

Protecting Employee & Consumer Rights



ATTY. C. JOE SAYAS, JR.

THERE are valid overtime or meal break claims that are too small to require a lawsuit. If they are litigated, the litigation may cost too much and the payoff may not be worth the problem. Other than the size and expense, there is also the very real possibility that employers may retaliate against the employee who is trying to assert his/her rights. These are some of the major concerns as to why small overtime claims are rarely pursued and employers continue to get away with their violations.

However, if the employee is but one of many other employees who is not paid overtime despite working more than 8 hours

Bridging Financial Gaps



EVANGELINE A. GIRON

WHILE the 2011 tax season kicked off last January 14th, a huge portion of American taxpayers, estimated at around 50 million (accounts to about one-third of taxpayers), won't be able to file until mid- to late February.

Due to recent tax law changes, the IRS has delayed processing of all electronic and paper returns for those taxpayers claiming the following deductions:

- Education Expenses
- Tuition and Fees Deduction
- General Sales Tax
- Itemized Deductions
- Casualties and Thefts
- District of Columbia First-Time Homebuyer Credit
- General Business Credit
- First-Time Homebuyer Credit

Chapter 7 Bankruptcy: Means test

DURING initial consultations, debtors contemplating filing bankruptcy have expressed their personal preference of filing Chapter 7, instead of Chapter 13, for various reasons such as the shorter time frame to get a discharge from the bankruptcy court under Chapter 7. However, not everyone is qualified to file Chapter 7. One needs to pass the means test to be eligible for Chapter 7 bankruptcy filing.

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), enacted in October 2005, introduced the concept of the “means test” which is meant to determine whether debtor filers are eligible to file a Chapter 7 liquidation bankruptcy or whether they should file a Chapter 13 bankruptcy plan. If a Chapter 7 petition is filed and later there is a determination by the bankruptcy court that the debtor filer is not qualified, the court can either dismiss the petition or convert it into a Chapter 13 petition, upon finding that relief under Chapter 7 would be “abuse” under the appropriate provisions of the bankruptcy law.

The means test has actually two (2) parts or phases. The first part of the means test is to determine the debtor's current average monthly income for the last six (6) months prior to filing bankruptcy. [The current average monthly income refers to all taxable and non-taxable income from all sources, unless otherwise exempted, including those of the non-filing spouse (if married)]. If the debtor's monthly income is less than the applicable median income based on the family size, he can file a Chapter 7 bankruptcy. If his monthly income is more, he has to pass the second phase of the means test. Otherwise, he will have to file

From Your Life Coach, Bing



CARLYNE ODICTA-KOHNER

ONE of my client's intentions this year is to upgrade her office location. Her current office is secluded, has no windows and is almost like an attic. She wants more light and windows. We have discovered that one of her values is actually called “outdoors” meaning to commune with nature. When she is not working, the first thing she does is run to the beach. Last year we laid out a plan to achieve her goal. She saved money each month so that she could have a budget to move to a better location. Now, she is looking forward to moving to her new office this New Year and for all the good changes that will positively happen in her life!

It's 2011! You have probably heard, read or viewed some shows on New Year resolutions or change of directions. On that note, I want you to write down five values. Some examples of values are: freedom, humor, kindness, romance, and wisdom. Other values that I have encountered have names such as 007

How wage and hour class actions benefit employees

per day or more than 40 hours per week, or are not provided meal breaks, they may be able to assert their rights as a group. They can do this by means of a class action.

What is a Wage and Hour Class Action?

It is a lawsuit by an employee or a group of employees (called the class representative) on behalf of themselves and all other employees who have the same employment claims, that is, not being properly paid overtime wages by their employer. The class action may prove that the employer's violation of the laws on overtime law or meal breaks is typical of the employer's treatment of its other employees.

What are the advantages of a Class Action?

A class action benefits employees for the following reasons:

- 1) If the individual overtime

claim is modest and may prove costly if pursued as an individual action, a class action will provide low-wage workers with a relatively inexpensive way to resolve their overtime claims. Note that employees or class members do not pay out-of-pocket fees to attorneys. It is only upon the resolution of the class action and after court approval that the attorneys are paid for their work.

- 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 keep silent and endure the violation. Courts have recognized that fear of retaliation for individual suits against an employer justifies a class certification in an employ-

ment 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. It will compel an employer, who engages in minimal but widespread violation against each individual employee, to properly compensate these employees for their valid claims. More importantly, an overtime class action may be the only way to impose the costs of labor violations on the employer. A class action

sends the message that violation of laws that protect employees can be ultimately expensive, and thus, deter future violations.

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

THE decision to terminate one's marriage typically brings to the forefront many issues all at once. Issues pertaining to property, support, and child custody need to be addressed in a divorce proceeding. In a long term marriage especially, these issues are often heavily litigated between the spouses, and can take a significant amount of time to resolve. Frequently, a spouse would like to “move on,” and re-attain single status as soon as possible, but has a perception that to become divorced, issues concerning property, support, and child custody first need to be resolved. Many erroneously believe that getting a divorce prior to resolution of property, support, and custody issues is like putting the “carriage before the horse” – an impossibility. Under the Family Code, a spouse can “bifurcate” the issue of marital status and terminate the marriage without having to wait until the issues pertaining to property, support, and child custody are resolved.

