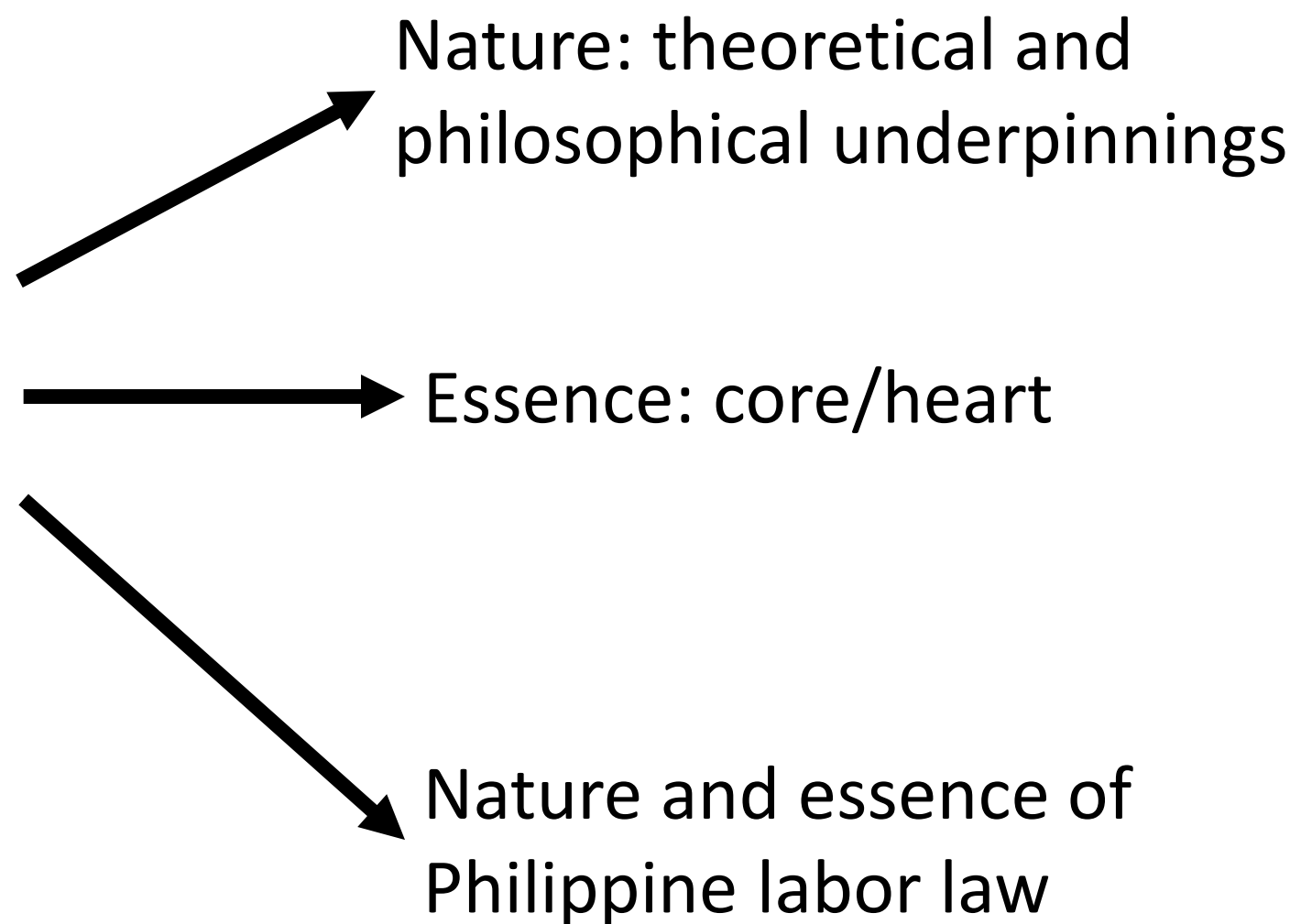


FUNDAMENTAL AND GENERAL PRINCIPLES

PART I. LABOR LAW REVIEW

LAW



Nature: theoretical and
philosophical underpinnings

Essence: core/heart

Nature and essence of
Philippine labor law

Foundation of the subject:

BASIC CONCEPTS:

- Social justice
- Labor law (standards, relations)
- Welfare laws
- Social legislation

FUNDAMENTAL BASES:

- Art. II, Secs. 2,9,10, 11, 13, 14, 18, 20
- Art. III, Secs. 1, 4, 8, 10, 16, 18(2)
- Art. XIII, Secs. 1, 3, 13, 14

STATUTORY BASES:

- Labor Code of the Philippines
- New Civil Code of the Philippines
- Welfare and Social legislations

What is 'SOCIAL JUSTICE'?

❑ Fundamentally a social construct.

- A concept that is created and defined by people within a society, rather than being an inherent, objective truth of natural world.
- Shaped by cultural norms, historical circumstances, and on going social and political dialogue.

❑ But it is not arbitrary.

- Natural law theory proposes that there are ***objective moral truths*** that can be understood through reason (e.g. paying wages below a just amount and forcing workers to give up their wages without due process are wrong because they violate the right to life, liberty, and property, they cause social instability, and erodes trust in the social order)
- Social justice is the project of designing societal structures that uphold universally accepted norms of justice, fairness, and common good.

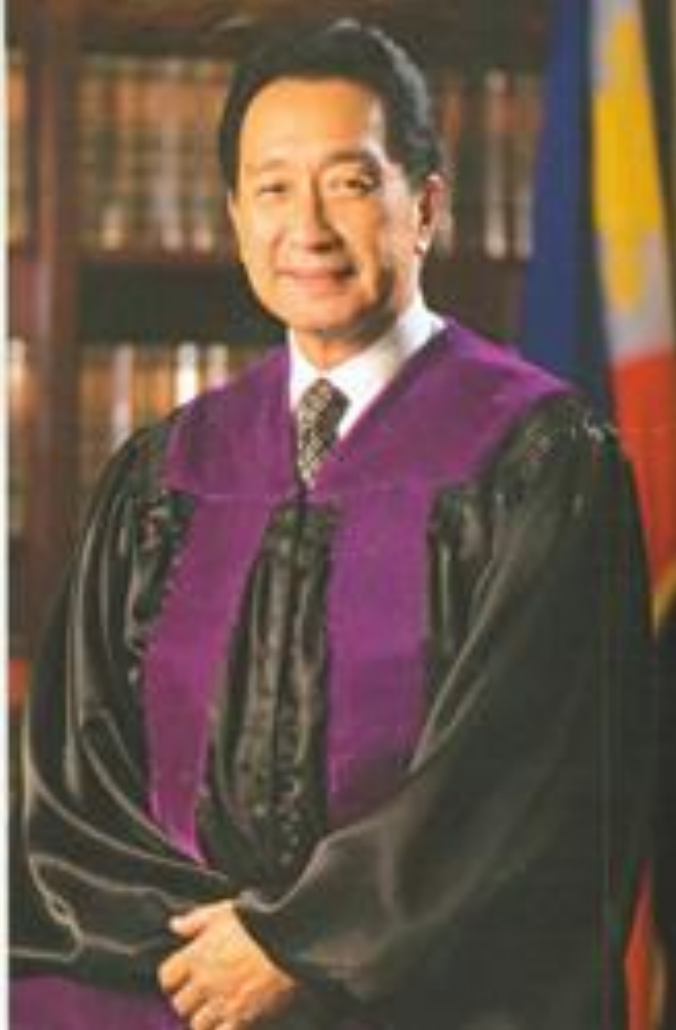
What is 'SOCIAL JUSTICE'?



JUSTICE JOSE P. LAUREL

“Neither communism, nor despotism, nor atomism nor anarchy, but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the component elements of society through the maintenance of proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments, on the time-honored principle of *salus populi est suprema lex*.” Calalang vs Williams, GR No. 47800, December 2, 1940

What is 'SOCIAL JUSTICE'?



JUSTICE PRESBITERO J. VELASCO

“The basic tenet of social justice is that "those who have less in life must have more in law." Social justice commands the protection by the State of the needy and the less fortunate members of society. This command becomes all the more firm in labor cases where security of tenure is also an issue.”

(Separate and Dissenting Opinion of Justice Velasco in Perez vs. Philippine Telegraph and Telephone Company, GR No. 152048, April 7, 2009)

SOCIAL JUSTICE ON LABOR:

“The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits, as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of productions and the right of enterprises to reasonable returns on investments, and to expansion and growth.”

(Section 3, Art. XIII, 1987 Constitution)

SOCIAL JUSTICE ON LABOR:

STATE POLICIES:

1. Afford full protection to labor, local and overseas, organized and unorganized;
2. Promote full employment and equality of employment opportunities for all;
3. Promote the shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes, including conciliation, and their compliance therewith to foster industrial peace.

FUNDAMENTAL RIGHTS OF LABOR:

1. Right to self-organization
2. Right collective bargaining and negotiations
3. Right engage in peaceful concerted activities, including the right to strike (in accordance with law)
4. Right to security to tenure
5. Right to humane conditions of work
6. Right to receive living wage
7. Right to participate in decision and policy-making processes affecting their rights and benefits (as may be provided by law)
8. Right to its just share in the fruits of its labor

FUNDAMENTAL RIGHTS OF CAPITAL:

1. Right to property and due process of law
2. Right to reasonable returns on investment
3. Right to expansion and growth

Some Philippine legal construct of SJ in LL:

- Strict compliance with the procedural requirements in dismissal of employees
- Imposing on the employer the burden to prove the legality of the dismissal rather than requiring the employee to prove why his termination is illegal
- Interpreting vague provisions in employment contracts strictly against the employer and liberally in favor of the employee
- Recognizing the Philippine Labor Arbiter's jurisdiction over an illegal dismissal case filed by an OFW against his foreign employer
- Allowing 'financial assistance' to some employees who were validly dismissed due to a just cause

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Pakistan International
Airlines vs. Ople, GR No.
61594, September 28,
1990

 May the stipulations deprive Philippine labor tribunals of their jurisdiction provided by Philippine laws?

 Should Philippine courts give effect to the contractual stipulation?

5. DURATION OF EMPLOYMENT AND PENALTY

This agreement is for a period of three (3) years, but can be extended by the mutual consent of the parties.

xxx xxx xxx

6. TERMINATION

xxx xxx xxx

Notwithstanding anything to contrary as herein provided, PIA reserves the right to terminate this agreement at any time by giving the employee notice in writing in advance one month before the intended termination or in lieu thereof, by paying the employee wages equivalent to one month's salary

xxx xxx xxx

10. APPLICABLE LAW

This agreement shall be construed and governed under and by the laws of Pakistan, and only the Courts of Karachi, Pakistan shall have the jurisdiction to consider any matter arising out of our under this agreement.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Pakistan International
Airlines vs. Ople, GR No.
61594, September 28,
1990

 Q: May a stipulation in an employment contract deprive Philippine labor tribunals of their jurisdiction provided by Philippine laws?

 Q: Should Philippine courts give effect to a contractual stipulation vesting exclusive jurisdiction and venue in a foreign tribunal over labor disputes between a Filipino and her foreign employer?

❑ “Counterbalancing the autonomy of contracting parties is the equally general rule that provisions of applicable law, especially provisions relating to matters affected with public policy, are deemed written into the contract. Put a little differently, the governing principle is that **parties may not contract away** applicable provisions of law especially peremptory provisions dealing with matters **heavily impressed with public interest**. The law relating to labor and employment is clearly such area and parties are not at liberty to insulate themselves and their relationship from the impact of labor laws and regulations by simply contracting with each other.”

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Pakistan International
Airlines vs. Ople, GR No.
61594, September 28,
1990

 Q: May a stipulation in an employment contract deprive Philippine labor tribunals of their jurisdiction provided by Philippine laws?

 Q: Should Philippine courts give effect to a contractual stipulation vesting exclusive jurisdiction and venue in a foreign tribunal over labor disputes between a Filipino and her foreign employer?

- The employer-employee relationship is “much affected with public interest and that the otherwise applicable Philippine laws and regulations cannot be affected by the parties agreeing upon some other law to govern their relationship. xxx Even a cursory scrutiny of the relevant circumstances of this case will show the multiple and substantive contacts between Philippine law and Philippine courts, on the one hand, and the relationship between the parties, upon the others” (e.g. the contract was executed and partially performed in the Philippines, between Filipino citizens and a resident foreign corporation, private respondents were based in the Philippines in between their assigned flights to the Middle East and Europe)

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Manila Hotel Corp. vs.
NLRC, GR No. 120077,
October 13, 2000

Q: What is the rule on
forum non conveniens?

Q: Is it applicable to
oust Philippine labor
tribunals of jurisdiction
over labor disputes
involving foreign
company employers?

FACTS:

- Employee was working in Oman when offered work by the foreign employer (Palace Hotel);
- Foreign employer is a non-resident foreign corporation in the Philippines and has a management contract with MHICL (MHC owned 50% of the capital stock of MHICL);
- Employment contracts were signed in a foreign land (through mail);
- Employee resigned from his employer in Oman and worked for his new employer (Palace Hotel) in Beijing, China;
- While in China, employee was made to sign an amended employment agreement which was “noted” by the VP of MHICL
- While in China, foreign employer pre-terminated the employment agreement
- Employee filed an illegal dismissal case against the foreign employer before the NLRC.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Manila Hotel Corp. vs.
NLRC, GR No. 120077,
October 13, 2000

- ❑ “Under the rule of forum non conveniens, a Philippine court or agency may assume jurisdiction over the case if it chooses to do so provided: **(1)** that the Philippine court is one to which the parties may **conveniently resort** to; **(2)** that the Philippine court is in a **position to make** an intelligent decision as to the law and the facts; and **(3)** that the Philippine court has or is likely to have **power to enforce its decision**.

Caveat: *“Not all cases involving our citizens can be tried here”.*

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Manila Hotel Corp. vs.
NLRC, GR No. 120077,
October 13, 2000

Ruling: The NLRC is not
the convenient forum to
decide on the dispute:

- ❑ The employment contract as such was perfected in foreign soil. This calls to fore the application of the principle of **lex loci contractus**.
- ❑ Neither can the NLRC determine the facts surrounding the alleged illegal dismissal as **all acts complained of took place in Beijing**, People's Republic of China. The NLRC was not in a position to determine whether the Tiannamen Square incident truly adversely affected operations of the Palace Hotel as to justify respondent Santos' retrenchment.
- ❑ Even assuming that a proper decision could be reached by the NLRC, such would not have any binding effect against the employer, a corporation **incorporated under the laws of China** and was not even served with summons.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Manila Hotel Corp. vs.
NLRC, GR No. 120077,
October 13, 2000

- ❑ This is not to say that Philippine courts and agencies have no power to solve controversies involving foreign employers. Neither are we saying that we do not have power over an employment contract executed in a foreign country. **If Santos were an "overseas contract worker"**, a Philippine forum, specifically the POEA, not the NLRC, would protect him. He is not an "overseas contract worker" a fact which he admits with conviction.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Manila Hotel Corp. vs.
NLRC, GR No. 120077,
October 13, 2000

- **PIERCING THE VEIL OF CORPORATE FICTION:** The tests in determining whether the corporate veil may be pierced are: *First*, the defendant must have control or complete domination of the other corporation's finances, policy and business practices ***with regard to the transaction attacked***. There must be proof that the other corporation had no separate mind, will or existence ***with respect to the act complained of***. *Second*, control must be used by the defendant to commit fraud or wrong. *Third*, the aforesaid control or breach of duty must be the ***proximate cause of the injury or loss complained of***. The absence of the elements prevents the piercing of the corporate veil.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

PNB vs Florence
Cabansag, GR No.
157010, June 21, 2005

 Is the Philippine Labor Law applicable to the employee who was directly hired abroad?

FACTS:

- Employee applied with PNB Singapore Branch while on a ***tourist*** visa
- PNB Singapore is a branch of PNB, a Philippine domestic corporation
- At the time, PNB Singapore Branch had 2 types of employment: (1) expatriates hired in Manila and assigned in Singapore and (2) locally (directly) hired
- The PNB President approved in Manila the employee's appointment
- Employee was issued an *employment pass* by the Singaporean government as an employee of PNB Singapore Branch and subsequently an OEC by the POEA.
- PNB Singapore Branch dismissed the employee

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

PNB vs Florence
Cabansag, GR No.
157010, June 21, 2005

 Is the Philippine Labor Law applicable to the employee who was directly hired abroad?

- ❑ Under art. 224 (formerly art. 217) of the Labor Code and sec. 10 of the Migrant Workers Act, labor arbiters clearly have original and exclusive jurisdiction over claims arising from employer-employee relations, including termination disputes **involving all workers**, among whom are overseas Filipino workers (OFW).
- ❑ Noteworthy is the fact that respondent likewise applied for and secured an **Overseas Employment Certificate** from the POEA through the Philippine Embassy in Singapore. The Certificate, issued on March 8, 1999, declared her a bona fide contract worker for Singapore. Under Philippine law, this document authorized her working status in a foreign country and **entitled her to all benefits and processes under our statutes.**

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Saudi Arabian Airlines
vs. Rebesencio, GR No.
198587, January 14,
2015

Facts:

- Employees (Filipinos) were recruited and hired by a foreign corporation doing business in the Philippines (Saudia)
- The recruitment and hiring of the employees by the foreign employer was with the approval of the POEA
- Employees were dismissed and contended that their dismissal arose from their application for maternity benefits – matter that apparently did not sit well with the policy of the foreign employer
- Foreign employer invokes the employment contract stipulation providing that if an air hostess becomes pregnant at any time during the term of the contract, it shall render the employment void due to lack of medical fitness.
- Employees sues the employer for illegal dismissal.
- Foreign employer rejects the assumption of jurisdiction by Philippine labor tribunals, invoking the forum *non conveniens* rule.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Saudi Arabian Airlines
vs. Rebesencio, GR No.
198587, January 14,
2015

 What is the difference between a choice of law and forum non conveniens? Are they valid cause to divest Philippine labor tribunals of their jurisdiction?

- ☐ Forum non conveniens relates to forum, not to the choice of governing law. That forum non conveniens may ultimately result in the application of foreign law is merely an incident of its application.
- ☐ Choice of law provisions are an offshoot of the fundamental principle of autonomy of contracts while forum non conveniens is a device akin to the rule against forum shopping.
- ☐ Both principles however, do not determine jurisdiction.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Saudi Arabian Airlines
vs. Rebesencio, GR No.
198587, January 14,
2015

 What is the difference between a choice of law and forum non conveniens? Are they valid cause to divest Philippine labor tribunals of their jurisdiction?

- ❑ Any evaluation of the propriety of contracting parties' choice of a forum and its incidents must grapple with two (2) considerations: **first**, the availability and adequacy of recourse to a foreign tribunal; and **second**, the question of where, as between the forum court and a foreign court, the balance of interests inhering in a dispute weighs more heavily.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Saudi Arabian Airlines
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2015

 What is the difference between a choice of law and forum non conveniens? Are they valid cause to divest Philippine labor tribunals of their jurisdiction?

- ❑ Two (2) factors weigh into a court's appraisal of the balance of interests inhering in a dispute: **first**, the **vinculum** which the parties and their relation have to a given jurisdiction; and **second**, the **public interest that must animate a tribunal**, in its capacity as an agent of the sovereign, in choosing to assume or decline jurisdiction. The first is more concerned with the parties, their personal circumstances, and private interests; the second concerns itself with the state and the greater social order.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Saudi Arabian Airlines
vs. Rebesencio, GR No.
198587, January 14,
2015

 What is the difference between a choice of law and forum non conveniens? Are they valid cause to divest Philippine labor tribunals of their jurisdiction?

- ☐ In any case, even a further consideration of the applicability of forum non conveniens on the incidental matter of the law governing respondents' relation with Saudia leads to the conclusion that it is improper for Philippine tribunals to divest themselves of jurisdiction.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

EDI-Staffbuilders
International, Inc. vs.
National Labor Relations
Commission, GR No.
145587, October 26,
2007

Facts

- The employee (Gran) was recruited in the Philippines by EDI, and deployed by ESI, to work with a foreign employer (OAB) in Riyadh, Saudi Arabia
- The contract was executed in the Philippines: Contract stipulates that Saudi Labor Laws will govern matters not provided in the contract (e.g. specific causes of termination, termination procedures, etc)

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

EDI-Staffbuilders
International, Inc. vs.
National Labor Relations
Commission, GR No.
145587, October 26,
2007

 What is the *lex loci intentiones* rule?
Can you relate it with
the doctrine of
presumed-identity
approach?

- ❑ In cases involving OFWs, the rights and obligations among and between the OFW, the local recruiter/agent, and the foreign employer/principal are governed by the employment contract.
- ❑ A contract freely entered into is considered law between the parties; and hence, should be respected. In formulating the contract, the parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.
- ❑ In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law. He is presumed to know only domestic or forum law.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

EDI-Staffbuilders
International, Inc. vs.
National Labor Relations
Commission, GR No.
145587, October 26,
2007

Q: Is proving the
validity and legality of
dismissal a duty of the
foreign employer
alone?

- ❑ “Even though EDI and/or ESI were merely the local employment or recruitment agencies and not the foreign employer, they should have adduced additional evidence to convincingly show that Gran’s employment was validly and legally terminated. The burden devolves not only upon the foreign-based employer but also on the employment or recruitment agency for the latter **is not only an agent of the former, but is also solidarily liable with the foreign principal** for any claims or liabilities arising from the dismissal of the worker.”

