

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

Q: I recently tried to return to work after 10 months of disability leave. I showed my boss my doctor's certificate saying I should not do a lot of driving but I can do deskwork. Since driving was very important to my work, this means I could not go back to my old duties. I asked if I could be transferred to another position that would accommodate my restrictions. I was told that there are no other positions open and I would have to be terminated. However, our company was hiring and there are lower level positions for which I would qualify. What are my rights?

A: Your employer may have a duty to offer you the vacant lower level positions to comply with its duty to provide reasonable accommodation. California law prohibits discrimination based on disability or medical condition. An employer may not refuse to hire, train, or promote an employee based on disability. An employer may not terminate an employee or discriminate against the employee in compensation or other conditions of employment based on the employee's disability or medical condition.

Employer's Duty to Provide Reasonable Accommodation

If a disabled employee is unable to perform his or her old duties, the employer must engage in a timely, good faith interactive process in response to the disabled employee's request for reasonable accommodation. The employer must start the interactive process if the employee's disability becomes known or obvious.

The employer knows an employee has a disability when the employee tells the employer about the condition, or when the employer becomes aware of the condition, such as through a third party or by

Protecting disabled employees

observation. After knowing of the employee's disability, the employer must provide a reasonable accommodation for the disabled employee.

Depending on the employee's specific restrictions and the employer's circumstances, the following are some types of reasonable accommodations that an employer may provide:

- Making facilities accessible to and usable by disabled individuals;
- Job restructuring;
- Offering part-time or modified work schedules;
- Reassigning to a vacant position;
- Acquiring or modifying equipment or devices;
- Adjusting or modifying examinations, training materials or policies;
- Providing qualified readers or interpreters; and
- "Other similar accommodations for individuals with disabilities."

Sometimes allowing the employee a temporary leave of absence may be a reasonable accommodation if, after the leave, the employee likely can resume his or her duties. Additionally, if the employee can no longer perform the former job's duties, offering a vacant position may be a reasonable accommodation, even if the position pays less than the disabled employee's former job.

The employer has the duty to find and offer suitable jobs for the employee. Simply telling the disabled employee to check available job postings in the company is not enough. As in the situation above, the employer must reassign or transfer a disabled employee to a vacant position because the employer is in a better position to know what jobs are vacant or may become vacant. Additionally, the law entitles the disabled employee to "preferential consideration" in reassignment of existing employees. However, the employer is not required to promote or create a new position in order to accommodate a disabled employee.

Employee's Duty to Cooperate in Good Faith

Throughout the interactive process, the employee has the responsibility to cooperate in good faith with the employer, including providing information that the employer may require to explore accommodations. Typically, the employee must be able to provide the employer with a list of restrictions that must be met to accommodate the employee. The employer may take the employee's demands into consideration in determining whether a suitable opening exists.

Each employee's situation in every workplace is different from another. The specifics of each claim must be discussed with an experienced employment attorney to protect the rights of disabled 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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ATTY. JOEL R. BANDER

(Editor's note/Erratum: In the May 23 weekend issue of the Los Angeles Asian Journal, Atty. Joel Bander's article, "H1-B Visas Still Available," was erroneously placed in Atty. Daniel Hanlon's column. The Asian Journal deeply regrets this error and apologizes for any inconvenience that this unintended mistake has caused Atty. Bander and Atty. Hanlon. To make up for the misprint and correct the error, we are republishing Atty. Bander's column.)

THE US Citizenship & Immigration Services (USCIS) announced on May 18, 2009 that it will continue to accept H-1B petitions for the fiscal year 2010. USCIS has only received approximately 45,500 petitions counting toward the general 65,000 cap and approximately 20,000 petitions for the 20,000 cap for aliens with advanced degrees.

This turnout contrasts with our experience in 2007 and 2008, when USCIS was immediately swamped with more petitions than visa numbers available on the first two days

H-1B visas still available

of the filing season beginning April 1. During those years, USCIS conducted lottery and rejected thousands of applications that were not fortunate enough to be selected in the lottery. While many still expect USCIS to reach its ceiling this year, the question is whether USCIS will still conduct lottery once the ceiling has been reached.

