

**PROTECTING EMPLOYEE & CONSUMER RIGHTS**



**ATTY. CONRADO JOE SAYAS**

ONE of the most important aspects of a wage claim is how employees can prove that their employer owes them additional compensation for hours worked. If an employee is claiming unpaid overtime or that he or she never takes a meal break but works during lunch, it is useful for the employee to have kept accurate time records during the work period.

Although the law does not require employers to use time clocks, the law does require employers to keep accurate records. These records should be in ink or other indelible form that show when non-exempt employees begin and end each work period. The records must show the actual hours worked by the employee. Work schedules posted in advance cannot be used to compute the employee's work hours.

Employers may ask employees to handwrite or type out their time on a timesheet/log-in sheet, or "punch in" and "punch out" on a time clock (ranging from the mechanical to the biometric). Whatever the method, the employer must ensure that the information is accurate. A legible printed copy of the recorded time must be provided when requested by the employee. Should any time-keeping device fail to work, the employer has the burden of proving the number of hours worked.

There are three concerns that may arise in connection with time-keeping records: Rounding practices, erroneous time clock punches, and non-distinction of work and meal and rest periods.

**Rounding Off.** Employees should record their exact starting and stopping times; however, in computing time worked, an employer may "round off" an employee's starting and stopping times to the nearest five minutes or nearest one-tenth of one-quarter of an hour. For example, if the employee came in at 8:21, the employer may round the time off to 8:30. Rounding off is allowed only if this practice averages out over a period of

# Keep accurate time records at work to protect your rights

time and does not result in a failure to compensate the employee for all time actually worked.

**Erroneous Time Clock Punches.** These may occur when employees come in early to or leave late from work and punch in and out accordingly. The employer may disregard the early or late clock punching and need not pay for them only if the employee did not do any work during those periods. For example, if the employee clocked in at 8:15 instead of the regular starting time of 8:30, but then spent the extra 15 minutes at the break room having coffee and chatting with other employees, then the employee need be paid for the extra 15 minutes of coming in early. However, if the employee came in at 8:15 and started working right away, the 15 minutes should be paid.

Even though employers may disregard early punch ins or late punch outs, employers do have the obligation to maintain accurate records. Therefore, employers have the right to prohibit employees from habitually punching in early or punching out late. And since it may be difficult for employers to prove that the employee was not working early or working late, the employer can rigidly enforce its timekeeping policies. If erroneous early or late punching is discovered, employers may correct the records by obtaining a brief statement or notation from the employee voluntarily acknowledging the error and that no work was performed before or after the employee's regular hours. This correction should be kept with the timecard.

**Work Period versus Meal & Rest Periods.** Accurate time-keeping records must show the actual hours worked by non-exempt employees. Mandatory 10-minute rest periods for every 3 1/2 hours worked do not have to be recorded. The mandatory 30-minute meal period for every 5 hours of work does not have to be recorded only if the business closes during a meal period. However, meal periods during which business operations do not cease must be recorded. Employers must also keep records

of sleep periods for employees who are on a 24-hour shift if the sleep period is not paid by the employer.

Good time-keeping records can make or break an employee's claim. If the employee feels that the employer is not keeping proper time, the employee may keep a personal diary of his or her hours worked. If an employee is uncertain as to whether he or she is paid correctly based on the employer's time records, it would be wise for the employee to discuss the matter with a knowledgeable employment attorney.

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**BARRISTER'S CORNER**



**ATTY. KENNETH URSUA REYES**

THE duties owed between spouses in the management and control of community property are the same with regard to those in a fiduciary relationship. The marital entity is one with the greatest degree of confidence. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and a duty to refrain from taking any unfair advantage of the other. Fam. Code Sec. 721(b) This fiduciary duty continues after separation until the date of distribution of community property. A problem frequently arises when after separation but before dissolution, one spouse breaches the fiduciary duty by mismanaging or transferring community property in prejudice of the other spouse's rights. The aggrieved party has certain remedies available in this situation.

Family Code Sec. 1101 provides a statutory basis for a breach of fiduciary duty claim against a spouse. An actionable claim against one's spouse lies where there is a breach of fiduciary duty which results in "impairment to the claimant spouse's present undivided one-half interest in the community

# Management and control of community property after separation

estate." Fam. Code Sec. 1101(a). An impairment that falls under the foregoing code may be the result of a single transaction or a pattern or series of transactions which have caused a detrimental impact to the claimant spouse's undivided one-half interest in the community estate.

A wide array of remedies is available under Family Code Sec. 1101. The court may order an accounting to determine the spouses' marital property and obligations, and it may determine the rights of ownership in community property. In addition, the court may order that title to certain community property be reformed to include the name of the claimant spouse. Furthermore, remedies for breach of the fiduciary duty by a spouse, shall include, but not be limited to, an award to the claimant spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty, plus attorney's fees and court costs. Fam. Code Sec. 1101(g). Under subsection g., attorney's fees and court costs are mandatory. If the breach by a spouse can be shown to have been done with fraud, oppression or malice, the claimant spouse's remedies in-

clude an award of 100%, or an amount equal to 100%, of any asset undisclosed or transferred in breach of the fiduciary duty. Fam. Code Sec. 1101(h).