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Industrial Personnel &
Management Services,
Inc., et.al vs. De Vera,
GR No. 205703, March
07, 2016

Facts:

- Employee (Filipino) was hired by a foreign employer (SNC-Lavalin) through its local placement agency (IPAMS);
- Foreign employer is a Canadian-based company with project in Madagascar
- The overseas employment contract was processed with the POEA
- The employment contract was pre-terminated by the foreign employer due to alleged business reverses caused by the 2008 financial crisis;
- Employee filed an illegal dismissal case against the foreign employer in the Philippines
- Foreign employer disputes the jurisdiction of Philippine labor tribunals over the complaint alleging that since the contract was approved in Canada, *lex loci celebrationis* points to Canadian laws as the applicable law to their contract. Canadian law did not require any ground for early termination of employment.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Industrial Personnel & Management Services, Inc., et.al vs. De Vera, GR No. 205703, March 07, 2016

 What are the requisites for the applicability of a foreign law governing employment contract in the Philippines?

- ❑ The **general rule** is that Philippine laws apply even to overseas employment contracts. This rule is rooted in the constitutional provision of Section 3, Article XIII that the State shall afford **full protection to labor, whether local or overseas**. Hence, even if the OFW has his employment abroad, it does not strip him of his rights to security of tenure, humane conditions of work and a living wage under our Constitution.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Industrial Personnel & Management Services, Inc., et.al vs. De Vera, GR No. 205703, March 07, 2016

 What are the requisites for the applicability of a foreign law governing employment contract in the Philippines?

- ❑ As an **exception**, the parties may agree that a foreign law shall govern the employment contract. A synthesis of the existing laws and jurisprudence reveals that this exception is subject to the following requisites:
 1. That it is **expressly stipulated** in the overseas employment contract that a specific foreign law shall govern;
 2. That the foreign law invoked must be **proven** before the courts pursuant to the Philippine rules on evidence;
 3. That the foreign law stipulated in the overseas employment contract must **not be contrary** to law, morals, good customs, public order, or public policy of the Philippines; and
 4. That the overseas employment contract must be processed through the **POEA**.

EFFECT OF A FOREIGN LAW STIPULATED IN AN EMPLOYMENT CONTRACT

Bison Management Corp. vs. AAA and Dale P. Pernito,

- ❑ “It appears that the first and fourth requisites are present. However, the second requisite and the **third requisite, which is the most important**, are absent.

 What is the most important requisite in the Industrial Management Services case? Is HIV+ test a valid cause of dismissal if provided under a foreign law?

- ❑ The CA correctly ruled that since **Philippine law** "**categorically prohibits** the use of a person's **HIV+** condition as a ground for dismissal . . . the inescapable conclusion is that there was no valid cause to terminate [AAA], and that doing so is tantamount to illegal dismissal.

LABOR LAWS AS AN EXERCISE OF POLICE POWER:

Philippine Association of
Service Exporters, Inc. vs.
Drilon
GR No. L-81958, June 30,
1988

Q: Is a temporary ban
on deployment of Filipina
domestic helpers in the
light of numerous reported
abuses violative of the Bill
of Rights?

- ❑ In the light in which the temporary ban was issued which is the reported numerous abuses committed against Filipino domestic and household helpers abroad, the DO is a valid exercise by the state of its **police power**. Police power constitutes an **implied limitation on the Bill of Rights**.

PARTICIPATORY MANAGEMENT:

Philippine Airlines vs
National Labor Relations
Commission
GR No. 85985, August 13,
1993

 Does a change in company code of discipline require prior consultation with the employees? Or is it a valid exercise of management prerogative?

☐ A line must be drawn between policies which are purely business-oriented and those which affect the right of employees. In treating the latter, management should see to it that its employees are at least properly informed of its decisions or modes of action. The Code of Discipline imposes penalty which definitely affects the workers' right to security of tenure.

☐ **NOTE:** Art. XIII, Sec. 3 of the 1987 Constitution already identifies this as among the fundamental rights of workers (as may be provided by law).

Republic Act No. 6715 decrees the participation of employees in decision and policy making processes affecting their rights, duties and welfare.

WHAT IS LABOR LAW?

- ❑ **GENERIC DEFINITION:** Labor law is that branch of law that **regulates the relationship** between labor (employee) and capital (employer).
 - ❑ **CONCISE DEFINITION:** “Consisting of statutes, regulations, and jurisprudence governing the relations between capital and labor, by providing for certain **employment standards and legal framework** for defining, adjusting, and administering the standards and other incidents of employment or related productive work relationships.” (Azucena, 2021)
-

DIVISIONS OF LABOR LAW

1. **Labor Standards** - refers to the **minimum terms and conditions of employment** that every employer is mandated to comply with as these are already fixed by law.
 2. **Labor Relations** - refers to the **status, rights and duties**, and the **institutional mechanisms** that govern the individual and collective interactions of employers, employees or their representatives.
 3. **Welfare Laws** — refer to statutes intended to provide protection to the employee and his beneficiaries in case of **disability, sickness, old age, death, and other contingencies** that result in loss of income or financial burden.
-

STATUTORY BASES: LABOR CODE

1. Art. 4: Presumption in favor of labor

- ❑ All doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.
 - This is a rule of statutory construction. Therefore, its application hinges on the indispensable element that there is **“doubt”** in the implementation and interpretation of labor code provisions.
 - Related provision in the Civil Code: “In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.” (Art. 1702)

STATUTORY BASES: LABOR CODE

Nasipit Lumber Company, Inc.
vs National Wages and
Productivity Commission, GR
No. 113097, April 27, 1998

 Are vague provisions in an administrative regulation issued by the RTWPB granting to certain establishments exemption from the coverage of a Wage Order to be interpreted in favor of exemption?

❑ All doubts in the implementation and the interpretation of the provisions of the Labor Code and its implementing rules and regulations must be resolved in favor of labor. An exemption from the coverage of a Wage Order takes away from the workers the mandated increase in the minimum wage which is **inconsistent with the avowed public policy** enshrined in RA No. 6727. Thus, any doubt in the administrative regulation that grants an exemption shall be interpreted against exemption, especially when it does not bear the NWPC's approval.

STATORY BASES: The Labor Code of the Philippines

2. Art. 6: Application to government employees:

- ❑ Government corporations **created by Congress** are subject to Civil Service rules, while those incorporated under the **general Corporation Law** are covered by the Labor Code. (National Service Corp vs NLRC, GR No. L-69870, November 29, 1988)
 - ❑ Under the 1987 Constitution, “the Civil Service embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned-and-controlled corporations with original charters.”
 - ❑ EO 180 “Providing Guidelines for the exercise of the right to organize of government employees, creating a public sector labor-management council, and for other purposes. PSLMC 2024 Rules and Regulations Governing the Exercise of Right of Government Employees to Organize
-

STATORY BASES: SPECIAL LABOR LEGISLATIONS

a. Providing specific benefits:

- Republic Act No. 11199 (Social Security Act of 2018)
 - Republic Act No. 8291 (Government Insurance Act of 1997)
 - Republic Act No. 7699 (Portability Law)
 - Republic Act No. 7875, as amended by RA No. 11223 (National Health Insurance Act)
 - PD No. 626 (Employees' compensation and State Insurance Fund)
 - Republic Act No. 9710 (Magna Carta for Women Act - Special leave for women employees due to gynecological disease)
 - Republic Act No. 9262 (Anti-Violence Against Women and their Children Act - VAWC leave)
 - Republic Act No. 8187 (Paternity Leave Act)
 - Republic Act No. 11861 (Expanded Solo Parents Welfare Act – Solo Parent Leave)
 - Presidential Decree No. 851, as amended (13th Month Pay Law)
 - (Republic Act No. 11210 (Expanded Maternity Leave Law)
-

STATORY BASES: SPECIAL LABOR LEGISLATIONS

b. Providing special protection:

- ☐ Republic Act No. 7877 (Anti-Sexual Harassment Act – Sexual Harassment in the Workplace)
 - ☐ Republic Act No. 11313 (Safe Spaces Act – Gender-Based Sexual Harassment in the Workplace)
 - ☐ Republic Act No. 7610, as amended by Republic Act No. 7658, Republic Act No. 9231 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act – Regulation of Child Labor)
 - ☐ Republic Act No. 11058 (An Act Strengthening Compliance with Occupational Safety and Health Standards – amended pertinent Labor Code provisions)
 - ☐ Republic Act No. 10911 (Anti-Age Discrimination in Employment Act)
 - ☐ Republic Act No. 9710 (Magna Carta for Women – Discrimination of women in employment)
 - ☐ Republic Act No. 10361 (Kasambahay Law)
 - ☐ Batas Pambansa Blg. 232 (Education Act of 1982 – special rights of school personnel, teaching, and academic staff)
-

STATUTORY BASES: CIVIL CODE

- ❑ Labor law is part of civil law. Civil law deals with the rights and relations of persons as individuals or as members of the society. Labor laws apply also to civil rights, albeit in work situations. (Azucena, 2021)
 - ❑ Art. 1700. The relation between capital and labor are **not merely contractual**. They are **impressed with public interest** that labor contracts must yield to the common good. Therefore, such contracts are subject to the special law on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.
-

STATUTORY BASES: CIVIL CODE

ARTICLE 1701. Neither capital nor labor shall act oppressively against the other, or impair the interest or convenience of the public.

ARTICLE 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

ARTICLE 1703. No contract which practically amounts to involuntary servitude, under any guise whatsoever, shall be valid.

ARTICLE 1704. In collective bargaining, the labor union or members of the board or committee signing the contract shall be liable for non-fulfillment thereof.

STATUTORY BASES: CIVIL CODE

ARTICLE 1705. The laborer's wages shall be paid in legal currency.

ARTICLE 1706. Withholding of the wages, except for a debt due, shall not be made by the employer.

ARTICLE 1707. The laborer's wages shall be a **lien on the goods manufactured or the work done.**

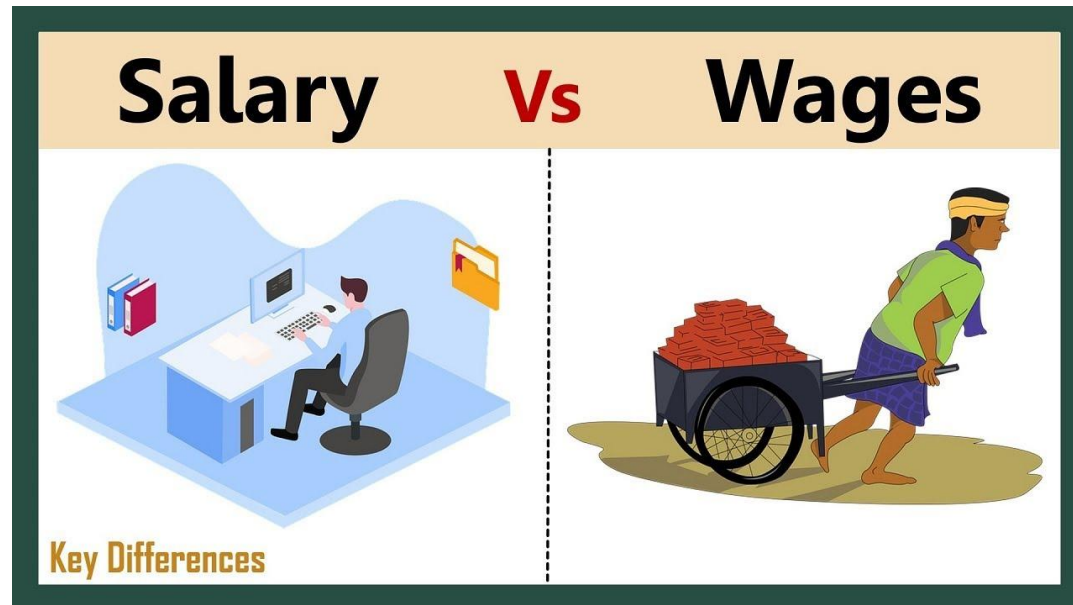
ARTICLE 1708. The laborer's wages shall not be subject to **execution or attachment, except** for debts incurred for **food, shelter, clothing and medical attendance.**

GARNISHMENT OR ATTACHMENT OF WAGES

*Gaa vs. CA, GR
No. L-66149,
December 3, 1985*

Q: Is the exemption from attachment or garnishment of wages under the Civil Code applicable to all employees? (2017 Bar Exam)

Article 1708 of the New Civil Code was not intended to operate in favor of any but those who are laboring men or women in the sense that their work is manual. Persons belonging to this class usually look to the reward of a day's labor for immediate or present support, and such persons are more in need of the exemption than any others. It does not cover the salary of managerial and supervisory employees.



STATUTORY BASES: CIVIL CODE

ARTICLE 1709. The employer shall neither seize nor retain any tool or other articles belonging to the laborer.

ARTICLE 1710. Dismissal of laborers shall be subject to the supervision of the Government, under special laws.

ARTICLE 1711. (impliedly repealed by Title II Book IV of the Labor Code, see Oceanmarine Resources vs. Nedic, GR No. 236263, July 19, 2022)

ARTICLE 1712. If the death or injury is due to the negligence of a fellow worker, the latter and the employer shall be **solidarily liable for compensation**. If a fellow worker's intentional or malicious act is the only cause of the death or injury, the employer shall not be answerable, unless it should be shown that the latter did not exercise due diligence in the selection or supervision of the plaintiff's fellow worker.

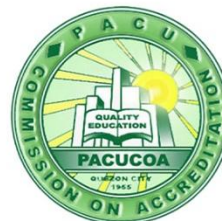
STATUTORY BASES: SPECIAL RULES FOR THE PRIVATE EDUCATION INDUSTRY

- ❑ Batas Pambansa Blg. 232 (Education Act of 1982)
- ❑ 2008 Manual of Regulations for Private Higher Education (MORPHE)
- ❑ 2010 Manual of Regulations for Private Schools in Basic Education (MORBE)



THANK
YOU

📍 General Luna Road, Baguio City, Philippines 2600
☎ (074)442-3306
🌐 ub@e.ubaguio.edu
🌐 www.ubaguio.edu



RECRUITMENT AND PLACEMENT OF WORKERS

PART TWO. LABOR LAW REVIEW

STATE POLICY ON OVERSEAS EMPLOYMENT:

*Article 11,
Sec 9
Article 111,
Sec 3*

“While recognizing the significant contributions of Filipino migrant workers to the national economy through their foreign exchange remittances, the State **does not promote** overseas employment as a means to sustain economic growth and achieve national development. The State, therefore, shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development.” Sec. 2(c), RA No. 8042

*Full employment and equality of
employment for all*

“The State **does not promote** overseas employment as a means to economic growth and national development and shall continuously aim to make it a choice and not a necessity. The State shall institute measures that will strengthen the domestic labor market for the effective reintegration of Overseas Filipino Workers.” (Sec. 2, 3rd par. RA No. 11641)

REGULATORY AGENCIES:

❑ Department of Labor and Employment (**local**

employment) –

- Labor Code and DO 141-14 series of 2014
- DO 217 (2020) for *Kasambahays*;
- DO No. 216 (2020) Industry workers other than domestic workers under RA 10361;
- DO 221-2021; DO 221-A s.2022 alien employment permit requirement

❑ Department of Migrant Workers (**overseas employment**) –

- RA No. 11641 (Dept of Migrant Workers Act)
 - 2023 DMW Department Circular No. 1 series of 2023 for landbased OFWs
 - 2016 POEA Rules for seafarers
 - RA No. 8042, as amended by RA No. 11641
-

DEFINITION OF “RECRUITMENT AND PLACEMENT”

Art. 13 (b), Labor Code of
the Philippines

“**Recruitment and placement**” refers to any act of **c**anvassing, **e**nlisting, **c**ontracting, **t**ransporting, **u**tilizing, **h**iring or **p**rocurring workers, and includes **re**errals, **co**ntract **se**rvices, **pr**omising or **ad**vertising for employment, locally or abroad, whether for profit or not: **Provided**, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

DEFINITION OF “RECRUITMENT AND PLACEMENT”

Rule III (41), 2016 Revised
POEA Rules Governing the
Recruitment and
Employment of Seafarers

“Recruitment and Placement — refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring **seafarers**, and includes referrals, contract services, promising or advertising for overseas **maritime employment**, whether for profit or not.

DEFINITION OF “RECRUITMENT AND PLACEMENT”

Rule II (41), 2023 DMW
Rules and Regulations
Governing the Recruitment
and Employment of
Landbased Overseas
Filipino Workers

“Recruitment and Placement — refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referring, contracting services, promising or advertising for **employment abroad**, whether for profit or not.

CECTUHP-ReCoSePrAd:

C – Canvassing (**looking** for workers)

E – Enlisting (**offering** work or **convincing** someone to accept an offer of work)

C – Contracting (**executing** a contract of work or employment)

T – Transporting (physically **moving** a person for the purpose of work)

U – Utilizing (**earning** income or profit from workers)

H – Hiring (**engaging** a person for employment)

P – Procuring (**find** a worker for the benefit of another)

Re – Referrals (**forwarding** a person to a selected placement or recruitment agency)

CoSe – Contract Service (**preparation** of employment contract)

Pr – Promising (making **positive affirmation or undertaking** to another regarding availability of work)

Ad – Advertising (**publishing** offer of employment) (Ungos and Ungos, Labor Law 3 (Fundamentals of Labor Law Review, 2021 Ed.)

PRESUMPTION OF RECRUITMENT & PLACEMENT:

People vs Hon. Panis,
GR No. L-58674-77,
July 11, 1990

Q: Is the number of recruited individuals relevant to establish the fact of recruitment and placement?

❑ “The number of persons dealt with is not an essential ingredient of the act of recruitment and placement of workers. Any of the acts mentioned in the basic rule in Article 13(b) will constitute recruitment and placement even if only one prospective worker is involved. The proviso merely lays down **a rule of evidence** that where a fee is collected in consideration of a promise or offer of employment to two or more prospective workers, the individual or entity dealing with them shall be deemed to be engaged in the act of recruitment and placement. The words "shall be deemed" create that **presumption.**”

SUFFICIENCY OF RECRUITMENT & PLACEMENT

People vs Jamilosa,
GR No. 169076,
January 23, 2007

Q: What is the relevance of the material consideration in establishing the fact of recruitment or placement under Art. 13(b)?

- ❑ “The failure of the prosecution to adduce in evidence any receipt or document signed by appellant where he acknowledged to have received money and liquor does not free him from criminal liability. x x x It can be gleaned from the language of Article 13(b) of the Labor Code that the act of recruitment may be **for profit or not**. It is sufficient that the accused **promises or offers** for a fee employment to warrant conviction for illegal recruitment.”

BAN ON DIRECT HIRING:

 True or False. As a general rule, direct hiring of OFWs is not allowed. (2010 Bar)

Art. 18, Labor Code;
but see Sec. 6(b) of RA
No. 11641 (DMW Act)

 Explain the policy behind the prohibition against direct hiring for overseas employment. (not yet asked)

- ☐ No employer may hire a Filipino worker for overseas employment except through the Boards and entities **authorized** by the Secretary of Migrant Workers.

 - ☐ One of the State policies enshrined under Art. XIII, Sec. 3 of the 1987 Constitution is that the State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. By banning direct hiring in overseas employment, the State is able to guarantee that it could afford full protection to overseas Filipino workers through bilateral and multilateral agreements with other states that provide better, safer, and healthier working conditions for them abroad.
-

BAN ON DIRECT HIRING: EXCEPTIONS

❑ Art. 18, Labor Code
as supplemented by
Sec. 126 DMW MC 1-
23 and **Sec. 16**
DMW AO 04-25

1. Members of the diplomatic corps
2. International organizations
3. Such other employers as may be allowed by the SOLE/SMW
4. Heads of state and government officials with the rank of at least deputy minister

🔍: What are the exceptions from the ban on direct hiring in overseas employment, if any? (2017 Bar)

🔍: Who are 'name hires' in the context of the ban on direct hiring for overseas employment? (Not yet asked)

❑ **Name hires** – workers who are able to obtain overseas employment opportunity without the assistance or participation of any agency (**NOTE:** Are they still exempted?)

BAN ON DIRECT HIRING: EXCEPTIONS

❑ Art. 18, Labor Code
as supplemented by
Sec. 126 DMW MC 1-
23 and **Sec. 16**
DMW AO 04-25

 Are the exempted
direct hires also
exempted from the
supervision of the
DMW?

- ❑ Exempted direct hires must still be processed through the DMW. They shall submit the following documents to the Department:
1. Verified and/or authenticated original employment contract which contains terms and conditions over and above the DMW-prescribed employment contract;
 2. Passport valid for at least six (6) months from the date of intended departure;
 3. Valid and appropriate visa or work permit;
 4. Letter of employer requesting exemption from the ban on direct hiring;
 5. Other documents as may be required by the MWO considering the peculiar situation in the country of destination.

BAN ON DIRECT HIRING: EXCEPTIONS

❑ Art. 18, Labor Code
as supplemented by
Sec. 126 DMW MC 1-
23 and **Sec. 16**
DMW AO 04-25

Q: Are professional athletes who are contracted to play in overseas leagues or tournaments for foreign teams or organizations considered direct hires? What steps should they undertake to benefit from the protection of Philippine labor laws?

