

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

Q: I WORK as a driver/courier for a service-oriented company. I am often asked by my supervisor to pick up packages an hour or two before my regular clock in time. However, my supervisor told me to always clock-in at my regular clock in time. So even though I work an extra one or two hours every day, I am only paid 8 hours and not 9 or 10 hours. Should I be paid for the work that I do outside of my regular scheduled hours?

A: Yes, you should be paid for the extra hours you worked even though such work was done before your scheduled hours. Such extra hours are termed "off the clock" hours because they occur outside an employee's regular work hours or shift. In this instance, you are additionally entitled to the overtime rate of 1½ times your regular rate for any work in excess of 8 hours per day.

Off-the-clock hours are incurred, for example, when employees work at 8 AM even though scheduled to start at 9 AM, or they finish work at 6 PM even though scheduled to end at 5:30 PM. Off-the-clock hours are still considered "hours worked."

Under California laws, "hours worked" is defined as the time during which an employee is subject to the control of an employer. It includes all the

Should employees be paid for work done 'off the clock?'

time the employee is suffered or permitted to work, whether or not required to do so. If the employer tells the employee to come in and perform work (even if outside the employee's scheduled work hours or shift), or if the employee tells the employee to finish work regardless of the employee's clock out time, then the employee is, therefore, required to work. The employee should be paid for this time. If off-the-clock hours exceed 8 hours per day or 40 hours per week, the employee should be paid overtime.

The California Labor Code requires that non-exempt employees (i.e. employees who do not fall under the executive, administrative, or professional exemptions in the Wage Orders) must be paid overtime compensation if they worked any hour or a fraction of an hour in excess of 8 hours per day or more than 40 hours per work week. The employee must be paid at the premium rate of 1 ½ times the employee's regular rate if the employee worked more than 8 but less than 12 hours in a work day. If the employee worked more than 12 hours in a work day or in excess of 8 hours on the seventh day in a work week, the employee is entitled to double the employee's regular rate.

Perhaps one of the greatest hurdles that off-the-clock employees face when it comes to collecting for unpaid wages is how to prove that they performed off-the-clock work. By its very nature, off-the-clock work cannot be tracked or demonstrated

by the usual time clock methods. Even though employers are required by law to keep accurate time records, employees cannot simply rely on an employer's time-keeping records to substantiate claims for off-the-clock work. Employees may look to other means. The simplest, of course, is for employees to keep a contemporaneous personal diary of their hours worked.

However, absent a personal timesheet, there might still be other means that an employee can prove off-the-clock hours. Such an employee would be better served to consult with an experienced employment attorney to discuss possible options.

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.joesayasl.com or contact his office by telephone at (818) 291-0088.

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BARRISTER'S CORNER



ATTY. KENNETH URSUA REYES

IN previous editions of this article, the process of obtaining permanent residence through marriage was explored. Discussion of that procedure began with the supposition that the couple was married, and continued with the various steps to ultimately gain permanent residence. In many cases, however, a problem exists in even getting to the point at which a couple is married. Often, a foreign national is in his/her home country and, for one reason or another, the US citizen cannot travel to that country to marry him/her. A solution in such a scenario can be found with the K-1 Fiance(e) Visa.

A K-1 visa allows a foreign national to come to the United States to marry a United States citizen. The K-1 visa is valid for ninety (90) days after entry to the United States, during which time the marriage must take place. Once the foreign national is issued a K-1 visa, any of his/her unmarried children under the age of 21 may be issued K-1 visas. Upon arrival in the United States, the foreign national may immediately apply for permission to work. A

K-1 visa: Fiance(e) visa to marry US citizen

two-step process is involved to obtain a K-1 visa.