The relief afforded by Family Code Sec. 1101 is not exclusive. An aggrieved spouse may seek other remedies not outlined in the section. A spouse whose community property interests have been compromised as a result of his/her spouse's breach may maintain an action to set aside an unauthorized transfer or encumbrance of property, or to impose a constructive trust. Many options are indeed available for one who is faced with a breach of fiduciary duty by his/her spouse. If you are faced with a breach of the fiduciary duty by your spouse, it is important to consult an attorney as soon as possible to determine what avenues of relief to pursue.

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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](mailto:kureyeslaw@aol.com). Website [kenreyeslaw.com](http://kenreyeslaw.com)

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**TAPAT SA BATAS**



**ATTY. RHEA V. SAMSON**

ANG isang green card holder o lawful permanent resident (LPR) ay maraming karapatan, katulad ng pagtira at pagtrabaho kahit saan sa United States. Maaaring ang pinakamahalagang karapatan ng LPR ay ang mag-apply ng naturalization pagkatapos ng limang taon na pagiging LPR, o tatlong taon para sa mga asawa ng US Citizens (USC).

Dahil sa maraming karapatan ang mga LPR, marami rin silang mga obligasyon sa US. Isa na dito ay ang pagbayad ng buwis. Ang mga lalaking LPR na may 18-25 taong gulang ay kailangang mag-register para sa US military service. Kung siya ay hindi nakapag-register dahil hindi niya alam ang requirement na ito, hindi siya makakakuha kaagad ng kanyang naturalization.

Ang LPR ay may karapatang bumiyaha sa loob at labas ng US. Ngunit habang walang limitasyon ang pagbiyahe niya sa loob ng US borders, ang karapatan ng LPR na magbiyahe sa labas ng US ay may limitasyon. Ang may karapatan lamang na magbiyahe sa loob at labas ng US na walang limistasyon ay ang USC. Maraming LPR ang nagkakaroon ng problema dahil sa malimit silang bumiyaha papunta sa kanilang home country o kaya ay nagtatalagal sila doon ng higit sa anim na buwan sa loob ng isang taon. Dahil dito ang green card nila ay maaaring ma-revoke sa dahilang abandonment ng green card. Kung ang isang LPR ay mawawala sa US ng prolonged period, siya ay kailangang mag-apply ng re-entry permit upang makabalik ng US.

Ang isa sa karaniwang dahilan ng prolonged absence ng LPR sa US ay business, employment o family concerns. Mahalaga na bago magbiyahe, ang LPR ay magplano ng kanyang gagawin upang pagbalik niya ng US, hindi siya masasabihan ng Customs and Border Patrol (CBP) Officer na abandoned na ang kanyang green card.

Upang madetermina ang abandonment ng green card, maraming factors ang tinitignan katulad ng: (1) kung gaaano ka-

# Ang rights at obligations ng LPR

haba ang absence sa US; (2) ang dahilan nito; (3) ang at mga connections na na-maintain ng LPR sa US habang siya ay wala dito. Ang isa sa karaniwang misconception ay ang taon-taong visit lamang sa US ay sapat na upang ma-maintain ang green card. Maaaring walang problema dito sa una at pangalawang taon na ginagawa ito ng LPR. Ngunit sa susunod ay maaari na siyang mabigyan ng warning ng CBP Officer ng green card abandonment dahil sa ganitong ginagawa niya.

Kung siya ay may prolonged absence sa US, maaaring ipakita ng isang LPR na siya ay walang intention na mag-abandon ng green card sa pamamagitan ng pag-file ng tax returns at pagbayad ng buwis, pag-maintain ng bank accounts at credit card accounts na active. Kung ang LPR ay na-assign ng US employer sa ibang bansa, kailangang may sulat ang employer tungkol sa kung gaano katagal ang assignment na ito. Kung maaari, ang suweldo ng LPR ay dapat naka-deposit sa US bank account. Kailangan ding ang LPR ay mag-renew ng kanyang US driver's license, at kung possible ay bumili ng property sa US. Itong mga ito ay magpapakita na walang intention ang LPR na mag-abandon ng green card niya.

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Si Attorney Rhea V. Samson ay abogado dito sa California at sa Pilipinas. Siya ay nagturo sa Ateneo De Manila University ng Essentials of Philippine Business Law, Obligations and Contracts, Corporation Law, Partnership Law at Labor Laws and Social Legislation. Siya rin ay nagkatha ng librong, "Working With Labor Laws, A Comprehensive Guide on Conditions of Employment, Employee Benefits Under Special Laws, Termination and Retirement" na inilathala ng Ateneo de Manila University Press at University of Hawaii Press. Itong libro niya ay kasalukuyang textbook sa kursong Labor Laws and Social Legislation ng Ateneo de Manila University.

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