❑ Under Sec. 126 of the old 2016 POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers, “professionals and skilled workers with duly executed/authenticated contracts containing terms and conditions over and above the standard set by the POEA” and “workers hired by a relative/family member who is a permanent resident of the host country” are exempted from the ban on direct hiring. However, the 2023 DMW Memorandum Circular No. 1-23 glaringly removed these specifications. On the other hand, Sec. 16 of DMW AO No. 04-25 merely recognized a “general” power of the Secretary to allow additional exemptions from the ban.

LICENSE and AUTHORITY TO RECRUIT:

Art. 13 (d) (f); Labor Code

- ❑ **License** - a document issued by the Department of Labor authorizing a person or entity to **operate** a private employment agency.
- ❑ **Authority** - a document issued by the Department of Labor authorizing a person or association to **engage** in recruitment and placement activities as a private recruitment entity

DO 141-14 (IRR of Bk I, Labor Code)

- ❑ **License** - a document issued by the Secretary through the Regional Director authorizing a person, partnership or corporation to **operate** a private employment agency.
- ❑ **Authority** - a document issued by the Secretary through the Regional Director authorizing a person to **conduct** recruitment and placement activities for local employment on behalf of a private recruitment entity

LICENSE and AUTHORITY TO RECRUIT:

Sec. 1(b), Rule II, IRR of the MWA

- ❑ **License** - a document issued by the Secretary of Labor and Employment authorizing a person, partnership or corporation to operate a private recruitment/manning agency.
- ❑ **Authority** - a document issued by the Secretary of Labor and Employment authorizing the officers, personnel, agents or representatives of a licensed recruitment/manning agency to conduct recruitment and placement activities in a place stated in the license or in a specified place.

DMW MC 1-23; 2016 POEA Rules:

- ❑ **License** - a document issued by the Secretary or his/her duly authorized representative authorizing a person, partnership or corporation to operate a recruitment agency/**licensed manning agency**.
- ❑ **NOTE:** There is no separate definition for '**Authority**' but there are authorities issued for specific purposes, such as, JOBS FAIR AUTHORITY, LETTER OF AUTHORITY, and SPECIAL RECRUITMENT AUTHORITY

DMC No. 1 series of 2023;
2016 POEA
Revised
Rules for
Recruitment and
Employment of
Seafarers

- ☐ **Jobs Fair Authority** – refers to the authority granted to a licensed recruitment/manning agency to conduct recruitment outside of its registered business address through participation in a jobs fair.
- ☐ **Special Recruitment Authority** – refers to the authority granted to licensed recruitment/manning to conduct recruitment activities outside of its registered business address.
- ☐ **Letter of Authority** – refers to the authority granted an accredited principal/employer or the latter's representative to participate in recruitment activities within or outside of the licensed recruitment/manning agency's registered business address.

(Rule IV, DMC 1
series of 2023)

 **Waowao Builders International, Inc.** is a AAA Philippine domestic corporation engaged in the construction business, locally and overseas. It has a construction project in Singapore for which it needs additional manpower. Is it allowed to directly send its local workers to Singapore to work on its project?

(BAR 2026)

 **Special license** – if Philippine Overseas Construction Board (POCB)-registered construction companies with overseas construction projects will assign their employees to such overseas projects.

- Valid for 5 years
- NO FEES – shall be collected from the workers deployed
- If the PCOB-registered company has NO overseas construction project and desires to deploy workers overseas, they should apply for a regular license

**ELIGIBILITY
FOR
A
LICENSE:**

REQUIREMENTS	LOCAL	OVERSEAS
CITIZENSHIP	Filipino; 75% of the ACS	Same
CAPITALIZATION	Php 1M + Bond (150k) SP = 1M min net worth P&Corp = 1M min paid up capital	Php 5 M + Escrow deposit (1.5M for LB; 1M for SF) SP = 5M min net worth Corp = 5M min paid up capital
DISQUALIFICATION	1. Convicted of IR, Trafficking in person, or anti-child labor, moral turpitude 2. Probable cause/prima facie finding of guilt of IR or related crime 3. Revoked or cancelled license 4. Law enforcers and any official and employee of DOLE 5. Secondary license applicant 6. Engaged in contracting or subcontracting 7. Technical-vocational training institutions and other training institutions (for kasambahays and industry workers)	T – Travel agencies and airline ticket sales agencies, their officers, Board members, partners I - Insurance providers of OFWs required by law D – Derogatory record of proprietors, partners, officers, Board members E – Employees and officials of the government agencies mentioned in POEA rules

LIMITATIONS OF THE PRIVILEGES OF THE LICENSE:

REQUIREMENTS	LOCAL	OVERSEAS
VALIDITY PERIOD	3 years	Provisional license = 2 years (manning agency)/3 years (recruitment agency) Regular license = 4 years (manning agency)/6 yrs (recruitment agency) from PL issuance
TRANSFER OF LICENSE	Not allowed	Not allowed
CHANGE IN OWNERSHIP (e.g. through sale)	Automatic revocation	Automatic revocation (10 days to report to DMW or else results in derogatory record)
DEATH OF SOLE PROPRIETOR	6 months to wind-up activities	Automatic revocation (10 days to report to DMW)
DEATH OR WITHDRAWAL OF A PARTNER	Automatic revocation	Automatic revocation (10 days to report to DMW)
DEATH OF THE INCORPORATOR/SOLE STOCKHOLDER OF A ONE PERSON CORPORATION (OPC)	No provision	Nominee of the OPC shall report and submit to DMW documentary requirements within 30 days after the death or incapacity or else automatic dissolution

LIMITATIONS OF THE PRIVILEGES OF THE LICENSE:

REQUIREMENTS	LOCAL	OVERSEAS
MERGER OR CONSOLIDATION		Shall report to the DMW within 30 days from confirmation by the SEC of the merger or consolidation
CHANGE OF BUSINESS TYPE		Report to the DMW within 30 days from such change
TRANSFER OF SHARES OF STOCKS		Report to the DMW within 30 days from approval of such transfer by SEC
CHANGE IN THE COMPOSITION OF PARTNERS/BOARD OF DIRECTOR	Automatic revocation if entire Board is changed; If not, report with the Regional Office within five days from date of such change, otherwise RD may deny acknowledgment of new Director.	Report to the DMW within 30 days from such change
APPOINTMENT, DISMISSAL, OR RESIGNATION OF OFFICERS AND PERSONNEL	Report with the Regional Office within five (5) days from date of such change otherwise RD may deny acknowledgment of new personnel	Notify the Licensing and Regulation Bureau within thirty (30) calendar days from such appointment, dismissal, or resignation.

RA No.
8759, as
amended
by RA No.
10691

EMPLOYMENT PROMOTIONS:

- ☐ All LGUs, except barangays, shall operate and maintain a Public Employment Office (PESO)
 - ☐ PESO – mainly a job promotion or facilitation venue; employers are only encouraged to coordinate their job vacancies with the PESO for exchange of labor market information between them and job seekers
-

PUBLIC INFRASTRUCTURE PROJECTS: RA No. 6685

 St. Timothy Construction is awarded by the DPWH a Php 550 Million flood control project in Calumpit, Bulacan. The project is funded from the 2024 General Appropriations Act. The Municipal Mayor of Calumpit furnished the proprietor of the construction firm a list of ready, willing and able local residents who are currently unemployed for possible hiring in the project. The contractor rejected the list invoking its management prerogative to hire and select its own employees. Is the firm duty-bound to hire from among the unemployed locals?

 “All private contractors, including subcontractors, to whom awards are made for the undertaking of **national and local public works projects funded by either the National Government or any local government unit** including **foreign-assisted projects** must hire at least fifty percent (50%) of the unskilled and thirty percent (30%) of the skilled labor requirements from the unemployed bona fide and actual residents in the province, city and municipality who are ready, willing and able as determined by the governor, city mayor or municipal mayor concerned where the projects are to be undertaken.”

PUBLIC INFRASTRUCTURE PROJECTS: EXCEPTIONS:

- ❑ **Exempted personnel** – unskilled labor for prefabricated construction materials and other materials premade outside the place of project implementation and skilled manpower utilized or to be utilized for the preparation of engineering designs and project plans and layouts

 - ❑ **Exempted projects** - Any scientific project of a highly technical nature, all defense and military installations which fall under security requirements, any public works project that may be assigned to and which can be undertaken by the engineering battalions of the Armed Forces of the Philippines; if these projects are to be undertaken by private contractors, there should be a clearance by the Chief of Staff or Secretary of DOST, as the case maybe.
-

TYPES OF ILLEGAL RECRUITMENT:

1. ILLEGAL RECRUITMENT BY PERFORMING ANY ACT OF 'RECRUITMENT OR PLACEMENT' **WITHOUT A LICENSE** – Art. 38(a) of LCP and Sec. 6, RA No. 8042, as amended by RA No. 10022, in relation to Art. 13(b) of the LCP. This can only be committed by a person who is not a holder of a license or authority to recruit workers.
2. ILLEGAL RECRUITMENT **PRACTICES** –
 - Art. 38(a) of the Labor Code – amounts to illegal recruitment if committed by a non-licensee or non-holders of authority (local employment)
 - Sec. 6 (a) to (n) of RA No. 8042, as amended by RA No. 10022 – amounts to illegal recruitment even if committed by holders of license or authority. (overseas employment)
3. **PROHIBITED ACTS** AMOUNTING TO ILLEGAL RECRUITMENT – Sec. 6 (1) to (7), RA No. 8042, as amended by RA No. 10022 (overseas employment).

ELEMENTS OF ILLEGAL RECRUITMENT: LOCAL EMPLOYMENT

1. That the offender undertakes any activity within the meaning of **“recruitment and placement”** defined under Article 13(b), of the Labor Code;
2. That the offender has **no valid license or authority** required by law to enable him to lawfully engage in the recruitment and placement of workers.

EXPANDED ILLEGAL RECRUITMENT:

1. That the offender undertakes any of the **practices** mentioned in Art. 34(a) of the Labor Code; and
 2. That the offender may be a licensee or holder of an authority
-

ILLEGAL RECRUITMENT PRACTICES:

Art. 34, Labor Code
of the Phils

- a. **Overcharging** – To charge or accept directly or indirectly any amount or to make a worker pay the agency or its representatives any amount greater than that actually loaned or advanced to him;
 - b. **False notice** – To furnish or publish any false notice or information in relation to recruitment or employment
 - c. **Misrepresentation** – to give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority.
 - d. **Inducing quitting** – To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
-

ILLEGAL RECRUITMENT PRACTICES:

Art. 34, Labor Code
of the Phils

- e. **Inducing rejection** – To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency.
- f. **Recruiting for harm** -To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines.
- g. **Obstruction** – To obstruct or attempt to obstruct inspection by the Secretary or by his/her duly authorized representatives;
- h. **Non-submission of reports** – To fail to file reports on the status of employment, placement, vacancies, remittances of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the SOLE;

ILLEGAL RECRUITMENT PRACTICES:

Art. 34, Labor Code
of the Phils

- i. **Contract substitution** – To substitute or alter to prejudice of the worker, employment contract prescribed by the DOLE from time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the DOLE.
 - j. **Disallowed activity** – To become an officer or member of the Board of a travel agency or to be engaged directly or indirectly in the management of a travel agency
 - k. **Withholding or denying travel documents** – To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its IRR
-

ILLEGAL RECRUITMENT PRACTICES:

Sec. 6, MWA as amended

1. **All the prohibited practices enumerated under Sec. 6 of the MWA (similar to Art. 34 of the LCP, except paragraph [g] obstruction of inspection by the Secretary) – in addition:**
 2. **Failure to deploy.** Failure to actually deploy a contracted worker without valid reason as determined by the DOLE/DMW;
 3. **Failure to reimburse.** Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault;
 4. **Alien participation.** To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.
-

PROHIBITED ACTS AMOUNTING TO ILLEGAL RECRUITMENT:

Added by R.A.No. 10022 (2009):

1. Grant a loan to an OFW with interest exceeding 8% per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;
 2. Impose a compulsory and exclusive arrangement whereby an OFW is required to avail of a loan only from specifically designated institutions, entities or persons;
 3. Refuse to condone or renegotiate a loan incurred by an OFW after the latter's employment contract has been prematurely terminated through no fault of his or her own;
-

PROHIBITED ACTS AMOUNTING TO ILLEGAL RECRUITMENT:

Added by R.A.No. 10022 (2009):

4. Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;
 5. Impose a compulsory and exclusive arrangement whereby an OFW is required to undergo, training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;
-

PROHIBITED ACTS AMOUNTING TO ILLEGAL RECRUITMENT:

Added by R.A.No. 10022 (2009):

6. For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending worker's applications.
 7. For a recruitment/manning agency or a foreign principal/employer to pass to the OFW or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker's insurance coverage.
-

ELEMENTS OF ILLEGAL RECRUITMENT: OVERSEAS EMPLOYMENT

1. That the offender undertakes any of the **acts of “recruitment and placement”** contemplated in Art. 13(b) of the Labor Code in relation to overseas employment; and
2. That the offender has **no valid** license or authority required by law to enable him to lawfully engage in the recruitment and placement for overseas employment.

EXPANDED ILLEGAL RECRUITMENT:

1. That the offender undertakes any of the **illegal practices or prohibited acts** mentioned in Sec. 6 of RA No. 8042, as amended by RA No. 10022; and
 2. That the offender may be a licensee or holder of an authority
-

MODES OF ILLEGAL RECRUITMENT:

- ❑ SIMPLE ILLEGAL RECRUITMENT - neither large scale nor syndicated

 - ❑ INVOLVING ECONOMIC SABOTAGE:
 - a. Committed in large scale – when IR is committed against 3 or more persons individually or as a group

 - b. Committed by a syndicate – when IR recruitment is committed by 3 or more persons conspiring or confederating with each other
-

ILLEGAL RECRUITMENT IN LARGE SCALE:

Elements:

1. The offender has **no valid license or authority** to enable him or her to lawfully engage in recruitment and placement of workers;
 2. He or she undertakes any of the activities within the meaning of **"recruitment and placement"** under Article 13(b) of the Labor Code or any **prohibited practices** enumerated under Article 34 of the Labor Code or Section 6 of RA 8042, as amended; and
 3. He or she commits the same against **three or more persons**, individually or as a group.
-

MEANING OF THE THIRD ELEMENT:

People vs Gallardo, GR
No. 140067-71, August
29, 2002

 What is the
meaning of “3 or more
persons individually or
as a group?”

- ❑ “The conviction of illegal recruitment in large scale must be based on a finding in each case of illegal recruitment of three or more persons, whether individually or as a group. When the Labor Code speaks of illegal recruitment “committed against three (3) or more persons individually or as a group”, it must be understood as referring to the number of complainants in each case who are complainants therein, otherwise, prosecutions for single crimes of illegal recruitment can be accumulated to make out a case of large-scale illegal recruitment.”

MEANING OF THE THIRD ELEMENT:

People vs Liwanag, GR
No. 232245, March 2,
2022

Q: Is there a need
that at least 3 witnesses
testify against the
accused to prove the
third element?

- ❑ “The law does not require that at least three victims testify at the trial to convict an accused for Illegal Recruitment in Large Scale for so long as there is sufficient evidence proving that the offense was committed against three or more persons.”

ILLEGAL RECRUITMENT BY A SYNDICATE:

Elements:

1. The offenders have **no valid license or authority** to enable him or her to lawfully engage in recruitment and placement of workers;
 2. The offenders undertake any of the activities within the meaning of **"recruitment and placement"** under Article 13(b) of the Labor Code or any **prohibited practices** enumerated under Article 34 of the Labor Code or Section 6 of RA 8042, as amended; and
 3. The illegal recruitment is **"carried out by a group of three or more persons** conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme
-

MEANING OF 'CONSPIRING AND/OR CONFEDERATING':

People vs Sison, GR No. 187160, August 9, 2017

Q: Is it indispensable that all the accused took part in every act constituting illegal recruitment to prove that they conspired and confederated with one another?

- ❑ In the third element, it "is not essential that there be actual proof that all the conspirators took a direct part in every act. It is sufficient that they acted in concert pursuant to the same objective.
- ❑ The acts of Sison, Dedales, and Bacomo show a common purpose and each undertook a part to reach their objective. Their concerted action is evident in that either Sison or Dedales was receiving payments from the recruits; that Dedales signed the acknowledgment receipt from Sison; and that the three accompanied their recruits together in seeking out their visas in Malaysia and Indonesia. Further, the impression given to Castuera and other recruits was that the three were indeed working together."

CONDITION SINE QUA NON FOR SUCCESSFUL PROSECUTION OF ILLEGAL RECRUITERS:

People vs. Goce, et.al., GR No.
113161, August 29, 1995

Q: The complainants initially approached the accused regarding their plans of working overseas. Accused then informed them of the fees they need to pay and the papers they need to submit. Later, the accused collected from them fees for their passport, training, placement, medical, and other sundry expenses. Are these sufficient to constitute illegal recruitment?

“There is illegal recruitment when one gives the impression of having the ability to send a worker abroad. It is undisputed that the appellant (accused) gave complainants the distinct impression that she had the power or ability to send people abroad for work such that the latter were convinced to give her the money she demanded in order to be so employed.”

CONDITION SINE QUA NON FOR SUCCESSFUL PROSECUTION OF ILLEGAL RECRUITERS:

People vs. Concepcion, GR No. 251876, March 21, 2022

Q: The accused presented to the complainants job orders for overseas employment in Italy. She then collected money for the authentication and red ribbon of complainants' birth and marriage certificates, translations of certain Italian documents, and medical examination. The accused raised lack of evidence for failure of the complainants to submit proof of payment, such as acknowledgment receipts that she received payments from them. Is this a valid defense?

The absence of receipts issued by the accused in illegal recruitment case is not fatal to their conviction if the prosecution establishes, through credible evidence, that the accused has engaged in illegal recruitment.

CONDITION SINE QUA NON FOR SUCCESSFUL PROSECUTION OF ILLEGAL RECRUITERS:

Darvin vs. CA, GR No. 125044,
July 13, 1998

Q: The accused convinced the private complainant that for the amount of 150k, the complainant could leave for the USA without any appearance before the US Embassy. The private complainant believed the assurance of the accused and gave the amount which was used for procuring US Visa and airplane ticket. If the accused is not a licensed recruiter, may she be convicted of illegal recruitment under the circumstances?

By themselves, procuring a passport, airline tickets and foreign visa for another individual, without more, can hardly qualify as recruitment activities. It is important that there must at least be a promise or offer of an employment from the person posing as a recruiter, whether locally or abroad.

PERSONS LIABLE TO ILLEGAL RECRUITMENT:

Q: Who are the persons liable for illegal recruitment in overseas employment?

- "The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents thereof shall be liable." (Sec. 6, MWA, as amended)

EMPLOYEES AS CO-PRINCIPALS OF THE EMPLOYER:

People vs. Cabais,
GR No. 129070,
March 16, 2001

 Are employees of a company or corporation engaged in illegal recruitment liable as principals together with their employer?

- ❑ An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he **actively and consciously participated in illegal recruitment**. In this case, evidence showed that accused-appellant was the one who informed complainants of job prospects in Korea and the requirements for deployment. She also received money from them as placement fees. All of the complainants testified that they personally met accused-appellant and transacted with her regarding the overseas job placement offers. Complainants parted with their money, evidenced by receipts signed by accused Cabais and accused Forneas. Thus, accused-appellant actively participated in the recruitment of the complainants.”

EMPLOYEES AS CO-PRINCIPALS OF THE EMPLOYER:

People vs. Bulu Chowdury,
GR No. 129577-80,
February 15, 2000

 The accused interviewed the private complainants, informed them of the requirements for deployment, but did not receive payment from them. Everything that the accused did is stated in his job description. His employer failed to report his appointment with the POEA. May he be convicted of illegal recruitment as co-principal of the employer?

 Upon examination of the records, however, we find that the **prosecution failed to prove** that accused-appellant was aware of Crafrade's failure to register his name with the POEA and that he actively engaged in recruitment despite this knowledge. The obligation to register its personnel with the POEA belongs to the officers of the agency. A mere employee of the agency cannot be expected to know the legal requirements for its operation.

EMPLOYEES AS CO-PRINCIPALS OF THE EMPLOYER:

Toston vs. People, GR No. 232049,
March 3, 2021 (897 Phil 820)

Q: The employee was first employed by a licensed recruitment agency from June 11, 2007 to August 14, 2007. His employer reported his appointment with the POEA. He was rehired by the same employer from February 16, 2009 to June 16, 2011 but failed to register him again with the POEA. May he be criminally held liable for illegal recruitment as a co-principal of the employer?

❑ Similarly, Toston cannot be faulted for not following up on his registration status. Since the obligation to register his employment fell upon Steadfast, Toston was justified in relying upon his employer to faithfully comply with industry regulations.

