

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

MANY employees hesitate to pursue valid wage claims thinking that these claims are too small to require an attorney's time. They also believe that litigation costs too much and the payoff may not be worth it. Employees also fear that employers will fire them or give them a hard time for asserting their rights. Even though these concerns may be valid, employees should know that they have

Recovering small wage claims for employees through class actions

available legal remedies. One effective remedy is by means of an employment class action.

What Is an Employment Class Action?

It is a lawsuit by an employee or a small group of employees (called the class representative) on behalf of themselves and all other employees who have the same employment claims. For example, an employment class action may prove that the employer's action in not giving meal breaks against one employee is typical of the employer's treatment of its other employees.

What are the Advantages of a Class Action?

A class action is beneficial to employees for the following reasons:

- 1) Since individual awards in

wage and hour cases tend to be modest and since minimum wage litigation involves the lowest-wage workers, a class action will provide low-wage workers with a relatively inexpensive way to resolve an employment claim.

2) A class action may minimize the risk of retaliation against an employee member of the class. It is undeniable that current employees who individually sue their employers face a greater risk of retaliation. Fear of economic retaliation might induce aggrieved employees to quietly accept substandard conditions. Courts have recognized that fear of retaliation for individual suits against an employer justifies a class certification in an employment litigation even if the number of employees necessary to form a class has not been met.

3) A class action may serve to notify, inform, and educate employees who do not know that their legal rights have been violated. For example, some workers, particularly immigrants with limited English language skills, may be unfamiliar with the overtime laws. Even English-speaking or better educated employees may become confused with the complexities of the laws. Also, some employers misinform their employees that they are not eligible for overtime.

4) Government resources which handle wage claims are inadequate. If there are one thousand employees from the same employer individually making the same claims before

the Division of Labor Standards Enforcement (DLSE), a deluge of such claims would simply strip the resources of the DLSE, affecting not only these claims but other unrelated claims as well. Without private enforcement through class actions the DLSE's resources to resolve labor claims would be overtaxed. Class actions can prevent 'a failure of justice in our judicial system' by enforcing legal rights and statutory sanctions.

A class action is a potent weapon available to employees in order to challenge labor violations by the employer. With a class action, one lawsuit can vindicate the rights of a larger group of employees and make a real difference in protecting employee rights in the workplace.

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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

California Court's power to make divorce orders when one spouse does not live in California

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 3 months immediately prior to filing the petition.

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

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EB-5 investor visa program A US PRIORITY

IMMIGRATION EDGE



ATTY. DANIEL HANLON

RECOGNIZING the importance of encouraging foreign investment in the US, the USCIS recently issued a memorandum to provide new instructions to its adjudicators relating to the timing of creating new jobs and explaining the meaning of "full-time" for positions created through the "EB-5" investor program investment. Perhaps in response to seemingly ceaseless negative economic news, the adjudicatory changes will have the effect of extending the period of time during which a foreign investor may demonstrate compliance with the statutory minimum investment and job creation requirements, as well as broaden the definition of "full-time" employment. These changes should serve to loosen the overall time frame for compliance with the statutory requirements as well as make it easier for foreign investors to show that their investment has created or will create 10 jobs.

The Immigration Act of 1990 ("IMMACT 90") allocated an annual limit of 10,000 visas to alien investors participating in the EB-5 "employment-creation" program.

The program allows the USCIS to grant permanent resident status to immigrants entering the United States to engage in a new commercial enterprise: (1) which the alien has established; (2) in which the alien has invested, or is actively in the process of investing a minimum of either \$500,000 or \$1,000,000; and (3) which will benefit the US economy and create 10 full-time jobs for US workers. The minimum investment requirement of \$500,000 applies only when the enterprise is located in a rural area or an area of high unemployment.

The grossly underused EB-5 category only benefited a few hundred immigrant investors during each of its first several years of existence. In the middle 1990s, however, private organizations emerged offering EB-5 classification to persons investing far less than the statutory minimums, and in many cases guaranteeing no loss to the investor. Thousands of investors took advantage of these programs, and USCIS approved the petitions. The programs superficially complied with the statutory requirements of the

EB-5 program, but through the use of pooled investments, creative financing and balloon payments, generally did not create employment.

The USCIS even terminated some of the investors' green card status and charged them with deportation, resulting in families of investors losing their houses, jobs, and their right to be in the United States, as well as the loss of millions of dollars in investment capital to the struggling US economy.

In an effort to revive the program, the USCIS and Bush administration loosened some of the requirements for EB-5 classification. These amendments made permanent resident status more easily available to all investors by eliminating the "establishment" of enterprise requirement. Rather than prove they have invested in a "new enterprise," investors now need only show that they have invested in an existing commercial enterprise to be approved, which may also include a limited partnership. Nonetheless, the category

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has still been underutilized.

Under EB-5 rules, the investor must show that he will comply with the minimum investment requirements and create jobs for ten US workers, "within two years." Since the statute is vague as to when the two-year period commences, the new guidance sets the two-year period to begin to run 6 months after the initial investor petition is approved. Second, the new memo makes clear that "indirect and intermittent construction jobs" will count as permanent and full-time, as long as the position, not necessarily a particular worker, is expected to last at least two years. The new interpretive should spark renewed interest in the program and perhaps assist the US' ailing economy recover.

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All Underpaid Workers**

From: Bander Law Firm, LLP

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