

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

Q: BECAUSE of the economy, I know a lot of people who are getting laid off from work. I might soon be one of them. I am an hourly employee assigned to irregular schedules and I have always felt that I have not been paid for all the hours I worked. I have never before complained because I need the job. But since I'm going to be laid off, I believe I should collect what is rightfully due to me. So how do I determine which of my hours should be paid by my employer?

A: You must first determine what your work hours are to determine if your employer owes you additional compensation. Even if your schedule varies from day to day, there are still ways to determine whether you are working during any given day. The time you spend working is "work time" and must, therefore, be paid.

"Work time" is basically the time an employee spends on activities that are controlled by and for the benefit of the employer. This includes all the time that you are required to be present at the workplace. It also includes your regular "on-the-clock" hours as well as any "off-the-clock" time you spend performing job-related activities which benefit your employer.

Off-the-clock work

Off-the-clock work is performed before or after the designated shift time. For example, employees may "come early" and start working before their official starting time. Or, after the shift, employees may spend time cleaning equipment, or doing "on the way home" activities such as dropping off mail at the post office or delivering some paperwork to a customer. Off-the-clock work may also consist of an extra work hour per day whose value may be significant if the practice persisted for years. An employee who is paid \$15 per hour and has accumulated off-the-clock work hours at an average of one hour per day for the last four years may potentially have a wage claim of about \$20,000.

Lectures, meetings and training programs

Employees who attend lec-

Determining an employee's compensable hours

tures, meetings, and training programs must be paid for the time they do so if all of the following factors are present:

- 1) Attendance is during the employee's working hours;
- 2) Attendance is mandatory or required or the employee is made to understand that non-attendance would adversely affect the employee's employment;
- 3) The program is directly related to the employee's job with the primary purpose of making the employee more efficient at doing his present job; and
- 4) The employee is performing productive work during attendance at the program.

On-call time

Employees who are "on-call" after their regular work hours may be compensated for work time provided that the employee is restricted while on-call so as to disallow personal pursuits. Some factors to determine whether the employee is restricted or not include:

- a) the frequency of the calls received
- b) the expected response time
- c) the length of time worked when called
- d) any restrictions on how far an employee may travel away from home, and
- e) the ability of the employee to switch shifts

Travel time

An employee's commute to work is normally not considered work time. However, when the employee is given a special assignment that requires the employee to travel, such travel time is considered work time, although the employer may deduct or discount the time the employee would normally spend commuting to the regular work site.

If travel is part of the employee's job, such as travel from job site to job site during the workday, such travel time is work time and must be counted as hours worked. Or if the employee is required to travel to another location in order to work at a different location, the travel time from one location to the next is paid work time.

Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days but also during corresponding hours on nonworking days.

In determining their work hours and the payment due to them, employees should not be

deterred by words like "voluntary," "unauthorized" or "unapproved." Work performed voluntarily, or without authorization or approval, may still be compensable if the employer knows or should know work is being done and permits the employee to do it. In addition, all the time spent performing work-related activities permitted by the employer is work time, whether the work is "required" by the employer or not. These would include work performed at the employer's premises or work performed "at home" or at another place that is not the usual work site. Employers who accept the benefits of the work performed by its non-exempt employees must pay the wages due to the employees.

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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BARRISTER'S CORNER



ATTY. KENNETH URSUA REYES

DIVORCE can be a bit complicated specially if there are community assets and debts involved. Generally, accumulations and earning after the date of separation is each spouse's separate property. What happens when you use separate funds to pay for community debts after the date of separation such as when one spouse continues to pay the mortgage to the family residence after separation? Does that spouse get credit for all those mortgage payment?