COVERAGE	OFFENSE	PENALTY	PRESCRIPTIVE PERIOD
LOCAL EMPLOYMENT (Under the Labor Code)	SIMPLE ILLEGAL RECRUITMENT (including illegal practices under Art. 34)	☐ License holders = 2y-5y and/or 10k-50k fine, or both ☐ Without license = 4y-8y and/or 20k-100k fine, or both	3 years
	ECONOMIC SABOTAGE	Life imprisonment and 100k fine	
OVERSEAS EMPLOYMENT (Under the Migrant Workers Act, as amended)	SIMPLE ILLEGAL RECRUITMENT (including illegal practices under Sec. 6)	12y1d – 20 yrs + 1M-2M fine (maximum for non-licensee)	5 years
	PROHIBITED ACTS AMOUNTING TO ILLEGAL RECRUITMENT	6y1d – 12y + 500k-1M fine	5 years
	ECONOMOMIC SABOTAGE	Life imprisonment + 2M-5M fine	20 years

ESTAFA: Art. 315 PARAGRAPH 2(a), RPC

- ❑ In this jurisdiction, it is settled that a person who commits illegal recruitment may be charged and convicted separately of illegal recruitment under the Labor Code and estafa under par. 2(a) of Art. 315 of the Revised Penal Code.
 - ❑ The offense of illegal recruitment is *malum prohibitum* where the criminal intent of the accused is not necessary for conviction, while estafa is *malum in se* where the criminal intent of the accused is crucial for conviction. Conviction for offenses under the Labor Code does not bar conviction for offenses punishable by other laws. Conversely, conviction for estafa under par. 2(a) of Art. 315 of the Revised Penal Code does not bar a conviction for illegal recruitment under the Labor Code. It follows that one's acquittal of the crime of estafa will not necessarily result in his acquittal of the crime of illegal recruitment in large scale, and vice versa.
-

SEAFARER'S PROTECTION ACT (RA 10706)

- ❑ **Ambulance chasing** - It shall be unlawful for any person to engage in ambulance chasing or the act of soliciting, personally or through an agent, from seafarers, or their heirs, the pursuit of any claim against their employers for the purpose of recovery of monetary claim or benefit, including legal interest, arising from accident, illness or death, in exchange of an amount or fee which shall be retained or deducted from the monetary claim or benefit granted to or awarded to the seafarers or their heirs.
- ❑ **Excessive fees** – Fees of anyone representing a seafarer before a quasi-judicial body handling labor disputes for monetary claim or benefit, including legal interest, arising from accident, illness or death shall not exceed ten percent (10%) of the compensation or benefit awarded to the seafarer or his/her heirs.

JURISDICTION OF THE LABOR ARBITER:

MONEY CLAIMS arising out of employer-employee relationship involving overseas Filipino workers:

- ❑ Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the **claims arising out of an employer-employee relationship** or by virtue of any **law or contract involving Filipino workers for overseas deployment** including claims for actual, moral, exemplary and other forms of **damages**. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry. (Sec. 10, MWA, as amended)
-

SOLIDARY LIABILITY:

MONEY CLAIMS arising out of employer-employee relationship involving overseas Filipino workers:

- ❑ "The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be **joint and several**. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The **performance bond** to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all **money claims or damages** that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the **corporate officers and directors and partners** as the case may be, shall themselves be **jointly and solidarily** liable with the corporation or partnership for the aforesaid claims and damages.
-

LIABILITY OF RECRUITMENT AGENCY:

Sto. Tomas vs Salac,
GR No. 152642,
November 13, 2012

Q: Is the last sentence of the second paragraph of Section 10 of the Migrant Workers Act, valid?

- ❑ While the Court did not declare the last sentence of the second paragraph of Section 10 unconstitutional, it nevertheless clarified that:
 - “the liability of corporate directors and officers is not automatic. To make them jointly and solidarily liable with their company, there must be a finding that they were remiss in directing the affairs of that company, such as sponsoring or tolerating the conduct of illegal activities.
-

LIABILITY OF RECRUITMENT AGENCY:

SRL International Manpower
Agency vs. Pedro Yarza, GR No.
207828, February 14, 2022

Q: A local manning agency initially commenced the processing of an OFW's deployment to its principal. It stopped however when it found out that its principal obtained a tourist visa for, and dealt with the OFW directly, contrary to POEA rules. Is Sec. 10 still applicable to hold the agency solidarily liable with its principal in case of illegal dismissal?

A: "SRL cannot evade liability by simply refusing to process an overseas worker's documentation yet at the same time admit to being the local manning agent of a foreign principal which invalidly dismissed an employee. As the local placement agency, SRL should have employed measures to ensure that Yarza's deployment would be in accordance with existing policies, from the beginning of the employment until its end."

LIABILITY OF RECRUITMENT AGENCY:

Becmen Service Exporter and
Promotion, Inc. vs Sps Cuaresma,
GR No. 182978-79, April 7, 2009
(602 Phil 1058)

 Explain the responsibility of
licensed recruitment agencies to
their deployed OFWs, especially
those in distress.

- ☐ Recruitment agencies are expected to
extend assistance to their deployed
OFWs, especially those in distress.
Thus, their nonchalant and indifferent
attitude to the plight and welfare of
their distressed OFWs is a ground to
hold them liable for damages under
Art. 21 of the Civil Code.

 What is the doctrine of imputed knowledge? How does it apply in our laws on overseas employment?

- ❑ The 'Theory of Imputed Knowledge' is a doctrine in agency which states that the **principal is bound by the knowledge of or notice to its agent**. Simply put, notice to the agent is notice to the principal. However, **notice to principal is not notice to the agent**.
- ❑ Jurisprudence applied the doctrine in determining the solidary liability of the principal/employer and its local recruitment/manning agency. The theory of imputed knowledge **ascribes the knowledge of the agent to the principal, but not the other way around**. In other words, the knowledge of the principal-foreign employer cannot be imputed to its agent.

Sunace International
Management Services,
Inc. vs National Labor
Relations Commission,
GR No. 161757,
January 25, 2006

 If the foreign employer extended the employment contract of the OFW, is the local recruitment agency still solidarily liable with the principal for money claims filed by the OFW?

- ☐ In the absence of substantial proof that the local recruitment/manning agency knew of, and consented to be bound under the extended contract, it cannot be held solidarily liable with the principal/employer for money claims filed by the OFW.
- ☐ The doctrine of imputed knowledge ascribes the knowledge of the agent, Sunace, to the principal, employer Xiong, not the other way around. The knowledge of the principal-foreign employer, cannot therefore, be imputed to its agent.

COMPLETE TERMINATION OF EMPLOYMENT CONTRACT:

APQ Shipmanagement
Co., LTD vs Caseñas,
GR No. 197303, June
4, 2014

 When is a seafarer's contract deemed completed? If illness is contracted prior to the completion of the contract, are the local manning agency and its principal solidarily liable for disability benefits?

- ☐ The requirements for the complete termination of an overseas seafarer's contract are: (1) termination by expiration or other causes/reasons; (2) signing off the vessel; (3) arrival at the point of hire. (NOTE: adopted in Sec. 52 of RA No. 12120)
- ☐ If a seafarer continued working after the expiry of his contract of employment, his illness contracted during such period is compensable. The agent shall be solidarily liable with the principal for money claims if it had knowledge of, and consented to, the extension of employment.

ENGAGEMENT OF ALIEN WORKER:

 What are the State policies on hiring foreigners to work in the Philippines?

DOLE DO 221-21

1. To promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.
 2. That the practice of all profession in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.
 3. To afford protection to Filipino labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers.
-

IMPLEMENTATION OF THE STATE POLICIES:

 How are these
State policies
implemented?

Art. 40, Labor
Code –
Employment
Permit of **Non-
resident Aliens**

- ☐ Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor.
 - ☐ The employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.
 - ☐ For an enterprise registered in preferred areas of investments, said employment permit may be issued upon the recommendation of the government agency charged with the supervision of said registered enterprise.
-

IMPLEMENTATION OF THE STATE POLICIES:

 How are these
State policies
implemented?

Sec. 2, DO 221-21

- ☐ All foreign nationals who intend to engage in gainful employment in the Philippines shall apply for an Alien Employment Permit (AEP).
 - ☐ **Gainful employment** — refers to a state or condition that **creates an employer-employee relationship** between the Philippine-based employer and the foreign national where the former has the power to hire or dismiss the foreign national from employment, pays the salaries or wages thereof and has authority to control the performance or conduct of the tasks and duties.
-

ALIEN EMPLOYMENT PERMIT vs ACR I-CARD

 Is the Alien Employment Permit (AEP) the same as the Alien Certificate of Registration (ACR) I-Card? If not, explain their difference.

- ❑ They are not the same. The **AEP** is a permit issued to a foreign national **pursuant to an employment arrangement** with a Philippine-based company while the **ACR** is just an **identification card** issued to a foreign national whose stay in the Philippines has exceeded fifty-nine (59) days. The AEP is issued by the DOLE through its regional offices while the ACR is issued by the Bureau of Immigration (BI)
-

AEP vs PRE-ARRANGED EMPLOYMENT VISA (9G)

 Is the Alien Employment Permit (AEP) the same as the Pre-Arranged Employment Visa-also known as 9G visa? If not, explain their difference.

- ❑ They are not the same. The AEP is a permit issued to a foreign national pursuant to an employment arrangement with a Philippine-based company while the Pre-Arranged Employment Visa – also known as the 9G visa, is a **permit issued to a foreign national to enter the country for employment or lawful occupation purposes**. The AEP is issued by the DOLE through its regional offices while the 9G Visa is issued by the Bureau of Immigration. Lastly, an AEP is one of the requirements for the issuance of a 9G visa.
-

LABOR MARKET TEST (LMT)

 What is a labor market test and its purpose in the hiring and engagement of foreign nationals in the Philippines?

- ❑ The LMT is a mechanism to **determine the non-availability of a Filipino citizen** who is competent, able, and willing at the time of application to perform the services to which the foreign national is desired. LMT is done by the DOLE by publishing new applications for AEP and information about the foreign national, his/her job position, job description, and qualifications, salary range and other benefits, employer's name and address, and a notice that any person in the Philippines who is competent, able, and willing at the time of application, to perform the services for which the foreign national is desired, may file an objection at the DOLE-RO within 30 days after publication.
-

OTHER PERMITS/AUTHORITY REQUIRED:

 What other permits shall be obtained apart from the AEP, if any? When shall these other permits obtained?

- ❑ If the foreign national's employment requires the exercise of a particular profession, a **Special Temporary Permit (STP)** from the PRC shall be obtained. If the Philippine-based company is engaged in mining, it shall obtain an **Authority to Hire Foreign National (AHFN)** from the DENR. If the Philippine-based company is wholly or partially nationalized industry (e.g. mass media, public utility, recruitment/manning agency), it shall obtain an **Authority to Employ Alien (AEA)** from the DOJ. Under Sec. 3 of DO 221-21 second paragraph, employers intending to hire foreign nationals shall secure all relevant permits and authorities prior to applying for AEP.
-

EXCEPTIONS FROM THE RULE: Sec. 18-19, DO 221-21

1. **Dependent spouse** of any member of the Diplomatic corps, provided there is an existing reciprocity agreement and/or exchange of notes between the Philippine Government and their respective countries of origin;
 2. **Accredited officials and personnel** of international organizations of which the Philippine Government has entered into an agreement with, and their dependent spouse desiring to work in the Philippines;
 3. Foreign nationals who are officers, staff, and employees working in the **Embassy** by reason of extra-territoriality principle, which is one of the generally accepted principles in international law;
-

EXCEPTIONS FROM THE RULE: Sec. 18-19, DO 221-21

4. Foreign nationals who are officers and staff of **Peacekeeping or International Organizations**, either deployed in the Philippines or invited by Non-Governmental Organizations as accredited, endorsed, or certified by the appropriate government agencies, provided they will not engage in any gainful employment in the Philippines;
 5. Foreign nationals who come to the Philippines to **teach, present and/or conduct research studies** in universities and colleges as visiting, exchange or adjunct professors under formal agreements between the universities or colleges in the Philippines and foreign universities or colleges, or between the Philippine government and foreign government, subject to the rules of reciprocity;
 6. **Permanent resident** foreign nationals and probationary or temporary resident visa holders;
-

EXCEPTIONS FROM THE RULE: Sec. 18-19, DO 221-21

7. **Refugees and stateless** persons recognized by the Department of Justice (DOJ) pursuant to Art. 17 or the 1951 and 1954 UN Conventions Relating to the Status of Refugees and Stateless Persons, respectively;
8. All foreign nationals granted exemption by **law**.

 Are foreign nationals hired as imports by professional basketball clubs based in the Philippines and playing in Philippine basketball leagues exempted from the AEP requirement?

☐ They are not among the exempted foreign nationals under Section 18 of DO 221-21. Thus, they need to obtain an alien employment permit UNLESS in the meantime, they are holders of either a permanent or temporary resident visa for being married to a Filipino citizen.

EXCEPTIONS FROM THE RULE: Sec. 18-19, DO 221-21

 Are the foreign nationals exempted from the requirement of an AEP under Sec. 18 also free from the 'Filipino-First policy' in the hiring of workers in the Philippines?

☐ No. The opening sentence of Sec. 18 states “The following categories of foreign nationals are covered by Article 40 of the Labor Code, but exempted from securing an employment permit under the existing laws or guidelines.” In the meantime, Art. 40 of the Labor Code states that “The employment permit may be issued to a non-resident alien or the applicant employer after a demonstration of the non-availability of a person in the Philippines who is competent, able, and willing at the time of application to perform the services for which the alien is desired.”

RIGHT TO SELF-ORGANIZATION: Art. 284, Labor Code

 Are the foreign nationals who hold an AEP eligible to join labor unions for purposes of collective bargaining? What is/are the condition/s for the grant of such right, if any?

- ☐ Yes. Aliens working in the country with valid permits issued by the DOLE may exercise the right to self-organization and join or assist labor organizations of their own choosing for purposes of collective bargaining: Provided, that said aliens are nationals of a **country which grants the same or similar rights** to Filipino workers.

General Milling Corp.,
et. al. vs Hon. Torres,
GR No. 93666, April
22, 1991 (273 Phil
434)

Q: Does the requirement of
an AEP violate the non-
impairment of the obligations of
contracts clause, or at least the
employer's right to management
prerogative?

☐ There is no violation of the non-impairment clause
because the provisions of the Labor Code and its
Implementing Rules and Regulations requiring alien
employment permits were in existence long before
petitioners entered into their contract of
employment. It is firmly settled that **provisions of
applicable laws, especially provisions
relating to matters affected with public
policy, are deemed written into contracts.**
Neither is the employer's right to management
prerogative violated because its right to employ is
limited by the statutory requirement of an
alien employment permit.

ILLEGAL DISMISSAL OF ALIEN WORKERS:

WPP Marketing Communications,
Inc., et.al. vs Galera, GR No. 169207,
March 25, 2010 (630 Phil 410)

 If a foreign national is hired to work in the Philippines without the required AEP and other permits, can there be a finding of illegal dismissal against his/her Philippine employer? If yes, is recovery on the money claims arising from such illegal dismissal allowed?

 By applying the Four-Fold Test, an employer-employee relationship may be found between an alien and his/her employer. Any dismissal of the employee by the employer that lacked both substantive and procedural due process is illegal, and the complaint that may arise from such illegal dismissal is therefore under the jurisdiction of the NLRC and the Labor Arbiter. The grant of the monetary claims arising from such illegal dismissal however, is a different matter. To grant the alien's prayer is to sanction the violation of the Philippine labor laws requiring aliens to secure work permits before their employment. The status quo must prevail, leaving the parties where they are.

Pacific Consultants International Asia,
Inc. vs Schonfeld, GR No. 166920,
February 19, 2007 (545 Phil 116)

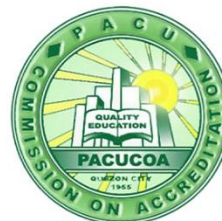
 What is the value of an AEP
in so far as the establishment of
employer-employee relationship
is concerned?

- ☐ It must be noted that non-resident foreign national or his employer shall apply for an AEP by attaching a copy of the alien worker's employment contract. Thus, if the alien worker relied on the employment contract and the employer's application for an AEP with the DOLE in believing that he is an employee of the applicant, the latter is estopped from alleging that another company had been the employer all along.



THANK
YOU

📍 General Luna Road, Baguio City, Philippines 2600
☎ (074)442-3306
🌐 ub@e.ubaguio.edu
🌐 www.ubaguio.edu



EMPLOYER-EMPLOYEE RELATIONSHIP

PART III. LABOR LAW REVIEW

1. Statutory definition of:
 - a. Worker
 - b. Employee
 - c. Employer

2. Two- tiered test of employer-employee relationship:
 - a. Four-fold test
 - b. Economic dependence test

3. Kinds of employment tenure

DEFINITION OF TERMS:

1. Worker – means any member of the labor force, whether **employed or unemployed**. (Art. 13[a], LCP)
2. Employer – includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions, as well as **non-profit private institutions, or organizations**. (Art. 97[b], LCP)
 - The term shall **not** include any **labor organization** or any of its officers or agents **except** when acting as employer. (Art. 219[e], LCP)

DEFINITION OF TERMS:

3. Employee – includes any individual **employed by an employer**. (Art. 97 [c], LCP)
 - Includes any person in the employ of an employer. The term shall not be limited to the employees of a particular employer, unless the Code so explicitly states. **It shall include any individual whose work has ceased as a result of or in connection with any current labor dispute or because of any unfair labor practice if he has not obtained any other substantially equivalent and regular employment.** (Art. 219 [f], LCP)

DEFINITION OF TERMS:

- Burden of proof – duty to present evidence (it doesn't shift)
- Burden of evidence – duty to present evidence sufficient to establish or rebut a fact in issue to establish a prima facie case. (shifts from party to party)
- Question of law – when there is doubt as to what the law is on a certain state of facts
- Question of fact – when the doubt arises as to the truth or falsity of the alleged facts

Diamond Farms Inc. vs. Southern
Philippines Federation of Labor
(SPFL)- Workers Solidarity of
DARBMUOCI/Diamond-SPFL
GR No. 173254-55 & 173263. January
13, 2016

 Is the existence of an employer-employee relationship a question of law, or a question of fact?

❑ Citing in *Tabas v. California Manufacturing Co., Inc.*, the Supreme Court held that: “**The existence of an employer-employee relation is a question of law and being such, it cannot be made the subject of agreement.** Hence, the fact that the manpower supply agreement between Livi and California had specifically designated the former as the petitioners' employer and had absolved the latter from any liability as an employer, will not erase either party's obligations as an employer, if an employer-employee relation otherwise exists between the workers and either firm.”

THE BURDEN OF PROOF: Who is an “employee”?

Valencia vs Classique Vinyl Products GR Nb. 206390, January 30, 2017

"It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The burden of proof rests upon the party who asserts the affirmative of an issue."

"Since it is Valencia here who is claiming to be an employee of Classique Vinyl, it is thus incumbent upon him to proffer evidence to prove the existence of employer-employee relationship between them. He "needs to show by substantial evidence that he was indeed an employee of the company against which he claims illegal dismissal." Corollary, the burden to prove the element of an employer employee relationship, viz: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control, lies upon Valencia."

THE BURDEN OF PROOF: Who is an “employee”?

Degamo vs. My CitiHomes, GR No. 249737, September 15, 2021

- “Settled is the rule that allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegation.”
- “Before a case for money claim filed against an alleged employer can prosper, an employer-employee relationship must first be established.”
- “Thus, in filing a complaint before the Labor Arbiter for non-payment of commission fees, based on the premise that she was an employee of CitiHomes, it is incumbent upon petitioner to prove the employer-employee relationship by substantial evidence for the burden of proof rests upon the party who asserts the affirmative of an issue. Petitioner claims to be an employee of CitiHomes; hence, it is her duty to proffer evidence to prove the existence of employer-employee relationship.”



Pedro and Maricel Dusol vs Emmarck Lazo GR No. 20055, January 20, 2021

Partnership not
employer-
employee?



“A person claiming the existence of industrial partnership rather than an employer-employee relationship has the burden to prove the existence of such partnership. And the best evidence of such partnership is the contract or articles of partnership.”

“As to the receipt of allowances and commission from profits of the beach resort, the SC held that, “However, it is beyond dispute that receipt by a person of share in the profits of a business does not by itself establish the existence of a partnership, if the amounts are received as wages of an employee. Neither does the sharing of gross returns establish partnership, most especially, in light of the absence of the any other evidence to establish the existence of the partnership.”

Sec. 15, Rule X, Book III, Rules Implementing the Labor Code

 Are consultants considered as “employees” of their “client”?

The relationship of employer–employee does not exist between a hospital and resident physicians in training, if the following conditions exist:

- a) The hospital has a training program duly accredited or approved by the appropriate government agency;
- b) The resident physician was engaged pursuant to such training program; and
- c) There is a training agreement between the resident physician and the training hospital.

Calamba Medical Center vs
NLRC
GR No. 176484, November
25, 2008
[592 Phil 318]

Q: Is a resident physician an employee of the hospital where he/she is affiliated with, or merely a consultant?

❑ “Under the “control test,” an employment relationship exists between a physician and a hospital if the hospital controls both the means and the details of the process by which the physician is to accomplish his task. **Where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, the element of control is absent.**

ARE RESIDENT PHYSICIAN EMPLOYEES OF THE HOSPITALS EMPLOYING THEM?

Calamba Medical Center vs
NLRC

GR No. 176484, November
25, 2008
[592 Phil 318]

 Is a resident physician an employee of the hospital where he/she is affiliated with, or merely a consultant?