First, the United States citizen (the petitioner) must file Petition for Alien Fiance(e) (Form I-129F) along with supporting documents with the USCIS. Through the filed petition and documents, the petitioner must demonstrate three things. To begin, it must be shown that the foreign national has a bona fide intent to marry within ninety (90) days after arrival. This is often accomplished by producing evidence that a marriage is going to take place – i.e. wedding announcements, catering contracts, etc. In addition, it must be shown that both parties are unmarried and of legal age. Birth certificates, and if one has been previously married, evidence that the prior marriage has been legally terminated are usually satisfactory to accomplish this. Finally, evidence must be provided to show that the parties have physically met each other within the past two (2) years. The petitioner may submit photos of the couple, plane tickets, hotel receipts, etc. as proof that the couple has met. Exceptions to this third requirement apply in certain circumstances that cannot be explored here due to space limitations of this article. The USCIS may also schedule an interview of the petitioner

wherein inquiry will be made on the foregoing issues. Once approved, notice is sent to the petitioner and the file is forwarded to the appropriate consulate abroad.

Second, after the petition is approved, the foreign national can apply for a K-1 visa in his/her home country. An interview is scheduled where the foreign national must provide certain documents for issuance of the visa. An affidavit of support from the petitioner, proving that the foreign national will not be relying on public assistance upon arrival, in addition to originals of documents mentioned hereinabove, must be presented. Other documents may also be requested by a particular consulate. If all requirements are met, visa issuance will follow. After arrival in the United States and marriage, the foreign national may thereafter begin the process to obtain permanent residence.

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 (Advertising Supplement)

How about Canada?

INSIDE IMMIGRATION



ATTY. DARREN SILVER

ON September 18, Darren Silver & Associates in conjunction with CSI Professionals conducted a seminar on Canada immigration at CSI's offices in Glendale, CA. The seminar received rave reviews and offered a very comprehensive "infomercial" on all things Canadian. On September 26 DSA will again be conducting the same seminar at CSI's Glendale offices. In addition, in late October DSA will be travelling to the Philippines to conduct seminars on Canada immigration and will also be appearing on a live worldwide telecast to millions of Filipino viewers discussing various Canadian immigration options. Be sure to tell your relatives abroad to catch the show!

For many aspiring immigrants, the negative effects of the world wide economic meltdown towards their ability to be able to work and or immigrate to greener pastures abroad has been devastating. For example, in the United States, there are scores of temporary H-1B workers that are in danger of running afoul of their status as more and more employers are facing a cash crunch and are forced to let them go. For these displaced workers the only options are either to quickly find another employer or go back home.

However, there is a 3rd relatively unknown option for these and other aspiring skilled workers to be able to realize their dream of a better life. That option is Canada. Canada has been ranked as one of the best places to live by the United Nations numerous times within the past 10 years. Other than its historically lower rates of gun crime and other violence compared to the United States, Canada mirrors its neighbor to the south in almost every other aspect. In fact upon visiting Canada, one will note that it looks like just like any other part of the United States with wide open highways, shopping malls, movie theaters, restaurants, etc. The only real palpable differences is that they use kilometers as opposed to miles, their currency is multi colored, they have a parliamentary system as opposed to our federal system of government and their head of state is the Queen of England as opposed to our President.

Geographically Canada is truly a breath taking wonder of nature. Second only to Russia, Canada is the largest country in the world with mountains in the western region to low lying plains in the eastern part of the country with fresh water lakes [Canada has the largest supply of fresh water in the world] and some of the most spectacu-

lar forested regions one has ever seen in between the two coasts. A majority of the estimated 33,000,000 people of Canada live within 150 miles of the border Canada shares with the United States with a majority of them living in the corridor between Windsor, Ontario [bordering Detroit, Michigan] and Montreal, Canada, i.e. the "401 corridor."

Economically, Canada is one of the trillion dollar class economies. Historically in order to fill the labor shortages that a country of its size encounters, the Canadian government has had to rely on a large influx of new immigrants each year. In 2007, Canada admitted approximately 250,000 new immigrants with similar figures for 2008 and expected for 2009. The majority of those new immigrants arrived in Canada in one of the following categories; family, refugee and asylum, investment and skilled workers. The latter is the focus of the remainder of this article.

