please call (213) 383-9495 to set up an appointment for a free initial consultation.

The above article is not a legal advice. Each matter involves specific facts upon which different laws may be applicable. If you, a family member or a friend is terminated or fired from a job, it is wise to consult with an attorney right away. You may call our office at (213) 383-9495 for a free initial consultation.

(Advertising Supplement)

How can bankruptcy avoid or delay foreclosure?

From PAGE C2

sure liability (example: liability for a second mortgage loan on the property after the first trust deed holder forecloses), Chapter 7 can also wipe out such liability. (Note: Most homeowners are not aware that they can still be liable for an unpaid 2nd mortgage loan even after foreclosure. The law provides some protection against this in certain cases but this is NOT always the case. See a competent bankruptcy lawyer for advice if you are one of the homeowners I described above.)

Lastly, in cases where the borrower has possible debt-cancellation income which could result in a tax liability (example: a bank

forgives a debt otherwise collectible against the borrower but reports the cancelled amount as "income" on a 1099), Chapter 7 bankruptcy may be your best way to get out from under your mortgage debt and tax liability at the same time. This is because a debt that is wiped out by a bankruptcy is excluded from income and is not taxed. If the expected cancellation-of-debt income is substantial, this alone could be a good reason to file Chapter 7. Recent laws were passed to protect most homeowners from this tax liability but in certain cases, these laws do not apply (example: the loan was secured by rental property). Tax laws are complex and situations

vary so if you are in doubt as to possible tax liability in your case, seek the advice of a competent tax professional.

If you want to explore the possible benefits of Chapter 13 or Chapter 7 bankruptcy protection, we would be glad to help you evaluate your options. To schedule a free office consultation, call us toll-free at 1-866-477-7772. We have offices in Glendale, Cerritos and West Covina.

None of the information herein is intended to give legal advice for any specific situation. Atty. Ray Bulaon has successfully helped more than 4,000 clients in finding solutions to their debt problems. To schedule a free attorney consultation, please call Ray Bulaon Law Offices at TOLL FREE 1-866-477-7772.

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