A judgment dissolving the marriage need not resolve all issues raised in the divorce petition. If there are issues set forth in the

Bifurcation and status only divorce

petition with regard to property, support, and custody, the Court may nonetheless separate the issue of dissolution of marriage status and grant an early trial on that issue (a “status only” judgment). Obtaining a “status only” judgment is most beneficial to those persons who want his or her marriage terminated as soon as possible. Through a “status only” judgment, a person is restored to single status more quickly, enabling a person to remarry even if other issues concerning the marriage have yet to be resolved.

It is important to note, however, that a judgment terminating the marriage itself also brings with it the consequence of terminating rights associated with marriage. To address the foregoing, the Court may impose conditions on a “status only” judgment, to preserve rights which normally would exist if an early dissolution of marriage status were not granted. These conditions are contained in Family Code Section 2337. The Court may require a spouse seeking early dissolution of marriage status to do any of the following, all designed to protect the interests of the spouse who is not seeking early dissolution:

- 1) indemnify the other spouse for adverse tax

consequences resulting from the early termination of marital status, 2) maintain the other spouse on existing health insurance, 3) indemnifying the other spouse from loss of rights to a probate homestead or probate family allowance, 4) indemnify the other spouse for loss of benefits under employee benefit plans, 5) joinder of an employee benefit plan, and 6) any other condition that the court determines is just and equitable.

With a “status only” judgment, the Court reserves jurisdiction to adjudicate any other issues concerning the marriage, including division of property, award of support, and custody issues. Accordingly, if you would like to obtain a “status only” judgment, and resolve any other issues pertaining to the marriage later, it is advised that you consult with an experienced attorney.

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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Atty. Gwendolyn Malaya-Santos

Chapter 13. For instance, in CA, the current state median income for a three (3) person household is \$67,562 per year or a monthly income of \$5,630.10. Stated otherwise, if you are a family of three (3) and your combined monthly income does not exceed \$5,630.10, you are eligible to file Chapter 7. You do not have to finish the rest of the means test. On the other hand, if your monthly income exceeds \$5,630.10, you have to finish the means test and the computations can be complex and confusing.

In the second part of the means test, you need to determine if you have enough disposable income after deducting the allowable monthly expenses (based on IRS guidelines) to pay in full or in part the unsecured debts (such as credit card debts or medical bills). Allowable monthly expenses may include basic living expenses such as food, clothing and shelter, transportation, telecommunication expenses, child care, future payments for secured debts and others.

If you are contemplating of filing bankruptcy or other alternatives, it is advisable to seek the counsel of a bankruptcy lawyer to guide you on the intricacies of filing for such a petition.

Atty. Gwendolyn Malaya-Santos is a member of the State Bar of California and the Integrated Bar of the Philippines. To schedule for a free initial consultation, please call (213) 386-5651. Atty. Santos' office is located at 3540 Wilshire Blvd., Suite 1012, Los Angeles, CA 90010.

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What values will you honor this year?

or risk taking, outside the box or eccentricity, Larry King or curiosity, and Hollywood or creativity. After you have written those five values, rank them from 1 to 5. Starting today I want you to feel your Number 1 value in your heart and in your bones.

Do you know someone that completely lives his or her values most of the time? Efren Penaflorida is passionate about giving. Manny Paquiao loves boxing. How about Tito, Vic and Joey who value fun? Rosa Rosal can't stop serving the Philippine Red Cross. You probably know some of your friends, colleagues, heroes that just adore what they do because their values are showing up big time! The energies of these people are infectious.

A client told me once, “ Living my values is an honest wonderful sensation that I do for myself. It feels like I have finally arrived!”

Over the years, I have been training myself to live my values of fairness, connection, being open, forgiveness, integrity and so on. My intuition is telling me to concentrate on my value of good health this year. I

have discussed my plan with my loved ones and of course they agreed with my idea. As Filipinos, we eat rice in the morning, rice at lunch and rice in the evening. And in Europe, we also eat pan. It's equivalent to our rice. I thought, “Those two have to go.” To prepare us for this dramatic change, I started my game plan the last week of December. I prepared a simple meal, soup in the lunchtime and salad in the evening. No pasta, no rice and no pan. I bought many local fruits, nuts and verduras. Now we incorporate yoga and other exercise routines, making it a daily practice.

So this year I invite you to own your biggest value and make it be something you are dying to show to this world. Go for it and practice it for the rest of your life! Today is our year so let's cheer for our new commitment!

Bing (Carlyne Odicta-Kohner) was trained as a Life Coach in the US from the Coaches Training Institute (CTI). She is a member of International Coach Federation (ICF). She co-owns Limitbusters Coaching & Training, Inc. (LCT). Please visit her at www.limitbusters.com or send your feedback at bingkohner@limitbusters.net.

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Call our office for appointment
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Atty. Yang will personally interview you