In 2008, the Minister of Citizenship and Immigration issued ministerial instructions to completely revamp how Canada immigration accepts and processes applications for the Federal Skilled Workers class and also put FSW applications into a Fast Track processing stream. According to the new instructions, all FSW applications will now be limited to a new list of 38 occupations that are considered to be in high demand in the Canadian economy. All that is required is that the applicant have 1 year of experience in the listed occupation acquired from anywhere in the world and they can have Permanent Resident or Landed Status status [aka Green Card] in Canada within 6-12 months! No job offer is required. Previously FSW applications to Canada were taking approximately 3-5 years to be processed. In addition to the 1 year of experience, the applicant will have to garner at least 67 points out of 100 on the assessment scale. Factors include age, education, language ability, existing ties to Canada, arranged etc. Most of the occupations relate to health, skilled trades and finance. Please see below for a complete list:

- Financial Managers
- Computer and Information Systems Managers
- Managers in Health Care
- Restaurant and Food Service Managers
- Accommodation Service Managers
- Construction Managers
- Financial Auditors and Accountants
- Geologists, Geochemists and Geophysicists
- Mining Engineers
- Geological Engineers
- Petroleum Engineers
- Specialist Physicians
- General Practitioners and Family Physicians
- Audiologists and Speech Language Pathologists
- Occupational Therapists
- Physiotherapists
- Head Nurses and Supervisors
- Registered Nurses

CAN BANDER LAW FIRM HELP YOU REDUCE YOUR MORTGAGE?

BANDER LAW FIRM MADE A DIFFERENCE FOR THIS CLIENT

TAKE ACTION NOW TO ADDRESS YOUR MORTGAGE CRISIS

Paul and Evita Anderson - Bander Law Firm Clients

Client Situation:
Mrs. Evita Anderson got injured at work and eventually became unemployed that left Mr. Paul Anderson as sole provider for the family. After months of struggling, they simply could not afford their mortgage payment. They came to Bander Law Firm seeking relief, unaware that there were material violations in their loan and the foreclosure process they were going through.

Bander Law Firm filed a lawsuit based on the violation of California Civil Code § 2923.6 and TRO was granted hence foreclosure proceeding was stopped. If not for the lawsuit, client would not have saved his home.

Loan Information:
Original Loan Amount: \$512,000.00 Loan Term: 30 Years - 5/1 ARM Libor Interest Only
Initial Interest Rate: 7.500% Payment/Rate Change Date: December 1, 2010
Negative Amortization Cap: 100% Max Loan Balance: \$512,000.00
Initial Payment Amount: \$3,200.00 Interest Only Payment Effective For: 5 Years

Bander Law Firm Audit Results:
APR Test: FAILED **The APR is understated but within the 0.25% threshold**
Finance Charge Test: FAILED **The Finance Charge exceeded the statutory threshold**
Amount Financed Test: FAILED **The Amount Financed exceeded the statutory threshold**

Original Mortgage Payment: \$3,658.00 including escrow items
Trial Period Payment: \$2,635.00 including escrow items

Currently, the Anderson's save about **\$1,023.00*** in mortgage payment per month.

No other law firm has more experience to provide a complete home loan case analysis to advise you of all the options to determine the best way to lower your mortgage payments and save your family home.

Go to www.BanderLaw.com to fill out our Mortgage Litigation Intake Form to arrange for your FREE consultation.

At Bander Law Firm, LLP we have over 75 attorneys or staff members dedicated to resolving your mortgage crisis. We are the largest law firm serving the Filipino Community of Southern California.

BANDER LAW FIRM HAS HANDLED OVER 800 RESIDENTIAL MORTGAGE CASES IN THE LAST YEAR. TURN TO US FOR GUIDANCE DURING YOUR MORGAGE CRISIS. YOUR HOME IS TOO IMPORTANT.

*Example case. Individual results dependent on many legal and financial factors.

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