“That petitioner exercised control over respondents gains light from the undisputed fact that in the emergency room, the operating room, or any department or ward for that matter, respondents' work is monitored through its nursing supervisors, charge nurses and orderlies. Without the approval or consent of petitioner or its medical director, no operations can be undertaken in those areas. For control test to apply, it is not essential for the employer to actually supervise the performance of duties of the employee, it being enough that it has the right to wield the power.”

Sycip, Gorres, Velayo &
Company Vs. De Raedt,
GR No. 161366, June 16,
2009 [607 Phil 133]

 The letter agreement required De Raedt to maintain an accurate time record, notify SGV of delays in De Raedt's schedule, secure prior clearance to leave place of assignment, and prepare reports. Are these control to establish an employer-employee relationship?

❑ “These requirements hardly show that SGV exercises control over the means and methods in the performance of De Raedt’s ways of accomplishing her work as Sociologist. Rather, SGV naturally expected to be updated regularly of De Raedt’s “work progress”, if any, on the project for which she was specifically engaged to ensure SGV’s compliance with the terms and conditions of the Sub-Consultancy Agreement with TMI. **The services to be performed by her specified what she needed to achieve but not on how she was to go about it.”**

 Are consultants considered as “employees” of their “client”?

Reyes vs Glaucoma Research
Foundation, Inc., et.al., GR
No. 189255, June 17, 2015
[760 Phil 779]

❑ “What was glaring in the present case is the undisputed fact that petitioner was never subject to definite working hours. He never denied that he goes to work and leaves therefrom as he pleases. In fact, on December, 1-31, 2004, he went on leave without seeking approval from the officers of respondent company. x x x This Court has held that there is no employer-employee relationship where the supposed employee is **not subject to a set of rules and regulations governing the performance of his duties** under the agreement with the company and is **not required to report for work at any time, nor to devote his time exclusively for working for the company.**”

Sagun vs ANZ Global Services and Operations (Manila), Inc., et.al., GR No. 220399, August 22, 2016 [793 Phil 633]

Q: If an accepted offer of employment was made subject to a condition (e.g. passing a background check) prior to commencement of employment, is it considered a perfected contract of employment? If yes, may the offeree successfully charge the offeror illegal dismissal if later the offer is withdrawn for failure of the offeree to pass during the background check?

□ “An employment contract, like any other contract, is perfected at the moment the parties come to agree upon its terms and conditions, and thereafter, concur in the essential elements thereof. x x x There was already a perfected contract of employment when petitioner signed ANZ’s employment offer and agreed to the terms and conditions that were embodied therein. x x x Petitioner’s employment with ANZ depended on the outcome of his background check, which partakes the nature of a **suspensive condition**, and hence renders the obligation of x x x ANZ conditional. x x x Jurisprudence states that when a contract is subject to suspensive condition, its effectivity shall take place only if and when the event which constitutes the condition happens or is fulfilled.”

 Are insurance agents employees or independent contractors of insurance companies?

An insurance company may have two classes of agents who sell insurance policies, namely:

1. Personnel who **have definite hours of work and are paid on salary basis;** and
2. Registered representatives **who do not have** definite hours of work and are paid on commission basis.

 The relationship of employer-employee exists as regards the first class but none in the second class. The reason is that the element of control over the means and methods of work exist over those with regular work hours; there is no such control over the registered representatives. They are paid on commission basis not on the regular hours of work they render.

PAGUIO VS. NRLC, GR
No. 119500, August
28, 1998

“The relationship between jeepney owners/operators and jeepney drivers under the boundary system is that of employer-employee and not of lessor-lessee because in the lease of chattels the lessor loses complete control over the chattel leased although the lessee cannot be reckless in the use thereof, otherwise he would be responsible for the damages to the lessor. In the case of jeepney owners/operators and jeepney drivers, the former exercises supervision and control over the latter. The fact that the drivers do not receive fixed wages but get only that in excess of the so-called "boundary" [that] they pay to the owner/operator is not sufficient to withdraw the relationship between them from that of employer and employee. Thus, private respondents were employees ... because they had been engaged to perform activities which were usually necessary or desirable in the usual business or trade of the employer.”

A. 4-FOLD TEST:

1. **Selection and engagement of workers** – the exercise by the employer of its 'choice' to hire the services of a worker and his commitment to keep the latter as his employee.
2. **Payment of wages** – refers to the compensation which the employee gets for the work performed, regardless of what it is called or how it is computed.
3. **Power of dismissal** – refers to the prerogative of the employer to terminate the employment of a worker, subject to substantive and procedural due process. It is a necessary incident of the right to select and engage workers.
4. **Power of control** – refers to the employer's power to regulate the means and methods by which the employee is to accomplish his/her work. In other words, it refers to the power to regulate how the work is done. **THIS IS THE MOST IMPORTANT ASPECT OF THE 4-FOLD TEST.**

 Explain the primacy of the control test in employer-employee relationship.

- ☐ Absent the power to control the employee with respect to the means and methods of accomplishing his work, there is no employer-employee relationship between the parties. (Continental Marble vs NLRC, 1988)

 Discuss what sort of control is required in order to establish an employer-employee relationship.

- ☐ Not all control exercised by the employer will automatically convert a relationship into one of an employer-employee relation. In order to be considered in declaring the existence of an employer-employee relationship, the control has to be on the **manner of doing work**. Control over aspects outside of the means and methods of work (dress code, output quota, time and place of production) are not indicative of employer-employee relationship. (Zanote Shoes vs NLRC, 1995)

Manggagawa sa
Komunikasyon ng
Pilipinas vs. PLDT;
PLDT vs. Bello III; Bello III
vs. PLDT
GR Nos. 244695, 244752,
245294, February 14, 2024



- ❑ “Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.” (citing Orozco vs CA)

TWO-TIERED TEST:

B. Dependency Test

Sevilla vs CA (April 15, 1988);

Francisco vs NLRC (August 31, 2006)

- ❑ “In this jurisdiction, there has been no uniform test to determine the existence of an employer-employee relation. In general, we have relied on the so-called right of control test, where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such end. Subsequently, however, we (SC) have considered, **in addition to the standard of right-of-control, the existing economic conditions prevailing between the parties**, like the inclusion of the employee in the payrolls, in determining the existence of an employer-employee relationship.” (Sevilla case)
-

TWO-TIERED TEST:

Sevilla vs CA (April
15, 1988);
Francisco vs NLRC
(August 31, 2006)

- ❑ “The better approach would therefore be to adopt a two-tiered test involving: (1) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and (2) the underlying economic realities of the activity or relationship.
- ❑ This two-tiered test would provide us (SC) with a framework of analysis, which would take into consideration the totality of circumstances surrounding the true nature of the relationship between the parties. This is especially appropriate in this case where there is no written agreement or terms of reference to base the relationship on; and due to the complexity of the relationship based on the various positions and responsibilities given to the worker over the period of the latter's employment.”
(Francisco case)

TWO-TIERED TEST:

Sevilla vs CA (April
15, 1988);
Francisco vs NLRC
(August 31, 2006)

- ❑ Thus, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity, such as: (1) the extent to which the services performed are an **integral part of the employer's business**; (2) the extent of the **worker's investment** in equipment and facilities; (3) the **nature and degree of control** exercised by the employer; (4) the **worker's opportunity for profit and loss**; (5) the **amount of initiative, skill, judgment or foresight** required for the success of the claimed independent enterprise; (6) the **permanency and duration of the relationship** between the worker and the employer; and (7) the **degree of dependency of the worker** upon the employer for his continued employment in that line of business.” (Francisco case)

Sevilla vs CA (April
15, 1988);
Francisco vs NLRC
(August 31, 2006)

- ❑ “The proper standard of economic dependence is **whether the worker is dependent on the alleged employer for his continued employment in that line of business**. In the United States, the touchstone of economic reality in analyzing possible employment relationships for purposes of the Federal Labor Standards Act is dependency. By analogy, the benchmark of economic reality in analyzing possible employment relationships for purposes of the Labor Code ought to be the **economic dependence of the worker on his employer.**” (Francisco case)

ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

Ditiangkin, et.al. vs. Lazada E-Services Phils., Inc.
GR No. 246892, September 21, 2022

“To determine the existence of an employer-employee relationship, this Court employs a two-tiered test: the four-fold test and the economic dependence test.



When the control test is insufficient, the economic realities of the employment are considered to get a comprehensive assessment of the true classification of the worker.”

ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Ditiangkin, et.al. vs.
Lazada E-Services
Phils., Inc.**

“In Francisco v. National Labor Relations Commission, this Court explained the import of this test:

Thus, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity, such as: (1) the extent to which the services performed are an integral part of the employer's business; (2) the extent of the worker's investment in equipment and facilities; (3) the nature and degree of control exercised by the employer; (4) the worker's opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.”



ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Ditiangkin, et.al. vs.
Lazada E-Services
Phils., Inc.**

“When the status of the employment is in dispute, the employer bears the burden to prove that the person whose service it pays for is an independent contractor rather than a regular employee with or without fixed terms.”



ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

Ditiangkin, et.al. vs. Lazada E-Services Phils., Inc.



Contrary to respondents' assertions, petitioners satisfy both the four-fold and economic dependence tests.

Here, the four factors are present. First, petitioners are directly employed by respondent Lazada as evidenced by the Contracts they signed. Petitioner's former employer, RGSERVE, Inc., is not a party to the Contract with respondent Lazada. Second, as indicated in the Contract, petitioners receive their salaries from respondent Lazada. Petitioners are paid by respondent Lazada the amount of P1,200.00 for each day of service. Third, respondent Lazada has the power to dismiss petitioners. In their contract, respondents can immediately terminate the agreement if there is a breach of material provisions of the Contract. Lastly, respondent Lazada has control over the means and methods of the performance of petitioners' work.

ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Ditiangkin, et.al. vs.
Lazada E-Services
Phils., Inc.**



“This is explicit in their agreement which states:

2. Duties. Contractor, as an Independent Contractor, agrees to provide and to make itself available to provide, services ("Services") as a logistics and delivery services provider to the Company during **such reasonable hours and at such times as the Company may from time to time request. The method by which Contractor is to perform such Services shall be as instructed by, and within the discretion and control of the Company.** In performing Services under this agreement, Contractor agrees that it shall use diligent efforts and professional skills and judgment. (Emphasis supplied)”

ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Ditiangkin, et.al. vs.
Lazada E-Services
Phils., Inc.**

“This is also reflected in the way petitioners' work is carried out. Respondent Lazada requires the accomplishment of a **route sheet which keeps track of the arrival, departure, and unloading time of the items**. Petitioners shoulder a penalty of P500.00 if an item is lost on top of its actual value. Petitioners were also **required to submit trip tickets and incident reports** to respondent.”



ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Ditiangkin, et.al. vs.
Lazada E-Services
Phils., Inc.**

“Even if we consider these instructions as mere guidelines, the circumstances of the whole economic activity between petitioners and respondents confirm the existence of an employer-employee relationship.

The services performed by petitioners are integral to respondents' business. Respondents insist that the delivery of items is only incidental to their business as they are mainly an online platform where sellers and buyers transact. However, the delivery of items is clearly integrated in the services offered by respondents. That respondents could have left the delivery of the goods to the sellers and buyers is of no moment because this is evidently not the business model they are implementing.”



ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Ditiangkin, et.al. vs.
Lazada E-Services
Phils., Inc.**



“In carrying out their business, they are not merely a platform where parties can transact; they also offer the delivery of the items from the sellers to the buyers. The delivery eases the transaction between the sellers and buyers and is an integral part of respondent Lazada's business. Further, respondent Lazada admitted that it has different route managers to supervise the delivery of the products from the sellers to the buyers. Thus, it has taken steps to facilitate not only the transaction of the seller and buyer in the online platform but also the delivery of the items.”

ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Ditiangkin, et.al. vs.
Lazada E-Services
Phils., Inc.**



“Further, petitioners have invested in equipment to be engaged by respondents. Particularly, petitioners are required by respondents to use their own motor vehicles and other equipment and supplies in the delivery of the items. Moreover, petitioners had no control over their own profit or loss because they were paid a set daily wage. Petitioners also had no control over their own time and they cannot offer their service to other companies as respondents can demand their presence from time to time.”

ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Ditiangkin, et.al. vs.
Lazada E-Services
Phils., Inc.**



“More importantly, petitioners are dependent on respondents for their continued employment in this line of business. As the facts reveal, petitioners have been previously engaged by a third-party contractor to provide services for respondents. This time, petitioners were directly hired by respondents. This demonstrates that petitioners have been economically dependent on respondents for their livelihood.”

ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Borromeo vs. Lazada
E-Services Phils.,
Inc., GR No. 265610,
April 3, 2024**



In the same vein, the four factors determinative of employer-employee relationship are likewise present here. First, Lazada directly employed petitioners, albeit via an Independent Contractor Agreement; second, Lazada pays them PHP 1,200.00 per day of service rendered; third, Lazada holds the power to dismiss petitioners, as in fact it did; and fourth, Lazada controls the means and methods of the performance of petitioners' work.

ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Borromeo vs. Lazada
E-Services Phils.,
Inc., GR No. 265610,
April 3, 2024**



“This element of control is shown by the fact that petitioners are required to log in the route sheet their arrival time, loading time, and departure time to allow Lazada to monitor their movement as well as how they conduct their services. Aside from these, petitioners are also required to report their arrival at every store where they are tasked to pick up items to the Lazada monitoring supervisor and route monitoring staff in real time so that they can scan the items. Remarkably, the means of logging the data of the items picked up is also dictated by Lazada as it is the company that provided the petitioners the gadgets and equipment for scanning the items, namely, mobile phone scanner, power bank, and postpaid, as evidenced by the Accountability Forms submitted.”

ARE DELIVERY RIDERS EMPLOYEES OF ONLINE SELLING PLATFORMS EMPLOYING THEM?

**Borromeo vs. Lazada
E-Services Phils.,
Inc., GR No. 265610,
April 3, 2024**



Further, petitioners' Agreement identically states under Annex I thereof that "the Services provided will be evaluated on a monthly and quarterly basis. In the event that the Contractor cannot meet the standards set in relation to the Services, the Client shall have the right to terminate this agreement immediately by providing written notice." All these circumstances show that Lazada exercises control over petitioners' means and methods of rendering their service.

Aside from the four-fold test, petitioners were also able to satisfy the Economic Reality Test.

THINGS TO REMEMBER:

- ❑ Existence of an employer-employee relationship – question of law; stipulations of the parties NOT controlling;
- ❑ He who makes a positive allegation has the burden to prove it: employee if he asserts to be an employee; employer if it asserts other relations with the complainant.
- ❑ No two cases involving employer-employee relations are the same; each is resolved based on its own factual milieu.
- ❑ Two-tiered test: Four-fold test is a judicial creation not by any statutory establishment; this is why principles of burden of proof and burden of evidence are observed in accordance with the ROE. Economic dependence test if the four-fold test is not sufficient to make a finding of the existence of an employer-employee relationship.



**Bar Exam
Question
(2017)**

Dr. Crisostomo entered into a retainer agreement with AB Hotel and Resort whereby he would provide medical services to the guests and employees of AB Hotel and Resort, which, in turn, would provide the clinic premises and medical supplies. He received a monthly retainer fee of ₱60,000.00, plus a 70% share in the service charges from AB Hotel and Resort's guests availing themselves of the clinic's services. The clinic employed nurses and allied staff, whose salaries, SSS contributions and other benefits he undertook to pay. AB Hotel and Resort issued directives giving instructions to him on the replenishment of emergency kits and forbidding the clinic staff from receiving cash payments from the guests. In time, the nurses and the clinic staff claimed entitlement to rights as regular employees of AB Hotel and Resort, but the latter refused on the ground that Dr. Crisostomo, who was their employer, was an independent contractor. Rule, with reasons. (4%)

**Bar Exam
Question
(2017)**

Ans: There is no employer-employee relationship between the clinic staff and AB hotel and Resort. Applying the four-fold test, firstly, the clinic staff were not hired by AB Hotel and Resort but by Dr. Crisostomo; secondly, it is Dr. Crisostomo who pays the wages of the clinic staff and not AB Hotel and Resort; thirdly, AB Hotel and Resort does not enjoy the power to dismiss the clinic staff; lastly, AB Hotel and Resort does not control the means and methods by which the clinic staff perform their work. The directive by AB Hotel and Resort to Dr. Crisostomo to replenish emergency kits and prohibits the clinic staff to receive cash payments from guests is not a control over the means and methods of work by the staff. The directive is merely a guideline towards the achievement of the mutually desired result.

On the other hand, Dr. Crisostomo is an independent contractor. He is not paid wages/salary but a monthly retainer fee. Moreover, the premises provided by AB Hotel and Resort for the clinic is a necessity because as an employer, the law requires it to provide its employees emergency medical and dental services.

**Bar Exam
Question
(2016)**

Matibay Shoe and Repair Store, as added service to its customers, devoted a portion of its store to a shoe shine stand. The shoe shine boys were tested for their skill before being allowed to work and given ID cards. They were told to be present from the opening of the store up to closing time and were required to follow the company rules on cleanliness and decorum. They bought their own shoe shine boxes, polish, and rags. The boys were paid by their customers for their services but the payment is coursed through the store's cashier, who pays them before closing time. They were not supervised in their work by any managerial employee of the store but for a valid complaint by a customer or for violation of any company rule, they can be refused admission to the store. Were the boys employees of the store? Explain. (5%)

Bar Exam Question (2016)

Ans: The boys are employees of the store. By applying the four-fold test, there exists an employer-employee relationship between the shoe shine boys and the shoe store. Firstly, the store hired and engaged the shoe shine boys to perform a specific work (e.g. shine the shoes of the store's customers); secondly, the shoe store, to compensate the work performed, pays the wages of the shoe shine boys before closing time; thirdly, the power of the store to dismiss can be seen from the fact that for a valid complaint by a customer of for any violation of company rule, the shoe shine boys could be refused admission to the store; lastly, the power of the store to control the means and methods by which the shoe-shine boys perform their work can be gleaned from the following: (a) they worked in the store premises; (b) they were tested for their skill before being allowed to work; (c) they were required to report daily and observe definite hours of work; (d) they were required to follow the company rules on cleanliness and decorum; (e) their wages are paid by the store and not directly by the customers; (f) the store can dismiss them for a valid customer complaint or violation of company rules.

Bar Exam Question (2015)

Ador is a student working on his master's degree in horticulture. To make ends meet, he takes on jobs to come up with flower arrangements for friends. His neighbor, Nico, is about to get married to Lucia and needs a floral arranger. Ador offers his services and Nico agrees. They shake hands on it, agreeing that Nico will pay Ador P20,000.00 for his services but that Ador will take care of everything. As Ador sets about to decorate the venue, Nico changes all of Ador's plans and ends up designing the arrangements himself with Ador simply executing Nico's instructions.

- a. Is there an employer-employee relationship between Nico and Ador? (4%)
- b. Will Nico need to register Ador with the Social Security System (SSS)? (2%)

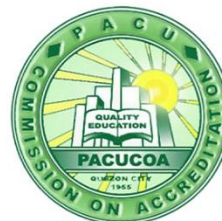
Bar Exam Question (2022)

Kotse Corp. operates a mobile phone application “Kotse PH” that allows users to book private cars on demand to their destination, and matches them with nearby available “driver-partners.” The destination is only made known to the driver-partners when the users have boarded the vehicle. Kotse Corp. has an accreditation process for its driver-partners who are required to submit bio-data, professional driver’s license, and negative drug test result, as well as pass an exam on road safety. After accreditation, the driver-partners are free to choose their own work hours but Kotse Corp. requires them to complete at least a total 40 hours per week or else the driver’s share in the fare will be reduced. The fare is determined by the application software depending on distance, time, and the demand for rides. The fare is paid by the user or passenger through the application and Kotse Corp. remits the driver’s share of 75% of the fare every two weeks. Kotse Corp. keeps 25% as its commission. The driver-partners are evaluated by the users or passengers through a five-star rating system. Driver-partners who consistently have an average rating of two stars or below may be removed from Kotse Corp.’s roster of driver-partners. The driver-partners use their own vehicles, pay for fuel, and secure their own vehicle insurance. Is there an employer-employee relationship between Kotse Corp. and its driver-partners? Explain briefly. (5 points)



THANK
YOU

📍 General Luna Road, Baguio City, Philippines 2600
☎ (074)442-3306
🌐 ub@e.ubaguio.edu
🌐 www.ubaguio.edu



VALID JOB CONTRACTING AND LABOR-ONLY CONTRACTING

PART FOUR. LABOR LAW REVIEW

Ditiangkin vs Lazada;
Borromeo vs. Lazada cases



- ❑ “When the status of the employment is in dispute, the employer bears the burden to prove that the person whose service it pays for is an independent contractor rather than a regular employee with or without fixed term.”

