

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

Q: I AM a computer technician and I work for a company that services the computers of other offices. I usually travel to various locations to do computer repairs and maintenance. I also install and update software and create and maintain computer networks. I usually work at least 10-hour days, six days a week. I receive \$3,000 a month and my manager tells me I am exempt from overtime laws. Is this true?

A: No, it is not. Based on your actual job duties, you are not exempt from overtime laws and should, therefore, be paid overtime if you work in excess of 8 hours per day or in excess of 40 hours per week.

The law provides that the following employees in the computer software field are entitled to overtime:

1. The employee is a trainee or an entry-level employee learning to become proficient in the theoretical and practical applications of highly specialized information to computer systems analysis, programming, and software engineering;
2. The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision;
3. The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment;

Are computer technicians entitled to overtime pay?

4. The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer aided design software but who is not engaged in computer systems analysis, programming, or any other similarly skilled computer-related occupations;

5. The employee writes materials such as box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the internet or CD-ROMs.

6. The employee is engaged in computer or computer-related work for the purpose of creating imagery for effects used in the movies, television, or theater.

The following computer software field employees are exempt from overtime:

1. The employee is primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment;
2. The employee is primarily engaged in duties consisting any or all of the following: a) Application of systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional specifications; b) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system

design specifications; or c) The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems;

3. The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, or software engineering;

4. The employee is paid not less than \$36 per hour or, if full-time and salaried, the employee's salary is not less than \$6,250 per month.

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

THIS is a common question among people contemplating divorce in California when the other spouse does not live in the state. The California Courts has the power to grant a divorce, annulment, or legal separation if either party is domiciled in the state. Domicile is where a person lives and intends to remain. However, there is an additional requirement if you are seeking a divorce rather than annulment or legal separation. To obtain a divorce in California, one of the parties must have been a resident of California for six months immediately before the filing of the divorce petition. Responding spouses can use this requirement as a defense if the Petitioning spouse does not meet such requirement when the petitioner filed for divorce. In addition, divorce petitions may be filed in the county where at least one spouse resided for three months immediately prior to filing the petition.

Now apart from getting a divorce, legal separation, or annulled status, there may be issues relating to distributing community and separate properties between the spouses and awarding support payments. In order for the California

California court's power to make divorce orders

When one spouse does not live in California

“Personal jurisdiction means the respondent has minimum contacts with California even if not physically here. Some of the factors looked at is respondents presence in the state, domicile, residence, citizenship, consent, appearance in the action, doing business in the state, doing an act that causes an effect in the state, ownership in the state, other relationship to the state.”

Courts to have the power to make orders, the California Courts must have personal jurisdiction over the respondent. Personal jurisdiction means the respondent has minimum contacts with California even if not physically here. Some of the factors looked at is respondents presence in the state, domicile, residence, citizenship, consent, appearance in the action, doing business in the state, doing an act that causes an effect in the state, ownership in the state, other relationship to the state. If the respondent does not have minimum contact with California, respondent may challenge any orders relating to distribution of property and support based on the court's lack of jurisdiction.

With regards to initial child custody issues, these issues are resolved under the Uniform Child Custody Jurisdiction and Enforcement Act. California Courts have the power to make initial custody orders if it is the child's home state at the time the action was filed. California may also

assume power to make custody orders if California has been the child's home state within six months before the action was filed, the child is absent from California, and a parent continues to live in California. California may also exercise jurisdiction when no other state is the child's home state or when all court's having jurisdiction over the child has declined to act and deferred to California as the more appropriate place to make custody orders. California may also exercise jurisdiction if no other state would have jurisdiction over the child.

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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H-1B visa quota opens April 1, 2009

IMMIGRATION EDGE



ATTY. DANIEL HANLON

THE H-1B visa quota for FY 2010 will finally open up on April 1, 2009, making 65,000 new H-1B visa numbers available for new employment beginning on October 1, 2009. Since the H-1B quota for the last few consecutive fiscal years has closed within days

of endeavor. The US employer or sponsor must demonstrate a need for a worker and attest that insufficient domestic labor is available to fill the need. Of course, the US employer must also establish his ability to pay the "prevailing wage" for the position.

If the intended worker is overseas, he may obtain an H-1B visa from the US Embassy upon USCIS approval of a Petition in the US A nonimmigrant visitor in the United States, for instance on a B-2 visa, may apply for "change of status" from visitor to H-1B professional worker. The new status will be indicated on the person's I-94, but is not a travel document. In order to travel and reenter the United States in H-1B status, a

“A nonimmigrant visitor in the United States, for instance on a B-2 visa, may apply for “change of status” from visitor to H-1B professional worker. The new status will be indicated on the person's I-94, but is not a travel document. In order to travel and reenter the United States in H-1B status, a visa must be obtained at a US Embassy or consulate abroad.”

of April first, thousands of applicants are already preparing their H-1B Petitions to be filed on or soon after April 1, 2009, which is the earliest date on which an employer may submit a new petition. Absent some extraordinary Congressional action, the recent trend of early-exhaustion of H-1B numbers will likely continue this year.

Since the sunset of the provisions of the American Competitiveness in the 21st Century Act (AC-21) in 2002, which had raised the annual number of H-1B visas to 195,000, the "H-1B cap" has been reached in each of the several years leaving thousands of professional workers and employers seeking to hire them out of business. The annual cap of 65,000 is grossly inadequate to accommodate businesses, as has been made obvious over the past few years, with the cap reached within a few days of April 1, 2008, despite the US economy experiencing a deep recession.

Employers seeking to hire an H-1B professional must establish that the prospective employee: 1. has a bachelor's degree; 2. seeks to come to the United States to perform services in a position requiring a bachelor's degree or higher for entry into the position; and that 3. the degree is directly related to the nonimmigrant's field

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The number and types of occupations that will qualify people for classification as H-1B professional workers are constantly expanding. With the development of so many new highly specialized occupations in the high-tech industries, more and more H-1Bs are necessary to fill the demand, and to maintain the status quo for more traditional occupations such as accountants and engineers.

Although certain categories of workers are exempt from the H-1B cap, there is no doubt that the 65,000 H-1B visas available for most jobs in "specialty occupations" will be used up by mid-Summer. With that in mind, employers desiring to hire professional workers under the H-1B category would do well to file their Petitions early, or risk being shut-out until April 1, 2010 when the quota reopens for FY 2011.

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

From: Bander Law Firm, LLP

**Re: Get the Thousands of \$\$\$\$ You Deserve
For Your Hardwork**

**California Law Entitles You to Overtime/
Minimum Wages/Interest/\$\$\$Penalties**

**Immigration Status
DOES NOT MATTER.**

**FREE CONSULTATION ON WAGES/HR CLAIMS
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