Last year, USCIS issued a regulation allowing a minimum window of five business days for USCIS to receive H-1B cap-subject cases and thereafter, run a random lottery selection to determine which cases filed within this window will be eligible for a cap number. This is due to the excessive number of petitions received. However, for this year, the general cap has not been met during the five-day window, giving rise to the speculation that no general lottery will be conducted. Some predict a "mini lottery" for cases filed after the five-day window if the number of additional filings exceeds the remainder of the cap. Until USCIS makes an announcement, it is not certain how the selection will be made.

One thing is certain, though. Those who failed to beat the April 1 rush can still file their petition and hope to be selected for processing.

They still have time, but must act NOW.

Contact Bander Law Firm now to know if H-1B is an appropriate visa petition for you. H-1B is a temporary work visa for individuals with a bachelor's or higher degree to be employed in a professional occupation. The petition must be filed by a US employer on behalf of a foreign beneficiary. If the beneficiary is presently in the United States as a nonimmigrant, he must be in valid status to apply for a change of status. The petition may also be filed for a beneficiary outside the United States, in which case, the visa will be applied for and issued in the US consulate in the beneficiary's home country.

Bander Law Firm, LLP has been providing immigration services for over 15 years and has multilingual staff. Feel free to call Bander Law Firm, LLP at 213-873-4333 to schedule your consultation regarding your legal concerns. Bander Law Firm provides a full range of legal services in the fields of Immigration, Mortgage Litigation, Personal Injury, Bankruptcy, Criminal and Removal Defense, Civil and Business Litigation, Wage and Hour Litigation and Class Action lawsuits.

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Consequences of failing to comply with Disclosure Requirements during Divorce

BARRISTER'S CORNER



ATTY. KENNETH URSUA REYES

THERE is a natural tendency between parties undergoing a divorce not to be forthcoming with one another in disclosing all their assets, debts, income and expenses. In an effort to get a bigger share of the pie, a party to a divorce proceedings sometimes will have to urge not to disclose that secret bank account or that secret property that was purchased without the other spouse's knowledge. As a result, parties sometimes refuse to comply with the requirement to exchange preliminary and final declarations of disclosures. There is a statutory duty in family law to exchange prescribed "preliminary" and "final" declarations, along with a current income and expense statement, in all dissolution, legal separation and nullity actions. Family Code Section 2103 provides that "In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to a proceeding for dissolution of the marriage or legal separation of the parties shall serve on the other party a preliminary declaration of disclosure under Section 2104 and a final declaration of disclosure under Section 2105, unless service of the final declaration of is waived."

The declarations of disclosure are not a mere formality. The parties are bound to provide full and accurate disclosures, consistent with their continuing fiduciary obligations as to all activities affecting each other's property and support rights. The deadline for service of each party's final declaration is either (1) "before or at the time the parties enter into an agreement for the resolution of property or support issues" (other than pendente lite support), or (2) if the case goes to trial, "no later than 45 days before the first assigned trial date." Missing this deadline will not prevent the case from going to trial but will prevent entry of

judgment.

What happens when one party fully complies with the disclosure requirement while the other does not? Family Code Section 2107 lays out the remedies a complying party may have. The complying party may either 1) file a motion to compel further response and/ or 2) file a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure at trial. 3) The complying party may also seek monetary sanctions against the non complying party. Such monetary sanctions award against a party who fails to comply with any provision of Fam. C. § 2100 et seq. The sanctions must be assessed in an amount "sufficient to deter repetition of the conduct or comparable conduct," and must include reasonable attorney fees, costs incurred or both ... unless the court finds that the noncomplying party "acted with substantial justification or that other circumstances make the imposition of the sanction unjust." 4) If a court enters a judgment when the parties have failed to comply with all disclosure requirements, the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error. 4) Upon the motion to set aside judgment, the court may order the parties to provide the preliminary and final declarations of disclosure that were exchanged between them.

What happens if both parties complied with the disclosure requirements but left out material items in the disclosure? A party who finds out after a divorce judgment has been entered may file a motion to adjudicate omitted asset or debt under family code section 2556. In those cases, generally the Court would distribute the omitted item among the parties as if it was added to the prior judgment rather than setting aside the original judgment.

Attorney 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. Website kenreyeslaw.com

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

From: Bander Law Firm, LLP

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