ART. 106, Labor Code

- ❑ “Whenever an employer enters into a contract with another person for the performance of the former’s work, the employees of the contractor and of the latter’s subcontractor, if any shall be paid in accordance with the provisions of this Code.” (1st paragraph)

- ❑ “The Secretary of Labor and Employment may, by appropriate regulations, **restrict or prohibit** the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.” (3rd paragraph)

Martinez, et.al. vs. San Miguel
Foods Inc., 904 Phil. 475 (2021)



**SAN MIGUEL
CORPORATION**

- ❑ “As a general rule, a contractor is presumed to be a labor-only contractor, unless such contractor overcomes the burden of proving that it has substantial capital, investment, tools, and the like. As a regulated industry, the law requires registration of labor contractors with the DOLE. Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting. Section 5 in relation to Section 11 of DO 18-0234 governed the registration of labor contractors.”
- ❑ NOTE: Sec. 14 of DO 174-2017 – new IRR of Articles 106 to 109 of the Labor Code, except contracting and subcontracting in the Construction industry under the licensing authority of PCAB (DO 19-93)

San Miguel Corp. Employees
Union-PTGWO VS. Hon.
Bersamira, 264 Phil. 875 (1990)



**SAN MIGUEL
CORPORATION**

- “We recognize the proprietary right of SanMig to exercise an inherent management prerogative and its best business judgment to determine whether it should contract out the performance of some of its work to independent contractors. However, the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law (Section 3, Article XIII, 1987 Constitution) equally call for recognition and protection. Those contending interests must be placed in proper perspective and equilibrium.”

VALID JOB CONTRACTING: NON-CORE BUSINESS ACTIVITIES ONLY?

Aliviado vs. Procter & Gamble Phils., Inc., 628 Phil. 469 (2010), cited in the Manggagawa vs PLDT case

 Is legitimate contracting out limited to the employer's non-core business activities only?

- ❑ “Clearly, the law and its implementing rules allow contracting arrangements for the performance of specific jobs, works or services. Indeed, it is management prerogative to farm out any of its activities, regardless of whether such activity is peripheral or core in nature. However, in order for such outsourcing to be valid, it must be made to an independent contractor because the current labor rules expressly prohibit labor-only contracting.”

Meralco VS. Quisumbing, 361
Phil. 845 (1999)



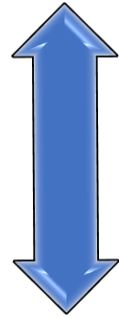
- ❑ “x x x contracting out is not unlimited; rather, it is a prerogative that management enjoys subject to well-defined legal limitations. x x x, the company can determine in its best business judgment whether it should contract out the performance of some of its work for as long as the employer is motivated by good faith, and the contracting out must not have been resorted to circumvent the law or must not have been the result of malicious or arbitrary action.”
- ❑ “x x x a balance already exists in the parties’ relationship with respect to contracting out; x x x the Secretary’s added requirement only introduces an imbalance in the parties’ collective bargaining relationship on a matter that the law already sufficiently regulates.”

DOLE D.O. No. 174-2017

- ❑ **Contracting or subcontracting** – refers to an arrangement whereby a principal agrees to farm out to a contractor the performance or completion of a specific job or work within a definite or predetermined period, regardless of whether such job or work is to be performed or completed within or outside the premises of the principal.
- ❑ **Presumption of labor-only contracting** – All contractors shall register with the DOLE-RO where they principally operates. Failure to do so creates a presumption that they engaged in labor-only contracting. (Sec. 14)



TRILATERAL EMPLOYMENT RELATIONSHIP



- a. SERVICE CONTRACT – the agreement between the Principal and the Contractor identifying the terms and conditions of the project/work/activity farmed out
- b. EMPLOYMENT CONTRACT – the agreement between the independent contractor and its workers

TRILATERAL EMPLOYMENT RELATIONSHIP

- Validity period of Certificate – the contractor shall be deemed registered only on the date of issuance of its Certificate of Registration. The CoR shall be valid for 2 years unless cancelled after due process. (Sec. 20)
 - Applicability of Certificate – If the contractor operates outside the region where it is registered, it shall submit a duly authenticated copy of its CoR to the DOLE-RO where it seeks to operate together with its Service Agreements in the area for monitoring purposes. (Sec. 20)
-

San Miguel Corp. vs
Semillano, et.al., 637
Phil. 115 (2010)



**SAN MIGUEL
CORPORATION**

- ❑ “Petitioner cannot rely either on AMPCO's Certificate of Registration as an Independent Contractor issued by the proper Regional Office of the DOLE to prove its claim. It is not conclusive evidence of such status. The fact of registration simply prevents the legal presumption of being a mere labor-only contractor from arising. In distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered.”

WHO IS AN INDEPENDENT CONTRACTOR?



SAJ Leonen in *Ditiangkin, et al. vs Lazada E-Services Phils, Inc. case*

- ❑ [O]ne who carries on a distinct and independent business and undertakes to perform the job, work, or service on its own account and under one's own responsibility according to one's own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof.”
- ❑ Our laws and jurisprudence recognize two types of contractors: legitimate job contractors and independent contractors who possess unique skills and talent.

TYPES OF INDEPENDENT CONTRACTOR:



SAJ Leonen in *Ditiangkin, et al. vs Lazada E-Services Phils, Inc. case*

- ❑ “The second type of independent contractor consists of individuals who possess unique skills and talents which set them apart from ordinary employees and whose means and methods of work are free from the control of the employer.[Examples can include a columnist who was hired because of her talent, skill, experience, and feminist standpoint, a basketball referee who has special skills and independent judgment, and a masiador or sentenciador who had expertise in cockfight gambling. In these instances, there is no trilateral relationship but a bilateral relationship because the independent contractors are directly engaged by the principal.
- ❑ With this type of contracting, there is no employer-employee relationship between an independent contractor and the principal, and their contracts are governed by the Civil Code.”

CONDITIONS OF A VALID CONTRACTING OR SUBCONTRACTING ARRANGEMENT:

- a. The contractor or subcontractor is engaged in a **distinct and independent business and undertakes to perform the job or work on its own responsibility**, according to its **own manner and method**;
 - b. The contractor or subcontractor has **substantial capital to carry out the job farmed out** by the principal on his account, manner and method, **investment** in the form of tools, equipment, machinery and supervision;
 - c. In performing the work farmed out, the contractor or subcontractor is **free from the control and/or direction** of the principal in all matters connected with the performance of the work except as to the result thereto; and
 - d. The **Service Agreement** ensures compliance with all the rights and benefits for all the employees of the contractor or subcontractor under the labor laws.
-

DC No.
01-17

DO 174-2017 NOT APPLICABLE TO THE FOLLOWING:

1. Business process outsourcing
 2. Knowledge process outsourcing
 3. Legal process outsourcing
 4. IT Infrastructure outsourcing
 5. Application development
 6. Hardware and/or software support
 7. Medical transcription
 8. Animation Services
 9. Back office operations/support
 10. Employment of workers by PCAB-registered construction companies (governed by DO No. 19 s. 1993; DO 13 s. 1998)
 11. Security services (governed by DO 150 s. 2016)
 12. Civil law contractual relationships (sale, lease, mortgage, etc)
 13. Professionals, or individual with unique skills and talents who himself or herself who himself or herself performs the job or work for the principal
-

Solidary liability between the principal and the legitimate contractor

**Art. 106
(2nd
paragraph):**

“In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.”

Art. 107:

“The provisions of the immediately preceding article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.”

INDIRECT EMPLOYER – PAYMENT OF MONEY CLAIMS

Rosewood Processing, Inc. vs
NLRC, 352 Phil. 1013 (1998)

 Is the principal excused from the solidary liability after it had paid the contractor the contract price? Is there a limit to the principal's solidary liability in relation to the unpaid wages of the contractor's employees?

- ☐ In both articles, the employer and indirect employer cannot escape their solidary obligation with the contractor or subcontractor even if it has already paid the workers' wage rates in accordance with the stipulation in the contract.
- ☐ However, the solidary liability of the principal with the contractor under Arts. 106 and 107 is limited only to unpaid wages of the contractor's/subcontractor's workers to the extent of the work performed under the contract or for the work, job, or project stipulated in the contract of services. Thus, the principal is not liable for unpaid wages of the contractor's workers before or after their assignment to the principal's business or project.

Rosewood Processing, Inc.
vs NLRC, 352 Phil. 1013
(1998)

- ❑ Articles 106, 107, and 109 hold an employer jointly and severally liable with its contractor or subcontractor, as if it were the direct employer. The liability under these articles, however, does not extend to the payment of **backwages and separation pay** of employees who were constructively or illegally dismissed by the contractor where it is not shown that the **principal/indirect employer had conspired** with the contractor in effecting the illegal dismissal.

REMEDY OF THE PRINCIPAL AGAINST THE CONTRACTOR

Jaguar Security and
Investigation Agency vs
Sales, et al., 575 Phil. 316
(2008)

 The LA found the contractor (Security Agency) liable for certain money claims to its employees and dismissed for lack of jurisdiction the contractor's cross claim against the principal to whom the employees were assigned. Is the LA correct?

- ☐ A claim for reimbursement by the contractor against the principal/indirect employer arising from the obligation created under Arts. 106-109 is considered as an ordinary civil suit which is within the jurisdiction of the regular courts, not the NLRC.
- ☐ The right of action for reimbursement under Articles 106 to 109 of the Labor Code arises only when the contractor has **actually** paid its employees the adjudged liability. Prior to such actual payment, the contractor has no cause of action against the principal.

NFA vs Masada Security
Agency, GR No. 163448,
March 8, 2005

 If there is a mandated minimum wage increase, does it include a corresponding obligation of the principal to adjust the contract price of its contractor?

- ❑ The term “wage” as used in Section 6 of RA No. 6727 (Wage Rationalization Act) pertains only to no other than the “statutory minimum wage” which is defined under the Rules Implementing RA No. 6727 as the lowest wage rate fixed by law that an employer can pay his worker. The basis thereof under Section 7 of the same Rules is the normal working hours, which shall not exceed eight hours a day. Hence, the prescribed increases of the additional liability to be borne by the principal under Section 6 of RA No. 6727 is the **increment of amount added to the remuneration of an employee for an eight-hour work.**

LABOR-ONLY CONTRACTING

**Secs. 3h and 5,
D.O. 174-17**

☐ Refers to arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job or work for a principal, and subject to the following elements:

- a. i. The contractor or subcontractor does not have substantial capital; or
ii. The contractor or subcontractor does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others; and
iii. The contractor's or subcontractor's employees recruited and placed are performing activities which are directly related to the main business operation of the principal.

OR

- b. The contractor or subcontractor does not exercise the right to control over the performance of the work of the employee.

Servflex, Inc. vs Urera,
921 Phil. 1007 (2022)

 If the contractor is duly registered with the DOLE, will this automatically prove that it is not a labor-only contractor?

- ❑ A certificate of registration with the DOLE is not a conclusive proof of legitimacy as a manpower provider. The **certificate only prevents the presumption of labor-only contracting from arising**. It is not a conclusive proof that an entity or person is indeed a legitimate contractor.

Section 7, DO 174-17

- ❑ “In the event that there is a finding that the contractor or subcontractor is engaged in labor-only contracting under Section 5 and other illicit forms of employment arrangements under Section 6 of these Rules, the principal **shall be deemed the direct employer** of the contractor or subcontractor’s employees.”

Art. 106, (third paragraph, last sentence) Labor Code

- ❑ “In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent **as if the latter were directly employed** by him.”

Section 7, DO 174-17

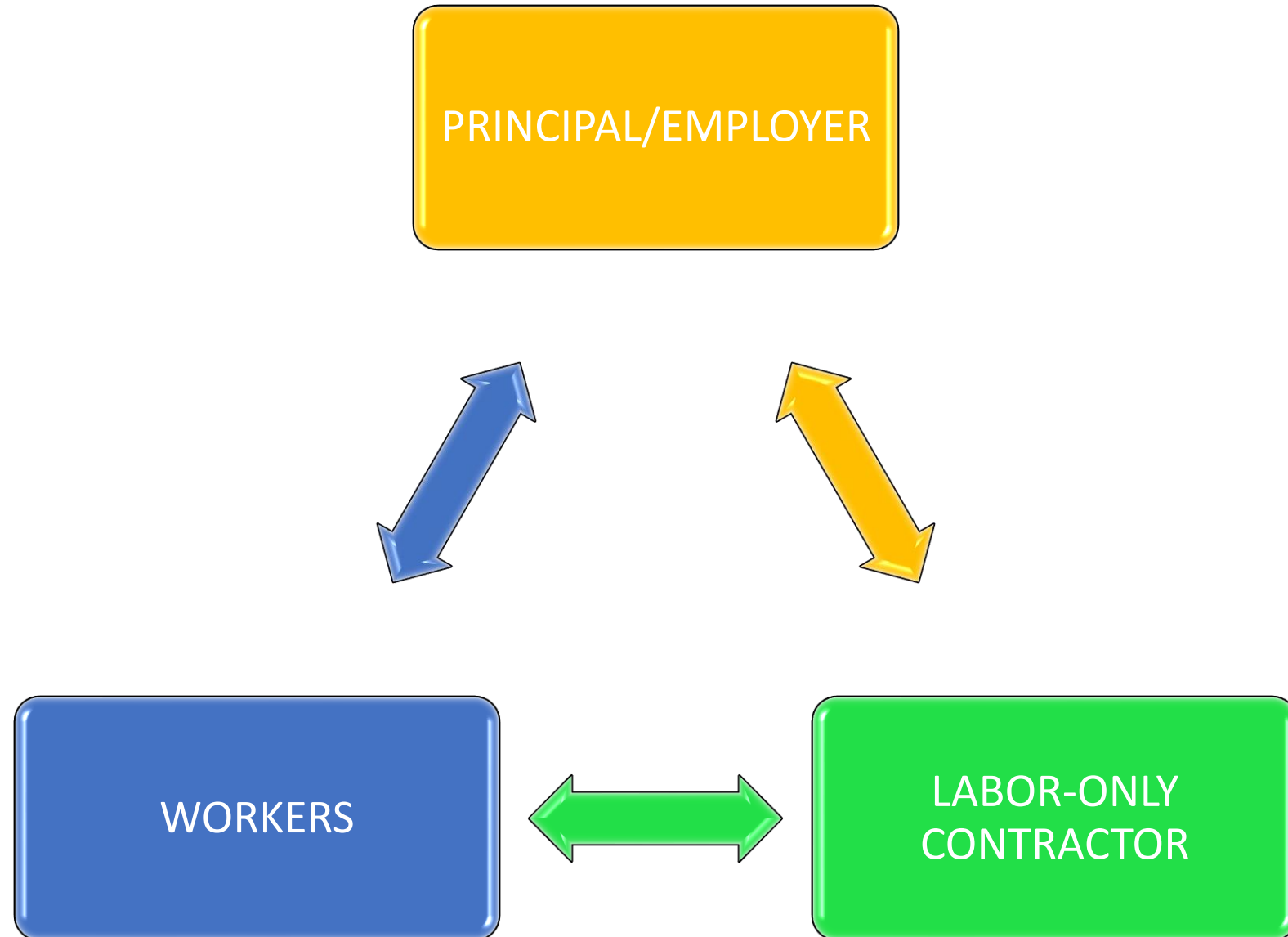
- ❑ “In the event that there is a finding that the contractor or subcontractor is engaged in labor-only contracting under Section 5 and other illicit forms of employment arrangements under Section 6 of these Rules, the principal **shall be deemed the direct employer** of the contractor or subcontractor’s employees.”

Art. 109

- ❑ “The provision of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the manner and extent of their civil liability under this Chapter, they shall be considered as direct employers.”

TRILATERAL EMPLOYMENT RELATIONSHIP

DO No.
174-2017



OTHER FORMS OF ILLICIT EMPLOYMENT ARRANGEMENTS:

Sec. 6, DO No. 174-
2017

1. When the principal farms out to a “Cabo”
2. Contracting out of job or work through an in-house agency
3. Contracting out of job or work through an in-house cooperative which merely supplies workers to the principal
4. Contracting out of a job or work by reason of a strike or lockout whether actual or imminent
5. Contracting out of a job or work being performed by union members and such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization as provided in Article 259 of the Labor Code, as amended
6. **Requiring contractor's/subcontractor's employees to perform functions which are currently being performed by the regular employees of the principal;**

OTHER FORMS OF ILLICIT EMPLOYMENT ARRANGEMENTS:

Sec. 6, DO No. 174-
2017

7. Requiring the contractor's/subcontractor's employees to sign, as a precondition to employment or continued employment, an antedated resignation letter, a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal or contractor from liability as to payment of future claims; or require the employee to become member of a cooperative;
8. Repeated hiring by the contractor/subcontractor of employees under an employment contract of short duration;
9. Requiring employees under a contracting/subcontracting arrangement to sign a contract fixing the period of employment to a term shorter than the term of the Service Agreement, unless the contract is divisible into phases for which substantially different skills are required and this is made known to the employee at the time of engagement
10. Such other practices, schemes or employment arrangements designed to circumvent the right of workers to security of tenure.

RIGHTS OF THE WORKER: LABOR STANDARDS

Other illicit forms of employment arrangements – see Section 6
DO 174-17

“Cabo” – refers to a person or group of persons or to a labor group which, under the guise of a labor organization, cooperative or any entity, supplies workers to an employer, with or without any monetary or other consideration, whether in the capacity of an agent of the employer or as an ostensible independent contractor.

PERMISSIBLE CONTRACTING OR SUBCONTRACTING ARRANGEMENTS:

❑ Sec. 8, D.O. No. 174-17

1. The contractor or subcontractor is engaged in a distinct and independent business and undertakes to perform the job or work on its own responsibility, according to its own manner or method;
2. The contractor or subcontractor has substantial capital to carry out the job farmed out by the principal on his account, manner and method, investment in the form of tools, equipment, machinery and supervision;
3. In performing the work farmed out, the contractor or subcontractor is free from the control and/or direction of the principal in all matters connected with the performance of the work except as to the result thereto; and
4. The Service Agreement ensures compliance with all the rights and benefits for all the employees of the contractor or subcontractor under the labor laws.

NOW WE TRY TO APPLY THE KNOWLEDGE:

Star Crafts is a lantern maker based in Pampanga. It supplies Christmas lanterns to stores in Luzon, Metro Manila, and parts of Visayas, with the months of August to November being the busiest months. Its factory employs a workforce of 2,000 workers who make different lanterns daily for the whole year. Because of increased demand, Star Crafts entered into a contractual arrangement with People Plus, a service contractor, to supply the former with 100 workers for only 4 months, August to November, at a rate different from what they pay their regular employees. The contract with People Plus stipulates that all equipment and raw materials will be supplied by Star Crafts with the express condition that the workers cannot take any of the designs home and must complete their tasks within the premises of Star Crafts.

Is there an employer-employee relationship between Star Crafts and the 100 workers from People Plus? (2015 Bar Question)

NOW WE TRY TO APPLY THE KNOWLEDGE:

The labor sector has been loudly agitating for the end of labor-only contracting, as distinguished from job contracting. Explain these two kinds of labor contracting, and give the effect of a finding that one is a labor-only contractor. Explain your answers. (2017 Bar Question)

NOW WE TRY TO APPLY THE KNOWLEDGE:

Eduardo owns a licensed company that supplies janitorial and messengerial aides to various businesses, including Gloria Restaurant (GR). The tools and supplies used by the janitors and messengers are supplied by the clients who also train the workers and monitor their performance. Their minimum wages are paid by the clients through Eduardo. After two years of working in GR, the janitors and messengers joined the union there to receive the same benefits as the directly hired employees of GR. **Can the janitors and messengers legally join the union? Discuss.** (2023 Bar Question)

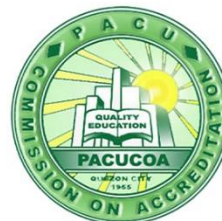
NOW WE TRY TO APPLY THE KNOWLEDGE:

Linis Manpower, Inc. (LMI) had provided janitorial services to the Philippine Overseas Employment Administration (POEA) since March 2009. Its service contract was renewed every three months. However, in the bidding held in June 2012, LMI was disqualified and excluded. In 2013, six janitors of LMI formerly assigned at POEA filed a complaint for underpayment of wages. Both LMI and POEA were impleaded as respondents. **Should POEA, a government agency subject to budgetary appropriations from Congress, be held liable solidarily with LMI for the payment of salary differentials due to the complainant? Cite the legal basis of your answer. (2014 Bar Question)**



THANK
YOU

📍 General Luna Road, Baguio City, Philippines 2600
☎ (074)442-3306
🌐 ub@e.ubaguio.edu
🌐 www.ubaguio.edu



CONDITIONS OF EMPLOYMENT

BOOK III: Arts. 82 – 161

PART V LABOR LAW REVIEW

CONDITIONS OF EMPLOYMENT



1. Minimum terms of employment deemed written in every employment contract.
2. Employers and employees are free to negotiate on terms and conditions higher or better than those provided by law – subject to the non-diminution rule.
3. Subject only to the conditions provided by the Labor Code.

1. Employer – employee relationship
2. Not excluded by the Labor Code under Articles 82 to 161
3. Within the scope of application of each benefit

A person wearing a dark blue suit, light blue shirt, and red tie is pointing their right index finger towards the word "EMPLOYEE". The word is written in large, white, sans-serif capital letters on a semi-transparent blue rectangular background. The background of the entire slide is a blurred image of a cityscape.

