

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

THE U.S. Government Accountability Office (GAO) recently did a study on the performance of the federal Department of Labor's Wage and Hour Division (WHD). The WHD is essentially tasked with enforcing federal laws on minimum wage and overtime. When a labor complaint is made, the WHD's usual responses would range between calling the employer to conducting a comprehensive investigation on an employer's labor violations. GAO went undercover and over a period of several months, GAO investigators filed ten fic-

titious complaints with WHD's district offices across the country, posing as both the employees and the employers. GAO's investigation revealed slow response times, a poor complaint intake process, failed conciliation attempts, and inadequately investigated claims. Of the ten complaints that were made, only one was successfully resolved. The report also revealed that several of the WHD's regional offices and staff were directed to only record successful complaint resolutions in its database, making WHD statistics appear better than they were. GAO also found that, because of the lack of resources and staff, investigations of wage theft and child labor violations were often delayed by months or years. WHD's frequently inadequate response to complaints left low wage work-

ers vulnerable to wage theft.

In response to GAO's investigation and report, current Secretary of Labor, Hilda Solis, released a statement saying that the WHD "has already begun the process of adding 150 new investigators to its field offices to refocus the agency on these enforcement responsibilities. In addition, under the American Recovery and Reinvestment Act, the agency will hire 100 investigators to ensure that contractors on stimulus projects are in compliance with the applicable laws."

The above issues and developments may involve only federal labor agencies and impact only labor claims on the federal level. However, California's own Division of Labor Standards Enforcement (DLSE), which enforces California's laws on wages, is

also faced with the same issues as its federal counterpart. The DLSE has admitted that its enforcement actions are normally hindered by a lack of resources. It takes money to investigate and pursue claims - money which is certainly scarce these days. Thus, the DLSE may not be able to handle every single claim that comes through its doors. More often than not, the DLSE may encourage employees who are claiming large amounts of unpaid wages to get an attorney.

Because of limited government help, it is important for the employee to be resourceful in seeking private attorneys. Some employees hesitate to talk to lawyers for fear that lawyers may charge them upfront. Others are concerned that some confidential information may be disclosed.

However, information on employee rights can be obtained without cost. Our law firm, for instance, allows the employee to call our office and make a no-cost inquiry. Information on the caller's wage claims are treated with strictest confidentiality. After evaluating an inquiry and we believe that the matter is something that the law firm can handle, we agree to take the case. We then advance the valuable time and the litigation costs required. The law firm gets paid only if the employee recovers money or wins the case. Meanwhile, the employee does not have to worry about paying any money in advance to prosecute his or her wage claims.

In this time of economic downturn, employees must take on the initiative of enforcing their employment rights. As I

have seen in my 22 years of litigation experience, people don't get what they deserve, they get what they fight for!

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.

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ATTY. JOEL R. BANDER

ARE you feeling tied down to your current job because of your H-1B visa? Did you receive a job offer from a different company but don't know what to do? The fact is: You CAN change employers while on an H-1B visa! What is important is that you and your employer follow the correct procedure necessary to do this.

Fortunately, the American Competitiveness in the Twenty-First Century Act (AC21) was enacted into law in 2000 and allows H-1B portability. This means that alien with an H-1B visa has an opportunity to move to a different employer. It does not mean that your visa is transferred from one employer to another. The new H-1B employer must first file a new Form I-129 petition for the alien before he

Changing employers while on an H-1B Visa

or she begins working for the new employer. The application will include the alien's pay stubs as evidence that there will be no gap in employment. There cannot be any gaps in employment. Oftentimes, employers/employees make a mistake of not filing the petition before the employee starts working for the new company. Failure to do so may lead to the revocation of an alien's H-1B visa.

Since their H-1B visa was already counted against the 65,000 visa cap when they obtained the visa from the current employer, the new employer can still file for their H-1B visa even if the 65,000 visa cap has already been exhausted. Once your H-1B visa has been counted toward the visa cap, you will no longer have to wait the next year to apply.

Another common mistake is when the employers do not pay the employee they petitioned with the wage indicated in the H-1B petition. These aliens should receive salary that is in accordance to the industry's prevailing wages. There are in-

stances when aliens petitioned by employers turn a blind eye on this violation made by their employers because they are happy enough that they are able to work in the United States.

As with any H-1B visa, aliens are only allowed to work for the petitioning US employer and perform the tasks described in the petition. The duties you are to perform and the wages you

are to receive should be in accordance with what was filed by the employer.

The most important thing to remember about changing employers while on an H-1B visa is this: There should be no gaps in your employment because your H-1B allows you to stay in the U.S. legally based on continuous employment.

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, Farsi, Korean 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.

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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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What is involved in a loan modification?

YOUR LEGAL OPTIONS



ATTY. JOHNNY ASCANO

DEAR Johnny, Can you give me an idea how does the loan modification process actually takes place? I want to avail of a loan modification for my mortgage, but I do not have any idea on how to proceed. If you could give me a short description of what is involved in the process, I shall gladly set an appointment with you. Thank you so much for the help.

Mr. LM
Dear Mr. LM,
Here is a brief description of the steps involved in a loan modification:

First, it starts with the consultation stage. This is when you consult your attorney about your situation and your attorney gives you advice whether or not loan modification is your best option.

Second, when your attorney finds out that your situation is proper for loan modification, he will give you the list of documents that will be used in your application. Normally, these documents include your (1) Proof of income; (2) At least four month of bank statements; (3) A hardship letter explaining your situation and requesting a loan modification; (4) A monthly expense sheet detail-

ing all your expenses, including items you are not paying for; (5) Your most recent mortgage statement; (6) 2 years W2 forms; and (7) 2 years income tax returns.

Third, your lawyer will begin negotiations with your lender shortly after sending your application. A good loan modification attorney will negotiate aggressively until the bank makes an offer that best suit your financial situation.

Fourth, when your lender and lawyer reach an agreement, you will receive a document detailing the offer for approval. The result may be a lower interest rate, and/or a lower monthly payment, a restructuring of your mortgage, or such other change that will be beneficial to you.

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.

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What to do with...

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show that the marriage is bona-fide and not merely for immigration purposes, INS may approve a Joint Petition without an interview.

The procedure described hereinabove applies in situations where the marriage has not been terminated. Often, the Joint Petition cannot be filed or approved because the marriage, although bona-fide when entered into, has been terminated by divorce. May aliens become threatened of falling out of status once their marriage is in trouble because the spouse often refuse to cooperate

or has filed a divorce petition. In such cases there is still hope and the prospect of obtaining unconditional permanent residence status still remains. A waiver of the joint petition requirement may be sought in such cases.

Atty. Kenneth Ursua Reyes was President of the Philippine American Bar Association. He is a member of both the Family law section and Immigration law section of the Los Angeles County Bar Association. He has extensive CPA experience prior to law practice. LAW OFFICES OF KENNETH REYES, P.C. is located at 3699 Wilshire Blvd., Suite 700, Los Angeles, CA, 90010. Tel. (213) 388-1611 or e-mail kureyeslaw@aol.com. Visit website Kenreyeslaw.com.

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