

# Should resident employees be compensated for "stand-by" time?

## PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

**Q:** I work at a board and care facility for the elderly. I am required to live at the facility and I have my own room there. My work hours are from 6 AM to 9 AM and 3 PM to 8 PM and during these hours I assist the residents, do house-keeping, cook, and give medicines. I am on "stand-by" from 8 PM until 7 AM just in case an elderly resident calls or needs help. I am not allowed to leave the facility during the stand-by hours. I take turns with another live-in employee when responding to calls. I have to fill out a time sheet showing the 8 hours that I worked plus any additional time that I spent responding to calls. These are the only hours that are paid. Since I am not allowed to leave the premises, shouldn't I be paid for my stand-by hours?

**A:** Under Labor Laws, you are considered a "resident employee" (a 'live-in' employee is someone employed in a private household). Resident employees are employees who are required to live where they work. Resident employees must be compensated for time spent performing their assigned duties. For example, in your case, you have assigned duties from the hours of 6 AM to 9 AM and 3 PM to 8 PM. You must be paid for the work you do during these hours.

However, even though resident employees are required to be at the workplace premises for a specific period of time, they are not entitled to be paid for time spent simply being available. If

resident employees are in the employment premises and they are simply waiting (for a call or an emergency to respond to), but they are free to do personal tasks while waiting (eating, grooming, watching TV, making calls, sleeping), then they have not incurred work hours.

"Work hours" is the time during which an employee is subject to the control of the employer. In the case of an employee who is required to reside on the employment premises, the time spent carrying out assigned duties or the time spent performing physical, mental or other specific tasks as required by the employer shall be counted as hours worked. If the employee is merely waiting and not performing any assigned tasks (and in fact, the employee is free to do personal tasks), then these hours are not considered hours worked. In other words, resident employees are not entitled to compensation simply for being on "stand-by."

If, during the standby hours, the resident employee performs an assigned task (for example, respond to an emergency or assist a resident to the go the bathroom), then the time spent doing this task is considered hours worked. In this case, these hours should be compensated.

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**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](http://www.joesayaslaw.com) or contact his office by telephone at (818) 291-0088.

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ATTY. JOEL R. BANDER

**M**OST people apply for a green card with the ultimate goal of becoming a U.S. citizen someday. Certain benefits are granted to citizens that are not available to green card holders, such as the right to vote in federal elections, right to obtain citizenship for children born abroad, eligibility for federal jobs, and right to become an elected official.

The process of conferring citizenship on a person is called naturalization. To be eligible for naturalization, the following requirements must be met: (1) must be a lawful permanent resident for 5 years, or 3 years if applying based on marriage to a U.S. citizen; (2) must be physically present for at least one-half of the 5-year or 3-year period; (3) must be 18 years or over; (4) must have resided for at least 3 months in the state where the

# When moral character is an issue in naturalization

application is filed; and (5) must meet the good moral character requirement for 5 years prior to filing the application.

Many people may have already met the five-year residency requirement but are not eligible to apply for naturalization due to moral character issues. There is no clear definition of good moral character for the purpose of an immigration proceeding. Good moral character has been interpreted to mean that your behavior meets the moral standard of the average citizen in your community. Therefore, customs and expectations relating to good moral character differ according to area.

An immigration officer has the authority to examine the applicant's entire life and to closely scrutinize the 5 years preceding his/her naturalization application. Past actions relating to applicant's current behavior may be discussed, although they cannot be the basis for the denial of his/her application.

The following have been given as examples by the USCIS that might demonstrate a lack of good moral character:

Any crime against a person with intent to harm.

Any crime against property or the Government that involves "fraud" or evil intent.

Two or more crimes for which the aggravated sentence was 5

years or more.

Violating any controlled substance law of the United States, any State, or any foreign country.

Habitual drunkenness. Illegal gambling.

Prostitution.

Polygamy (marriage to more than one person at the same time).

Lying to gain immigration benefits.

Failing to pay court-ordered child support or alimony payments.

Confinement in jail, prison, or similar institution for which the total confinement was 180 days or more during the past 5 years (or 3 years if you are applying based on your marriage to a U.S. citizen).

Failing to complete any probation, parole, or suspended sentence before applying for naturalization.

Terrorist acts.

Persecution of anyone because of race, religion, national origin, political opinion, or social group.

A person who has been convicted of murder at any time, or convicted of any other aggravated felony on or after November 29, 1990 cannot establish good moral character and therefore, is barred from applying for naturalization.

The applicant must not lie.

All arrests, convictions and crimes should be disclosed in the application. Even those conviction records that have been expunged must be reported. Failure to tell the truth about the applicant's involvement in any crime could lead to the denial of his application for lacking good moral character.

Bander Law Firm, LLP has been providing immigration services for over 15 years and has multilingual staff who can communicate effectively in Tagalog, Spanish, Sinhala, and Mandarin. Our firm provides free initial consultation on immigration matters, except criminal-related matters. Please feel free to call Bander Law Firm, LLP at 213-873-4333 to schedule your free initial consultation. To learn more about immigration concerns and read previous columns, visit [www.BanderLaw.com](http://www.BanderLaw.com).

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Atty. Joel R. Bander is the partner of Bander Law Firm, LLP. With over 15 years of litigation and immigration experience, Mr. Bander is a leading litigator and accomplished trial strategist. He has successfully handled numerous cases before Federal, State, Civil, and Criminal Judges and has participated in hundreds of arbitrations and trials.

Bander Law Firm, LLP Downtown office address: 1055 W. 7th Street, Suite 1950, Los Angeles, CA, 90017. Tel: (213) 873-4333 Fax: (213) 873-4334. San Gabriel Office address: 1045 E. Valley Blvd., #A215, San Gabriel, CA 91776. Email: [info@banderlaw.com](mailto:info@banderlaw.com).

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# The RN contract...

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card and determines how long the RN worked for her sponsor. If it determines that the RN has only worked for a short period of time, it may begin revocation and deportation proceedings against both the RN and her family members who obtained green cards through her.

These tragic consequences can be avoided by careful review in the beginning. For many of those currently in the position, there is still immigration and contractual relief available. The U.S. Constitution prohibits slavery and indentured servitude and because in many cases the sponsoring employer breaches the contract, the employee is not liable for any damages. This core constitutional value is the basis for providing relief to those forced to leave their sponsors. This will be the subject of our second part of this article.

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Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City.  
Telephone: (800) 795-8009  
E-mail: [immigration@rreeves.com](mailto:immigration@rreeves.com)  
Website: [www.rreeves.com](http://www.rreeves.com).

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The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case.

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To: Restaurant/Health Workers  
All Underpaid Workers

From: Bander Law Firm, LLP

Re: Get the Thousands of \$\$\$\$ You Deserve For Your Hardwork

California Law Entitles You to Overtime/ Minimum Wages/Interest/\$\$\$Penalties

Immigration Status DOES NOT MATTER.

FREE CONSULTATION ON WAGES/HR CLAIMS IMMIGRATION, PERSONAL INJURY

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**Bander Law Firm, LLP**  
Email: [info@banderlaw.com](mailto:info@banderlaw.com)

**DOWNTOWN OFFICE:**  
1055 W. 7th Street, Suite 1950,  
Los Angeles, CA 90017  
Tel: (213) 873-4333  
Fax: (213) 873-4334

**SAN GABRIEL OFFICE:**  
1045 E. Valley Blvd., STE A215  
San Gabriel, CA 91776  
Tel: (626) 571-1188  
Fax: (626) 571-8089

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