EMPLOYEE

EXCLUDED UNDER ARTS. 82 TO 131:

- a) Government employees, except GOCCs without original charter.
- b) Managerial employees, including officers and members of the managerial staff.
- c) Domestic helpers and persons in the personal service of another.
- d) Employees paid purely on commission basis, pakyaw, piece-rate, by result, regardless of the actual number of hours worked.
- e) Non-agricultural field personnel whose main functions are performed outside of the employer's premises and whose actual working hours cannot be determined with reasonable certainty.
- f) Members of the employer's family who are dependent on him for support.



EXCLUDED UNDER ARTS. 82 TO 131:

MANAGERIAL EMPLOYEES (Rule I Sec. 2, IRR of Book III):

- a. Primary duty is management
- b. Supervising the work of 2 or more employees therein;
- c. Authority to hire and fire employees of lower rank; or their recommendation and suggestion as to the hiring and firing, promotion or any other change of status of other employees are given a particular weight.



MANAGERIAL EMPLOYEES (Art. 219[m]):
“One who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, layoff recall, discharge, assign or discipline employees.”

SUPERVISORY EMPLOYEES (Art. 219[m]):
“Those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment.”

OFFICERS AND MEMBERS OF THE MANAGERIAL STAFF (Rule I Sec. 2, IRR of Book III):

- a. Primary duty – directly related to management policies of their employer;
- b. Discretion and independent judgment;
- c. Regularly and directly assist a proprietor or managerial employee in the management of the establishment or any department thereof, Exercise work under general supervision along specialized or technical lines requiring special training, experience, or knowledge; execute work under general supervision special assignment or tasks;
- d. Do not devote more than 20% of their working hours in a workweek to activities not directly and closely related to the performance of work described in paragraphs (a) (b) and (c) above



Supervisory employees under Art. 219(m) fall under the category of “officers and members of the managerial staff. (National Sugar Refineries vs NLRC, GR No. 101761, March 24, 1993)

EXCLUDED UNDER ARTS. 82 TO 131:

EXAMPLES OF MANAGERIAL AND SUPERVISORY POSITIONS:

1. Supervising engineer as provided by his job description (Peñaranda vs Baganga Plywood, GR No. 159577, May 3, 2006)
2. Route managers of soda company (Pepsi Cola Supervisory Union vs Laguesma, March 25, 1998, En Banc)
3. Personnel Superintendent is a supervisory employee where it appears that he did not have the power to hire, transfer, terminate or discipline erring workers (Cathay Pacific Steel, et. al. vs CA, August 30, 2006)



EXCLUDED UNDER ARTS. 82 TO 131:



IN DETERMINING WHETHER AN EMPLOYEE IS A MANAGERIAL, SUPERVISORY OR RANK AND FILE, the teaching in *National Steel Corporation vs Laguesma*, GR No. 103743, January 29, 1996 is that:

"What is essential is the nature of the employee's function and not the nomenclature or title given to the job which determines whether the employee has rank and file or managerial status, or whether he is a supervisory employee."

EXCLUDED UNDER ARTS. 82 TO 131:

NON-AGRICULTURAL FIELD PERSONNEL (Rule IV, Sec 1, IRR of Bk III):

- “Regularly perform their duty away from the principal or branch office or place of business of the employer whose actual hours in the field cannot be determined with reasonable certainty.”



“whose time and performance is unsupervised by the employer or his representative.” (Rule IV, Sec. 1, IRR Bk III)

NON-AGRICULTURAL FIELD PERSONNEL (Rule IV, Sec 1, IRR of Bk III):

- “Regularly perform their duty away from the principal or branch office or place of business of the employer whose actual hours in the field cannot be determined with reasonable certainty.”



“Fishermen under the supervision of the vessel’s patron or master during the duration of their work are not under the exclusion. (Mercidar Fishing Corp. vs NLRC, October 8, 1998)

EXCLUDED UNDER ARTS. 82 TO 131:

NON-AGRICULTURAL FIELD PERSONNEL (Rule IV, Sec 1, IRR of Bk III):

- “Regularly perform their duty away from the principal or branch office or place of business of the employer whose actual hours in the field cannot be determined with reasonable certainty.”



“Bus drivers and conductors whose actual work hours are monitored by the employer are not under this exclusion. (Autobus vs Bautista, May 16, 2005)”

DOMESTIC WORKER OR KASAMBAHAY (Sec. 3[d], IRR of RA No. 10361):

- “refers to any person engaged in domestic work within an employment relationship, whether on a live-in or live-out arrangement, such as, but not limited to, general househelp, “yaya”, cook, gardener, or laundry person, but shall exclude service providers, family drivers, children who are under foster family arrangement, or any person who performs domestic work only occasionally or sporadically and not on an occupational basis.”



HOURS WORKED (Art. 84; Rule 1, IRR Bk III)

a) All time during which an employee is required to be on duty or to be at a prescribed work place; and

b) All time during which an employee is suffered or permitted to work;

c) Rest periods of short duration during working hours shall be counted as hours worked.



PRINCIPLES IN DETERMINING HOURS WORKED:

1. All hours are hours worked which the employee is required to give to his employer, regardless of whether or not such hours are spent in productive labor or involve physical or mental exertion;
2. An employee need not leave the premises of the workplace in order that his rest period shall not be counted, it being enough that he stops working, may rest completely and may leave his workplace, to go elsewhere, whether within or outside the premises of his workplace;



3. If the work performed was necessary, or it benefited the employer, or the employee could not abandon his work at the end of his normal working hours because he had no replacement, all time spent for such work shall be considered hours worked, if the work was with the knowledge of his employer or immediate supervisor.
4. The time during which an employee is inactive by reason of interruptions in his work beyond his control shall be considered time either if the imminence of the resumption of work requires the employee's presence at the place of work or if the interval is too brief to be utilized effectively and gainfully in the employee's own interest.

PRINCIPLES IN DETERMINING HOURS WORKED:

1. *All hours are hours worked which the employee is required to give to his employer, regardless of whether or not such hours are spent in productive labor or involve physical or mental exertion;*

- Regular shift of the employee – all are considered hours worked; Required overtime, rest day, meal period, and holiday work.
- Working while sleeping – if sleep is subject to serious interruption or takes place under conditions substantially less desirable than would be likely to exist at the employee's home. It is not compensable if there is opportunity for comparatively uninterrupted sleep under fairly desirable conditions, even though the employee is required to remain on or near the employer's premises and must hold himself in readiness for a call to action employment.



PRINCIPLES IN DETERMINING HOURS WORKED:

2. *An employee need not leave the premises of the workplace in order that his rest period shall not be counted, it being enough that he stops working, may rest completely and may leave his workplace, to go elsewhere, whether within or outside the premises of his workplace;*

- ☐ Meal period – Art. 85 (if not less than 60 minutes) Except last paragraph of Art. 84 (short rest period)

National Development Company vs CIR GR No. L-15422, November 30, 1962

If work is continuous, uninterrupted, or unbroken, such that the employee cannot use the idle time to freely leave the workplace or rest completely, the meal period is considered working time for purposes of computing OVERTIME PAY.



PRINCIPLES IN DETERMINING HOURS WORKED:

2. *An employee need not leave the premises of the workplace in order that his rest period shall not be counted, it being enough that he stops working, may rest completely and may leave his workplace, to go elsewhere, whether within or outside the premises of his workplace;*

❑ Meal period – Art. 85 (if not less than 60 minutes) Except last paragraph of Art. 84 (short rest period)

Pan American World Airways System vs PAEA GR No. L – 16275, February 23, 1961

If during the so-called meal period, the mechanics were required to stand by for emergency work; that if they happened not to be available when called, they were reprimanded by the leadman; that as in fact it happened on many occasions, the mechanics had been called from their meals or told to hurry up eating to perform work during this period” such meal period is considered working time as compensable as overtime.

PRINCIPLES IN DETERMINING HOURS WORKED:

- 3. If the work performed was necessary, or it benefited the employer, or the employee could not abandon his work at the end of his normal working hours because he had no replacement, all time spent for such work shall be considered hours worked, if the work was with the knowledge of his employer or immediate supervisor.*

NWSA vs NWSA Consolidated Unions GR No. L-18939, August 31, 1964

“There is merit in the decision of respondent court that the method used by petitioner in offsetting the overtime with the undertime and at the same time charging said undertime to the accrued leave of the employee is unfair, for under such method the employee is made to pay twice for his undertime because his leave is reduced to that extent while he was made to pay for it with work beyond the regular working hours. The proper method should be to deduct the undertime from the accrued leave but pay the employee the overtime to which he is entitled. This method also obviates the irregular schedule that would result if the overtime should be set off against the undertime for that would place the schedule for working hours dependent on the employee.”

PRINCIPLES IN DETERMINING HOURS WORKED:

4. *The time during which an employee is inactive by reason of interruptions in his work beyond his control shall be considered time either if the imminence of the resumption of work requires the employee's presence at the place of work or if the interval is too brief to be utilized effectively and gainfully in the employee's own interest.*



University of Pangasinan Faculty Union vs. University of Pangasinan GR No. L-63122, February 20, 1984

- These semestral breaks are in the nature of work interruptions beyond the employees control.
- As such, these breaks cannot be considered as absences within the meaning of the law for which deductions may be made from monthly allowances. The "No work, no pay" principle does not apply in the instant case.
- Petitioners, in the case at bar, certainly do not, ad voluntatem, absent themselves during semestral breaks. Rather, they are constrained to take mandatory leave from work. For this they cannot be faulted nor can they be begrudged that which is due them under the law. (salary + ECOLA only)

PRINCIPLES IN DETERMINING HOURS WORKED:

4. *The time during which an employee is inactive by reason of interruptions in his work beyond his control shall be considered time either if the imminence of the resumption of work requires the employee's presence at the place of work or if the interval is too brief to be utilized effectively and gainfully in the employee's own interest.*

Jose Rizal College vs. NLRC GR No. L-65482, December 1, 1987

- Regular holidays specified as such by law are known to both school and faculty members as no class days;" certainly the latter do not expect payment for said unworked days, and this was clearly in their minds when they entered into the teaching contracts.
- It is readily apparent that the declared purpose of the holiday pay which is the prevention of diminution of the monthly income of the employees on account of work interruptions is defeated when a regular class day is cancelled on account of a special public holiday and class hours are held on another working day to make up for time lost in the school calendar. Otherwise stated, the faculty member, although forced to take a rest, does not earn what he should earn on that day.

PAYMENT OF WAGES DURING WORK SUSPENSIONS BY REASON OF NATURAL OR MAN-MADE CALAMITY :

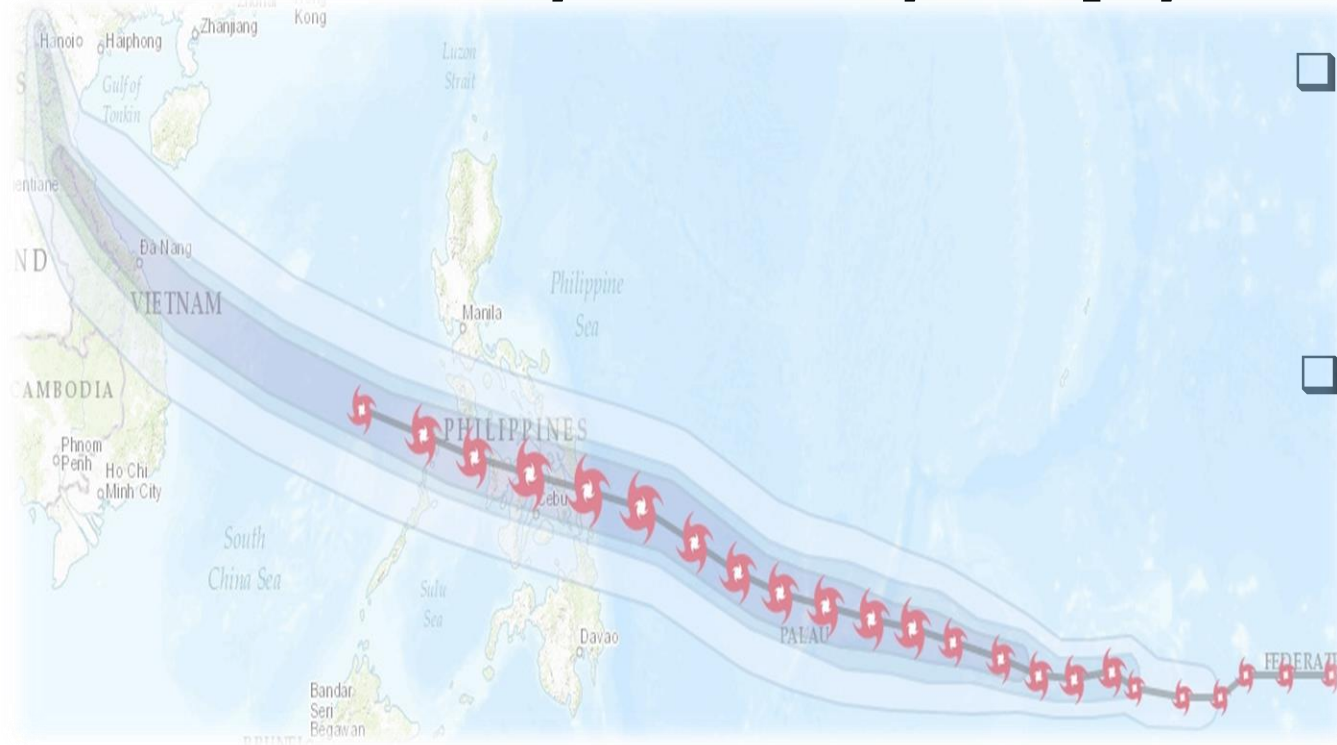
- IF UNWORKED – No work no pay
- IF WORKED – No additional pay shall be given to the employees but only their salary on said day.



- ☐ To alleviate the plight of employees in times of natural or man-made calamity, the employers may provide such extra incentives or benefits to employees who reported to work on the said days.
- ☐ No liability in case of Failure or Refusal to Work. – Employees who fail or refuse to work by reason of imminent danger resulting from natural or man-made calamity shall not be exposed to or subject to any administrative sanction.

PAYMENT OF WAGES DURING WORK SUSPENSIONS BY REASON OF NATURAL OR MAN-MADE CALAMITY :

- IF UNWORKED – No work no pay; Except: favorable company policy or CBA
- IF WORKED – No additional pay shall be given to the employees but only their salary on said day. Full pay if worked for at least 6 hours, prorate if less.

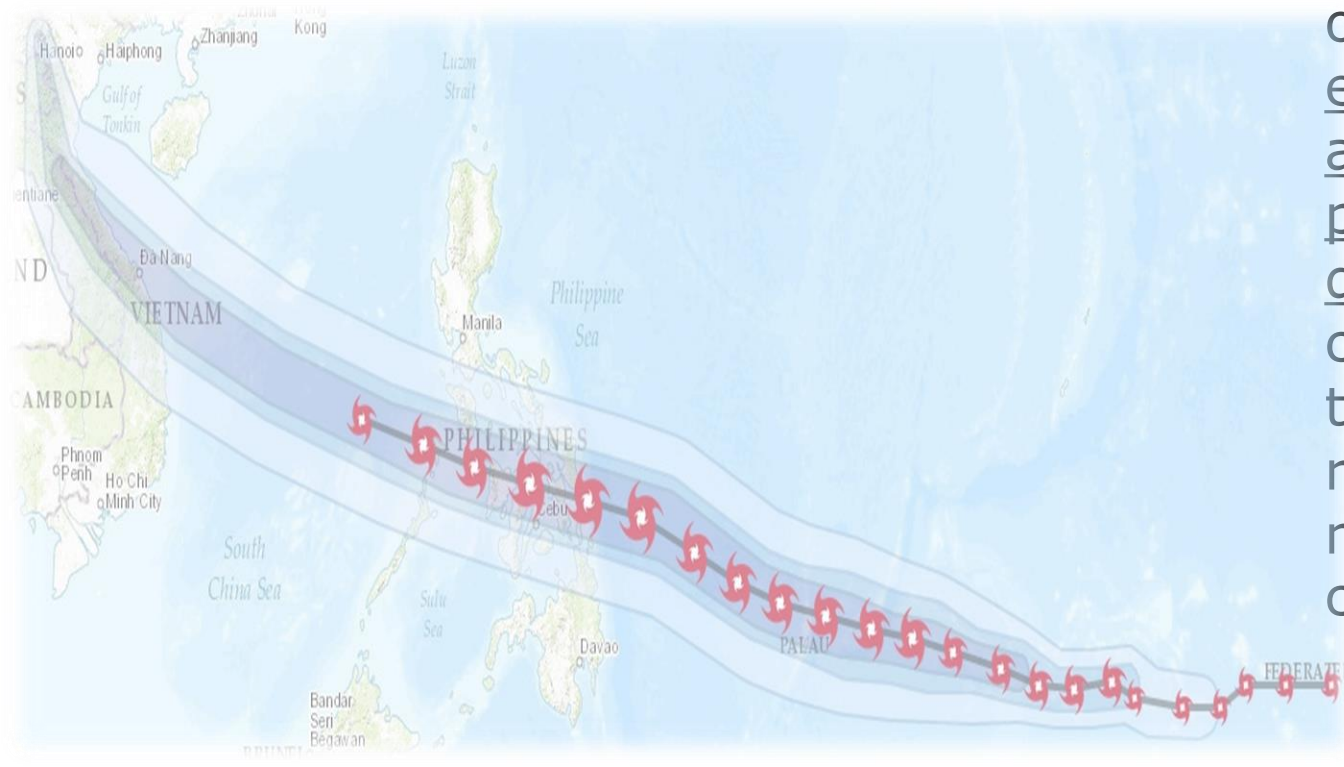


- ☐ To alleviate the plight of employees in times of natural or man-made calamity, the employers may provide such extra incentives or benefits to employees who reported to work on the said days.
- ☐ No liability in case of Failure or Refusal to Work. – Employees who fail or refuse to work by reason of imminent danger resulting from natural or man-made calamity shall not be exposed to or subject to any administrative sanction.

SALARY OF MONTHLY-PAID EMPLOYEES DURING SUSPENSION OF WORK DUE TO FORTUITOUS CAUSE

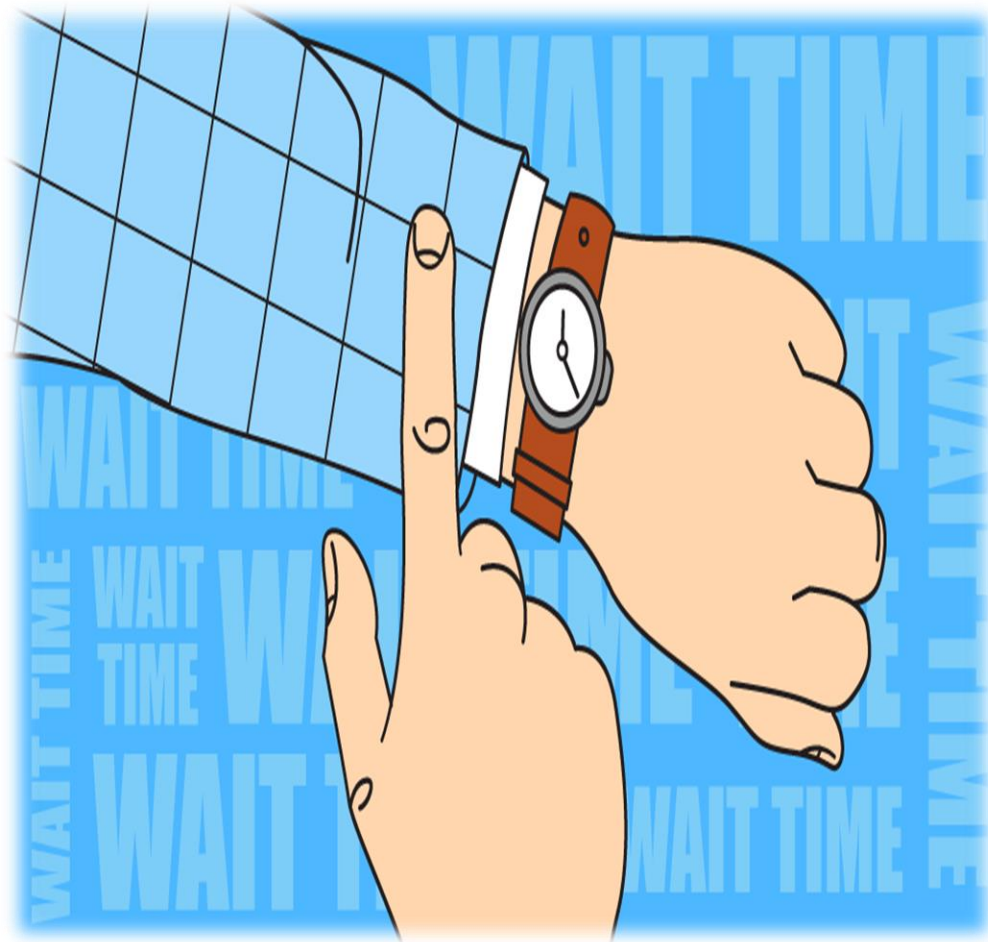
Wellington Investment and Manufacturing Corp. vs Cresenciano B. Trajano, GR No. 114698, July 3, 1995

As regards employees “who are uniformly paid by the month,” in the event of the declaration of any special holiday, or any fortuitous cause precluding work on any particular day or days (such as transportation strikes, riots, or typhoons or other natural calamities), the employee is entitled to the salary for the entire month and the employer has no right to deduct the proportionate amount corresponding to the days when no work was done. The monthly compensation is evidently intended precisely to avoid computations and adjustments resulting from the contingencies just mentioned which are routinely made in the case of workers paid on daily basis.”