Normally when a spouse uses separate property to pay for community debt prior to the date of separation, there is a presumption that it is a gift to the community unless you can trace the separate property contribution and seek reimbursement under family code §2640. However, there is no presumption of a gift when separate funds are used to pay community debts after the date of separation. That is why the date of separation is very important and commonly litigated in highly contested divorce cas-

Knowing your rights to reimbursements during divorce

es due to the difference in controlling presumptions. Instead, the trial court has discretion to order reimbursement of any separate property used to pay community debts after the date of separation under family code §2626. The reimbursement is commonly called Epstein credits after the case Marriage of Epstein. However in deciding whether to allow reimbursable credits, the Court has to consider the Epstein guidelines. Reimbursement for a particular debt is inappropriate where: a) The parties agreed payment would not be reimbursed. b) Payment was truly intended as a gift, even though made after separation.

c) Payment was made on account of a debt for the acquisition or preservation of an asset the payor was using, and the amount paid was not substantially in excess of the value of the use. d) The payments on account of preexisting community obligations constitute a discharge of the payor's support duties.

How about the situation where one spouse has exclusive use of the community asset between the date of separation

and the date the community no longer has an interest in the asset such as use of a car? The Spouse with the exclusive use of the community asset can be charged the reasonable use of that property under the Marriage of Watts. This is called Watts charge. So for example if the wife has exclusive use of the car, the husband may ask that the community be reimbursed by the wife for the value of the use of the car between separation and trial date or settlement date. The same thing can be applied when one spouse alone is staying at the family residence while the other spouse is paying for the house. The rules governing reimbursements can be confusing to lay people. It is best to obtain the representation of competent counsel.

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Homeowners with Countrywide loans eligible for Loan Modification

LEGAL LIFELINE



ATTY. GENE W. CHOE

ON June 25, 2008, California Attorney General Edmund G. Brown Jr. sued Countrywide Financial, its Chief Executive Officer Angelo Mozilo, and President David Sambol, for engaging in deceptive advertising and unfair competition by pushing homeowners into mass-produced risky loans for the sole purpose of reselling the mortgages on the secondary market. The lawsuit was filed in order to "seek relief for Californians who were ripped off by Countrywide's deceptive scheme," according to the Attorney General.

Countrywide was found to have used deceptive tactics to push homeowners into complicated, risky and expensive loans so that the company could later in time sell as many loans as possible to third-party investors. The company loans were promised very low initial or "teaser" interest rates or payments. However, average homeowners later find out that these loans are very complex and difficult to understand. Countrywide employees, ranging from loan officers and underwriters to branch managers were pressured to sign up as many lenders as they could, and in the process misrepresented or obfuscated the fact that certain types of loans for the borrowers would naturally lead to dramatic increases in monthly payments. Employees who did not meet quotas were terminated.

The company's deceptive marketing practices included but were not limited to the following:

1) Marketing complex loan products by emphasizing a very low "teaser" rate while misrepresenting the steep monthly payments, increased interest rates and risk of negative amortization;

- 2) Dramatically easing underwriting standards to qualify more people for loans;
- 3) Using low or no-documentation loans which allowed no verification of stated income;
- 4) Hiding total monthly payment obligations by selling homeowners a second mortgage in the form of a home equity line of credit;
- 5) Making borrowers sign a large stack of documents without providing time to read the paperwork; and
- 6) Misrepresenting or hiding the fact that loans had prepayment penalties.

As a result of Countrywide's deceptive sales practices, a large number of loans ended in default and foreclosure. Borrowers who filed complaints to Countrywide claiming that they didn't understand their loan term were only ignored by loan officers.

In October of 2008, Countrywide Home Loans, Countrywide Financial Corporation, and Full Spectrum Lending entered into a settlement with the Attorney General's office. The settlement is expected to provide up to \$3.5 billion of home loan and foreclosure relief to California borrowers \$8.68 billion of home loan and foreclosure relief nationally. In summary, the settlement will enable eligible subprime and pay-option mortgage borrowers to avoid foreclosure by obtaining a modified and affordable loan.

In order to be eligible for the modification program, the following criteria must be met. The borrower's first payment of subprime and pay-option adjustable-rate mortgage loans must have been due between January 1, 2004 and December 31, 2007. Also, the loans in default must be secured by owner-occupied property and serviced by Countrywide Financial or one of its affiliates. In addition, the borrower's loan balance must be 75% or more of the current value of the home, and the borrower must be able to afford adjusted monthly payments under the terms of the modification.

The terms of the modification may vary based on the type of loan. For "Pay-option ARM

**To: Restaurant/Health Workers
All Underpaid Workers**

From: Bander Law Firm, LLP

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