

**PROTECTING EMPLOYEE & CONSUMER RIGHTS**



**ATTY. CONRADO JOE SAYAS**

**Q:** I AM a registered nurse who was recruited from the Philippines to come over and work here in the United States. I signed a contract with a recruitment agency that I will be paid the prevailing wage rate for nurses who work in Los Angeles. I recently discovered that I am being paid less than the prevailing wage rate. If I quit and look for another employer I will be forced to pay \$30,000 for breach of contract. What are my options?

**A:** Your situation is very similar to two Filipino

# Employment contracts for nurses and other employees cannot be less than the prevailing wage rates

nurses who were allowed by the California Court of Appeal to proceed with their claims against a staffing company. The company required the nurses, Elena Sino-linding and Bermalyn Bascug, to sign an agreement indicating that they will be paid the prevailing wage rate provided by the Labor Department. The staffing company's contract also required each of them to reimburse the company \$20,000 for recruitment and training if the nurses breached the contract.

It was only when the nurses had left the Philippines and had been working for several months in the United States that they discovered they were being paid less than the prevailing wage rate. The nurses quit

their jobs and sued the staffing agency, not only on behalf of themselves but also on behalf of other nurses who were employed and were similarly treated by the staffing company.

The nurses alleged that the staffing agency violated federal regulations and the Labor Code. Federal regulations required employers hiring foreign workers to pay these workers the prevailing wage rate. The Labor Code prohibits employers from requiring an employee to agree in writing to a term or condition of employment when the employer knows that such term or condition is prohibited by law. The contract the nurses signed also contained illegal penalty provisions in the guise of liqui-

dated damages.

The staffing company argued that the failure to pay the prevailing wage provided by the Department of Labor was not prohibited by law. The employer also argued that the nurses cannot bring the lawsuit on behalf of others because they had not satisfied the procedural requirements for bringing a class action. Although the trial court agreed with the staffing company, the appellate court did not.

The appellate court found, among other things, that the nurses may sue the staffing company for failure to pay the prevailing wage rates and for failure to pay minimum wage; and that the nurses did not need to comply with class action re-

quirements to bring a claim under the Private Attorney General Act (PAGA). The law allows an aggrieved employee to bring a claim "on behalf of himself or herself and other current and former employees." It makes no reference to any of the requirements for bringing a class action.

These recent cases should be instructive to both employees and employers: Employees, particularly the nurses who enter into unlawful contracts, do have recourse in our courts. Employers are also alerted to the fact that failing to pay the required wage rates or providing undue restrictions in employment agreements may give rise to employee claims under PAGA.

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**ATTY. JOEL R. BANDER**

**T**HE Bureau of Labor Statistics reported that the employment growth rate in the country has been trending down while the unemployment rate has risen to 8.1% in February 2009. Construction and manufacturing reflected a slight decline while job growth in major industries in both the goods-producing and service-providing sectors continued to decline significantly. However, despite this reported weakening labor market condition, stories of labor shortages in various industries abound. Among the industries reportedly expanding are education and health services while leisure and hospitality remains substantially unchanged.

One solution seen to address the labor shortages is the hiring of foreign workers. Many employers in the industries experiencing labor shortages require temporary or seasonal workers owing to the nature of their business. Seasonal employers have the most challenging time in attracting local workers to take temporary employment without the benefits customarily given to regular employees. On the other hand, maintaining regular workers for seasonal services could be detrimental to the business' profitability. Employers faced with this dilemma may hire foreign workers to fill temporary positions under the H-2B program.

## H-2B Visa for Seasonal Employees

To qualify under the H-2B program, the U.S. employer must be able to show that its need is temporary as justified by one-time occurrence, intermittent, seasonal, or peak load nature. It must also show that there are no U.S. workers available, willing or qualified in the area of the proposed employment. Further, the employment need must be full-time and generally not longer than 10 months for recurring employment need.

Occupations common in H-2B petitions include hotel and restaurant workers, resort and spa workers, construction workers, entertainers, and child care and home support workers. H-2B may also be appropriate for programmers for a temporary assignment of installing a new computer program, professionals to work on a contract needing expertise not normally needed by the employer, or for relieving a regular employee during a leave of absence.

Like H-1B and other nonimmigrant worker petitions, H-2B petition is filed with the U.S. Citizenship and Immigration Services (USCIS). Prior to filing a petition with the USCIS, the employer must first obtain a temporary labor certification determination from Department of Labor (DOL). The application for temporary labor certification must be filed at least 60 days but not more than 180 days prior to the designated date of need for employment. An application can cover more than one worker, provided it is for the same occupation, area of intended employment, and period of need.

After certification, an H-2B visa petition is filed at the US-

CIS designated office along with the approved Labor Certification from the DOL. The H-2B visa petition must include copies of evidence that each foreign worker named in the petition meets the minimum job requirements stated in the certification. Currently, it takes about 60 days for the USCIS to process H-2B petitions.

Obtaining labor certifica-

tion and H-2B visa for a foreign worker may entail a lengthy and complicated process. However, a competent and experienced lawyer should be able to guide and assist the U.S. employer in completing the process.

If you have any questions, it is best to consult with an attorney. Bander Law Firm has been serving the community of Los Angeles, CA since 1987 and has

multilingual staff who can communicate effectively in Tagalog, Spanish, Sinhala, Farsi, Russian, Korean and Mandarin. Please feel free to call Bander Law Firm at 213-873-4333 to schedule your free initial consultation on immigration concerns. Bander Law Firm provides full range of legal services in the fields of Mortgage Litigation, Bankruptcy, Immigration, Personal Injury, Criminal and Removal Defense, Civil and Business Litigation, Wage and Hour Litigation and

Class Action lawsuits.

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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.

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## 7 tips for buying long-term care insurance

**O**NE option for addressing the high costs of long-term care is to buy an insurance policy. Policies can cover the cost of hiring someone to help the recipient with in-home cleaning, cooking, bathing and dressing.

Coverage may also include assisted living in a facility outside the home or could include nursing home care.

The AARP offers several tips if you're considering long-term health care insurance.

1. Buy a policy when you're still middle aged and before the onset of serious health problems. Waiting until you're in your 70s or 80s or in failing health could mean insurers won't sell you insurance or they'll make premiums too expensive.
2. Balance your goals with the cost. Goals should include protecting your assets, minimizing your dependence on other family members, and controlling where and how you receive long-term care services. For a 65-year-old, a policy could cost between \$2,000 and \$3,000 a year to cover nursing home care and home care. You may choose not to buy a policy if it forces you to lower your quality of living or makes you give up things you need now.
3. Decide what coverage suits you best. Some pay only for nursing home care, others only for in-home care. Policies can be purchased to cover a mixture of options including home care (sometimes including care by a family member), assisted living or adult day care.
4. Look at the daily or monthly benefit, which shows limits to what the insurance company will pay. If the cost of your care exceeds these limits, you'll have to pay the difference. Policies also will have a benefit period, which may be two years, six years, or the rest of your life.
5. Check to see what kind of inflation protection is included in the policy. Medical care expenses climb so rapidly that a lack of inflation protection may leave you paying a large portion of care yourself.
6. Make sure that your long-term care policy doesn't require that you spend time in a hospital to receive benefits; that it will be renewed as long as you pay premiums; and that it lets you stop paying premiums once you begin receiving benefits. Also make sure it covers pre-existing conditions if you disclosed them when you applied.
7. Consider optional products including life insurance policies or annuities with long-term care benefit riders. (AP)

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