

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

QLOOKING at my time cards, I noticed I usually worked more than eight hours, sometimes 25 minutes, or up to 45 minutes more than my normal shift. My boss rounds this down to eight hours. Am I entitled to be paid for the extra minutes even if it does not reach one hour?

A. Yes. You are entitled to wages not only at your regular rate but at the overtime rate of one-and-a-half times your regular rate, for any hour or fraction of an hour in excess of eight hours per day.

When an employee's time

card entries reflect that an employee is on the job a few minutes more than the standard shift time, questions may arise as to how to compute the actual working time. As a general rule, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods if they are not engaged in any work. Employees, however, should be paid if they are allowed or permitted to work during that extra time.

Unless the employee is either performing work during the period or has been directed by the employer to be on the premises, the early or late clock punching may be disregarded. Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be investigated since they raise a doubt as

to the accuracy of the records of the hours actually worked.

The California Division of Labor Standards Enforcement (DLSE) has adopted the practice of the US Department of Labor of "rounding" employee's hours for purposes of calculating the number of hours worked. The federal regulations allow rounding of hours to five-minute segments. It has been an accepted industry practice to record the employees' starting time and stopping time to the nearest five minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work. This practice of computing working time is accepted by DLSE, provided that it will not result over a period of time, in failure to compensate the employees properly

for all the time they have actually worked.

In recording working time, insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded. However, this rule applies only where there are uncertain and indefinite periods of time involved of a few seconds' or minutes' duration, and where the failure to count such time is due to practical considerations of the work environment.

An employer may not use this policy to justify the failure to count as hours worked any part, however small, of the employee's fixed or regular working time or practically ascertainable period of time regularly required for assigned duties. A difference of \$4 per day, spread across four

years of work or approximately \$4,000 is "not a trivial matter to a workingman." If this affects 100 employees, then the employer's violation is not insignificant.

When the total number of hours do not exceed eight hours per day, the time that exceed the regular scheduled working hours should be paid at the employee's regular rate. However, if the extra minutes bring the total number of hours worked in a day to over eight hours, the extra minutes should be paid at the overtime rate of one-and-a-half times the regular rate.

A few employers have learned the hard way of the need to accurately calculate and compensate employees for actual work hours. Employers' failure to follow the rules has caused employment lawsuits resulting in substantial penalties and back wages in favor of employees. It is

therefore critical that employers and employees alike be aware of the rules in this regard.

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)

Obama's housing plan

YOUR LEGAL OPTIONS



ATTY. JOHNNY ASCANO

DEAR Johnny, I heard that President Obama announced a plan to help homeowners avoid foreclosure. Has there been any action about this plan? If there is any, are you aware of what it includes? Who will benefit from the plan? What are the requirements to be able to benefit from the plan? I shall appreciate your immediate response on this.

Ms. Obama Mama

Dear Ms. Obama Mama,

I believe you are referring to the Making Home Affordable (MHA) Plan of President Obama, which was published on March 4, 2009. The MHA, in general, intends to help homeowners either to refinance their mortgage or do home loan modification. The refinancing option is only available for conforming loans owned or securitized by Fannie Mae and Freddie Mac. Most conventional loans including prime, subprime, adjustable, loans owned by lenders and loans in securities are eligible for a Home Affordable Modification.

To be eligible for a home refinance, (1) the property must be owner occupied; (2) the borrower must have sufficient income to support the new mortgage debt; (3) the first mortgage may not exceed 105% of the current market value of the property; and (4) the borrower must

not be delinquent on their mortgage.

To be eligible for a Home Affordable Modification, a borrower must: (1) be an owner-occupant in a one to four unit property, and have an unpaid principal balance that is equal to or less than \$729,750 (for one unit properties and higher for two to four unit properties, consult the Guidance for limits); (2) a loan that was originated before January 1, 2009; (3) a mortgage payment (including taxes, insurance, and homeowners association dues) that is more than 31% of the borrowers' gross monthly income; and (4) have experienced a significant change in income or expenses, to the point that the current mortgage payment is no longer affordable.

Should you wish further information, please call us at telephone numbers (213)248-1726 or (213)637-5609 to set an appointment.

Very truly yours,
Johnny

Please be informed that The Law Offices of Johnny S. Ascano is in the process of winding down the affairs of its Panorama City branch. Any transactions involving the said branch should be coursed thru our office at 3550 Wilshire Blvd. 17th Floor, Los Angeles CA 90010 or (213) 637-5609.

The content of this column is not a disclosure of any confidential information acquired in the course of an attorney-client relationship, but a mere academic discussion to illustrate a legal issue. It does not profess to apply to any particular legal case nor should be construed as a legal advice. For your particular immigration problem, you are encouraged to personally seek legal advice from a licensed immigration attorney or to visit us at our law office.

(Advertising Supplement)

The economic downturn and its effects on laid-off sponsored workers and H-1B visa holders

by ATTY. BELLA REYES, J.D., LL.M.

AS of the end of February 2009, almost every aspect of our communities has been affected by the global economic downturn. To address this problem, our new President, Barack Obama, recently signed the "American Recovery and Reinvestment Act of 2009," more fondly referred to as the "Stimulus Bill." This bill provides a large number of tax credits and billions in US dollars to programs that support American businesses and families, including extending the Unemployment Insurance benefits for thousands of laid-off workers.

However, precisely because of the economic problems in American businesses nowadays, many sponsored workers and H-1B visa holders have been displaced by being laid off of work. As if losing one's employment and source of income is not devastating enough, it is worse because one's immigration status is threatened to be lost too. Most of the time, family members are also involved.

Available remedies for laid-off sponsored workers and H-1B visa holders

If you were a Sponsored worker or H1B visa holder and you were recently laid off, please do not lose hope. There are available remedies for you. Please call our office to discuss options available to preserve your status. We would be happy to assist you in finding other employers/sponsors for you.

Unemployment benefits for laid-off sponsored workers and H-1B visa holders

Many laid-off sponsored workers are eligible to apply for unemployment benefits. What are "unemployment benefits?" Briefly, these are benefits paid from unemployment insurance programs governed by State laws following federal guidelines. Such insurance programs are paid for by each State's employers. For unemployment benefits to be provided, the programs require that employment be lost through no fault of the employee. This means that if the employee voluntarily resigns or is terminated for cause, he or she is ineligible for unemployment benefits.

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Is there an alternative to filing bankruptcy?

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worse over time. Sooner or later, you will need to face the music and deal with your creditors, so why not do it now? You can't shun them off forever. In some cases, however, where you have no income and no assets and you don't expect this situation to change anytime soon, you may be considered "judgment proof." What that means is that even if your creditors sue you and get a judgment, the judgment is worthless because it is uncollectible. Be aware, however, that if your financial condition does improve in the future, then you may no longer be judgment-proof. More importantly, if bankruptcy is in fact your only way out, you are better off filing now while you still qualify. If you wait to file until later when your financial situation has

improved, you may no longer qualify at that time and thus you would have missed your only chance to get out of debt once and for all.

If you are considering bankruptcy as a way out of debt, I am sure a lot of questions are going through your mind at this time. For a free evaluation of your case, please call our office at Toll-Free 1-866-477-7772 to schedule a free consultation. Let us help you. 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.
(Advertising Supplement)

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

----NO RECOVERY, NO FEE----

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