HOURS WORKED (Art. 84; Rule 1, IRR Bk III)

WAITING TIME:



- a) Waiting time spent by an employee shall be considered as working time if waiting is an integral part of his work or the employee is required or engaged by the employer to wait;
- b) An employee who is required to remain on call in the employer's premises or so close thereto that he cannot use the time effectively and gainfully for his own purpose shall be considered as working while on call. An employee who is not required to leave word at his home or with company officials where he may be reached is not working while on call.

HOURS WORKED (Art. 84; Rule 1, IRR Bk III)

ATTENDANCE TO LECTURES, MEETINGS, TRAINING PROGRAM:

Not counted as working time if ALL the following conditions are met:

- 1. Attendance is OUTSIDE of the employee's regular working hours;*
- 2. Attendance is in fact VOLUNTARY;
and*
- 3. The employee does not perform any PRODUCTIVE work during such attendance.*



HOURS WORKED (Art. 84; Rule 1, IRR Bk III)

TRAVEL TIME :

(A) TRAVEL FROM HOME TO WORK



- Normal incident of employment – NOT a working time.

- EXCEPTION: An employee is called for an emergency work outside of his/her regular working hours – travel time to prescribed work place is WORKING time.

HOURS WORKED (Art. 84; Rule 1, IRR Bk III)

TRAVEL TIME : (B) TRAVEL THAT'S ALL IN A DAY'S WORK

Travel is part of employee's principal activity like travel from jobsite to jobsite, travelling to be at a required meeting place to receive instructions or to perform other work there; to pick and to carry tools



After finishing work at 5pm, was sent to another job which he finished at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all the travel time are considered hours worked.

HOURS WORKED (Art. 84; Rule 1, IRR Bk III)

TRAVEL TIME :

(C) TRAVEL AWAY FROM HOME

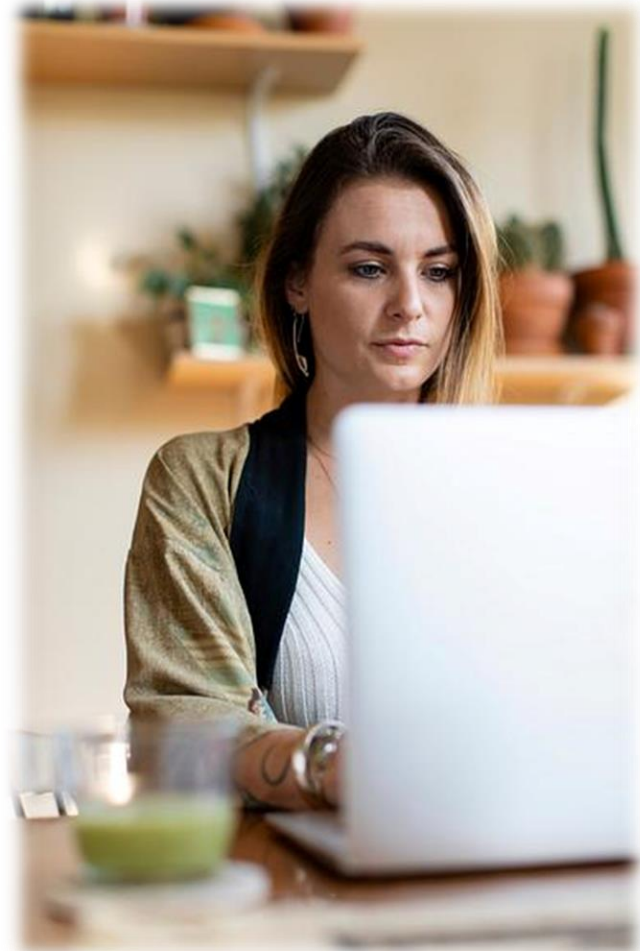
- Travel that keeps the employee away from home overnight – it is worktime when it cuts across the employee's workday
- The time is hours worked not only on regular working days during normal working hours but also during the corresponding hours on nonworking days.
- As an enforcement policy, the Department will not consider as worktime those times spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.



APPLICATION :

An employer in the private sector may offer a telecommuting program to its employees on a voluntary basis or as a result of collective bargaining, if any, and upon such terms and conditions as they may mutually agree upon provided that:

1. Covered by a telecommuting agreement providing terms and conditions not lower than the minimum conditions of employment provided by the Labor Code;
2. No discrimination – telecommuting employees are given the same treatment as that of comparable employee working at the employer's premises;
3. Shall not prejudice the employment status of the telecommuting employee.





- ☐ Telecommuting – refers to a **work arrangement** that allows an employee in the private sector to work from an alternative workplace with the use of telecommunication and/or computer technologies.
- ☐ Alternative workplace – refers to a location **other than the regular workplace**

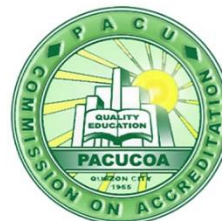


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📍 General Luna Road, Baguio City, Philippines 2600
☎ (074)442-3306
🌐 ub@e.ubaguio.edu
🌐 www.ubaguio.edu



MINIMUM CONDITIONS OF EMPLOYMENT

BOOK III: Arts. 82 – 161

PART V LABOR LAW REVIEW LECTURE

NORMAL HOURS OF WORK (ART. 83)

CONCEPT:

- Regular working hours fixed by law such that, as a matter of general rule, no employer may compel any employee to render work beyond the fixed period.
- Limits the exercise of management prerogative by recognizing the right of covered employees to completely stop working after the end of his or her regular working hours.

NORMAL HOURS OF WORK (ART. 83)

- PURPOSES:
- Safeguard the health and welfare of the laborer/worker (full protection to labor policy)
 - Minimize unemployment by forcing employers to hire more workers rather than requiring its workers or laborers to work more than their regular working hours (promote full employment policy)

APPLICATION:

Gen. Rule:

Not more than eight (8) hours a day

Exceptions:

1. Company policy or setting less than 8 hours daily working time (full-time or part-time); and
2. Health personnel in cities and municipalities with population of at least 1 million or in hospitals and clinics with a bed capacity of at least 100.
(2nd par. Art. 83)

NORMAL HOURS OF WORK (ART. 83)

40-HOUR WORKWEEK FOR HEALTH PERSONNEL:

- ☐ 8 hours a day for 5 days a week, exclusive of meal period
exception: exigencies of the service – 8 hours a day for 6 days a week WITH 30% of regular wage as additional compensation.

- ☐ NOT applicable if there exists a training agreement between the resident physician and the hospital and the training program is duly accredited or approved by the appropriate government agency. – NO EMPLOYER-EMPLOYEE RELATIONSHIP (Sec. 15, Rule X, IRR of Bk III)

SAN JUAN DE DIOS HOSPITAL EMPLOYEES' ASSOCIATION-AFW/MA VS NLRC, GR No. 126383, November 28, 1997

Republic Act No. 5901 (upon which PI 54 was based) has long been repealed by the Labor Code of the Philippines (Art. 83). The Secretary's imposition of a full weekly salary with paid two (2) days' off if they have completed the 40-hour/5-day workweek has no legal basis. Neither Article 83 of the Labor Code nor RA No. 5901 provide such imposition of paid two days off if the health personnel completed the 40-hour workweek.

DUTY TO STAY IN COMPANY PREMISES DURING MEAL BREAK

PHILIPPINE AIRLINES VS NLRC,
GR No. 132805, February 2, 1999

“Thus, the eight-hour work period does not include the meal break. Nowhere in the law may it be inferred that employees must take their meals within the company premises. Employees are not prohibited from going out of the premises as long as they return to their posts on time. Private respondent's act, therefore, of going home to take his dinner does not constitute abandonment.”



Philippine Airlines

Interphil Laboratories Employees Union, et.al. vs. Interphil Laboratories, GR No. 142824, December 19, 2001



It is evident from the CBA that the working hours may be changed, at the discretion of the company, should such change be necessary for its operations, and that the employees shall observe such rules as have been laid down by the company. Respondent company had to adopt a continuous 24-hour work daily schedule by reason of the nature of its business and the demands of its clients. It was established that the employees adhered to the said work schedule since 1988. The employees are deemed to have waived the eight-hour schedule since they followed, without any question or complaint, the two-shift schedule while their CBA was still in force and even prior thereto. The two-shift schedule effectively changed the working hours stipulated in the CBA. As the employees assented by practice to this arrangement, they cannot now be heard to claim that the overtime boycott is justified because they were not obliged to work beyond eight hours.

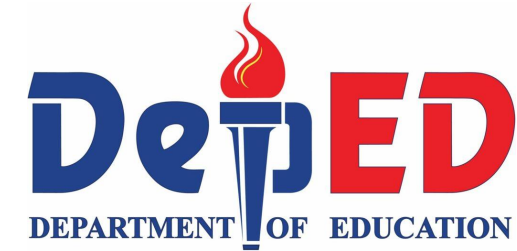
PRANGAN VS. NLRC, GR No.
126529, April 15, 1998

“In the instant case, there is no dispute that matters concerning an employee’s actual hours of work are within the ambit of management prerogative. However, when an employer alleges that his employee works less than the normal hours of employment as provided for in the law, he bears the burden of proving his allegation with clear and satisfactory evidence.”



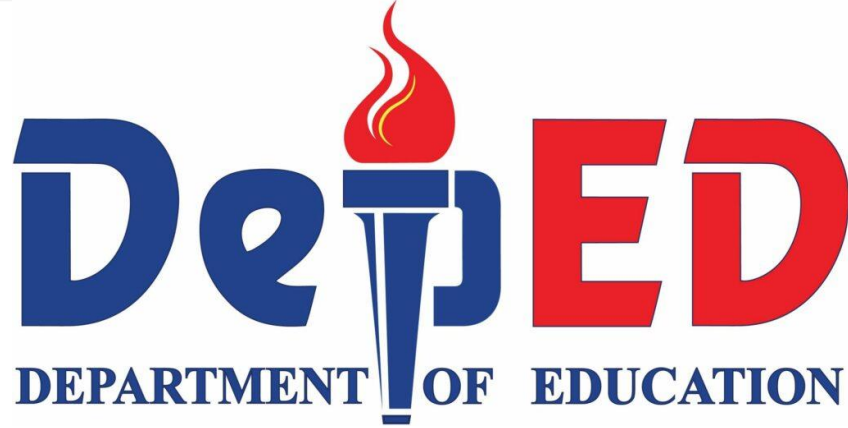
REGULAR HOURS AND TEACHING HOURS OF PRIVATE SCHOOL TEACHERS

DOLE-DECS-CHED-TESDA Order No. 2, Series of
1996:



“The normal hours of work of teaching or academic personnel shall be based on their normal or regular teaching loads. Such normal or regular teaching loads shall be in accordance with policies, rules and standards prescribed by the DECS, CHED, and TESDA. ***Any teaching load in excess of the normal or regular teaching load shall be considered as overload.*** Overload partakes of the nature of temporary/extra assignment and compensation therefore shall be considered as an **OVERLOAD HONORARIUM** if performed within the eight (8) hours work period and does not form part of the regular or basic pay. Overload performed beyond the eight hour daily work is **OVERTIME.**”

REGULAR HOURS AND TEACHING HOURS OF PRIVATE SCHOOL TEACHERS

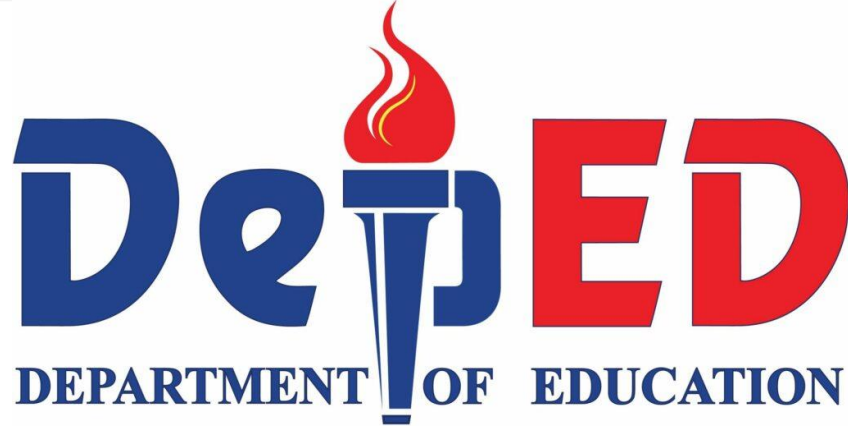


BASIC EDUCATION – Sec.93, 2010 REVISED MANUAL
OF REGULATION FOR PRIVATE SCHOOLS IN BASIC
EDUCATION (MORBE)

“The regular hours of work of school personnel in all private schools shall not exceed 8 hours a day.

The **normal teaching hours** in the different levels of instruction shall be issued through regulation by the Secretary on the basis of course requirements and the maximum load of teaching personnel.”

REGULAR HOURS AND TEACHING HOURS OF PRIVATE SCHOOL TEACHERS



Maximum teaching load in the elementary level
(Sec. 10.2.1, MORBE):

“No teacher shall have a load of more than 360 minutes of actual teaching per day unless required in the Collective Bargaining Agreement (CBA) provided, however, that any load in excess of 360 minutes of actual teaching per day shall be given additional overtime pay of at least 25% of the regular pay, which may be increased by the CBA.”

- Sec. 96 – defines overtime work as work in excess of 8 hours per day and compensation therein is equivalent to regular salary plus at least 25% thereof.

REGULAR HOURS AND TEACHING HOURS OF PRIVATE SCHOOL TEACHERS

Higher Education Teachers
(Sec. 120, MORPHE):



“The normal hours of work of teaching or academic personnel shall be based on their normal regular teaching loads. Such normal or regular teaching loads shall be based in accordance with the policies, rules and standards prescribed by the Commission. Any teaching load in excess of the normal or regular teaching load shall be considered as **overload**. Overload partakes of the nature of temporary extra assignment and compensation therefore shall be considered as **overload honorarium** if performed within the 8-hour work period and does not form part of the regular or basic pay. Overload performed beyond the eight-hour work is **overtime**.”

REGULAR HOURS AND TEACHING HOURS OF PRIVATE SCHOOL TEACHERS

Is the overload pay part of the basic salary for purposes of computing the teachers' 13th month pay?

LETRAN CALAMBA FACULTY AND EMPLOYEES ASSOCIATION VS. NLRC, COLEGIO DE SAN JUAN DE LETRAN CALAMBA, GR No. 156225, January 29, 2008

ULTIMATE GUIDE TO
**13th-MONTH
PAY**



NO. "The peculiarity of an overload lies in the fact that it may be performed within the normal eight-hour working day. This is the only reason why the DOLE, in its explanatory bulletin, finds it proper to include a teacher's overload pay in the determination of his or her 13th-month pay. However, the DOLE loses sight of the fact that even if it is performed within the normal eight-hour working day, an overload is still an additional or extra teaching work which is performed after the regular teaching load has been completed. Hence, any pay given as compensation for such additional work should be considered as extra and not deemed as part of the regular or basic salary."

SALIENT PROVISIONS OF DOLE ADVISORY NO. 2 SERIES OF 2009:

FEXIBLE WORK ARRANGEMENTS – alternative arrangements for schedules other than the traditional or standard work hours, workdays and workweek.

1. Compressed work week
2. Reduction of work days
3. Rotation of workers
4. Forced leave
5. Broken time schedule
6. Flexi-holidays schedule

Conditions of application:

1. Effectivity is temporary in nature
2. Voluntarily agreed upon by the employee
3. Prior notice to DOLE-RO prior to implementation
4. Differences shall be treated as grievance – either under GM or ROD

MEAL PERIOD (ART. 85)

“Subject to the regulations as the Secretary of Labor may prescribe, it shall be the duty of every employer to give his employees not less than sixty (60) minutes time-off for their regular meals.”

Sec. 7, R1, IRR Bk III
Compensable (as overtime) meal
period of not less than 20 minutes:

- 
- (a) Where the work is non-manual in nature or does not involve strenuous physical exertion;
 - (b) Where the establishment regularly operates not less than sixteen hours a day;
 - (c) In cases of actual or impending emergencies or there is urgent work to be performed on machineries, equipment or installations to avoid serious loss which the employer would otherwise suffer; and
 - (d) Where the work is necessary to prevent serious loss of perishable goods.

MEAL PERIOD (ART. 85)

FACTS: The employer gave the employees 1 hour meal period. The employees, during such meal period, are put on standby for emergency work and may be reprimanded by the employer if they happened not to be available when called. As in fact, in many occasions, the mechanics were told to hurry up eating to perform work during their meal period. Is the meal period still a time-off?

ANSWER: No. The meal period is considered compensable overtime work to which the employees are entitled to receive their basic pay plus at least 25% of thereof.



PAN AMERICAN WORLD AIRWAYS VS PAEA,
GR No. L – 16275, February 23, 1961

NIGHT SHIFT DIFFERENTIAL (ART. 86)

CONCEPT: Additional 10% of regular or applicable pay for workers/laborers asked or required to work at night between the hour of 10 in the evening and 6 in the morning.

**ADDITIONAL
EXCLUSION:** Service and retail establishments regularly employing not more than 5 workers

**REASON OF THE
RULE:** Compensation/sanction – night workers are more susceptible to the risks of the job than their counterparts in day work

Thus, cannot be waived as per Art. 6 NCC – contrary to public policy (Mercury Drug vs Dayao, GR No. L-30452, September 30, 1982)

BURDEN OF PROOF:

Fact of payment – employer's burden to prove (he has all the records and documents that could prove or disprove this fact) see National Semiconductor vs NLRC, GR No. 123520, June 26, 1998

As to the issue that negative allegation needs no proof unless it is essential to the cause of action or defense, the issue in the case is validity of dismissal and claim for non-payment is merely incidental to the cause of action.

What if the main cause of action is the non-payment of night shift differential itself?

FACTS:

Zonio and 14 of his colleagues were suspended for more than 1 month for sleeping while on duty. No formal investigation was conducted. Nonetheless, Zonio served the suspension and reported back to work after. However, the employer refused to accept him.

A complaint for illegal suspension and underpayment of salary, 13th month pay; non-payment of overtime and holiday pay; holiday and rest day premiums pay; service incentive leave pay; night shift differential pay; reimbursement of cash bond and miscellaneous fees; moral and exemplary damages; and attorney's fees.

In support of his claim for non-payment of night-shift differential pay and his other monetary claims, Zonio presented his logbook entries showing the days and time he reported for work. The logbook has no verification or countersign by the employer.

ISSUES:

1. Who has the burden to prove payment of Zonio's monetary claims?
2. Is Zonio's personal logbook as security guard sufficient to prove his entitlement to his monetary claims?

NIGHT SHIFT DIFFERENTIAL (ART. 86)

Reggie Zonio vs. 1st Quantum Leap Security Agency
GR No. 224944, May 5, 2021

DECISION:

“In determining the employee's entitlement to monetary claims, the burden of proof is shifted from the employer or the employee, depending on the monetary claim sought. In claims for payment of salary differential, service incentive leave, holiday pay, and 13th month pay, the burden rests on the employer to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant-employer to prove payment rather than on the plaintiff-employee to prove non-payment. This likewise stems from the fact that all pertinent personnel files, payrolls, records, remittances and other similar documents - which show that the differentials, service incentive leave and other claims of workers have been paid - are not in the possession of the worker but are in the custody and control of the employer. On the other hand, for overtime pay, premium pays for holidays and rest days, the burden is shifted on the employee, as these monetary claims are not incurred in the normal course of business. It is thus incumbent upon the employee to first prove that he actually rendered service in excess of the regular eight working hours a day, and that he in fact worked on holidays and rest days.”

NIGHT SHIFT DIFFERENTIAL (ART. 86)

Reggie Zonio vs. 1st Quantum Leap Security Agency
GR No. 224944, May 5, 2021

DECISION:

“Anyway, the fact that the entries are not verified or countersigned will not militate against Zonio. The entries in the logbook are prima facie evidence of Zonio's claim. Prima facie evidence is such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group, or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence. Respondents dispute the veracity of the entries in the logbook, yet, they did not proffer evidence to rebut them, or show that they paid Zonio for the services he rendered on the dates and the hours indicated in the logbook. The best evidence for respondents would have been the payrolls, vouchers, payslips, daily time records, and the like, which are in their custody and absolute control. However, respondents did not present any of these. This failure gives rise to the presumption that either they do not have them, or if they do, their presentation is prejudicial to their cause.”

OVERTIME WORK (ART. 87)

CONCEPT: Additional 25/30% of regular or applicable pay for workers/laborers asked or required to work in excess of 8 hours a day.

**REASON OF THE
RULE:**

Compensation/sanction – for overworking workers/laborers instead of giving them sufficient time to rest

CAN IT BE WAIVED?

1. GR: No, such waiver is contrary to public policy. The right is created for the benefit or protection of the employee. (Pampanga Sugar Development vs CIR, GR No. L-39387, June 29, 1982; Mercury Drug vs Dayao case)
2. Exception – When the waiver is in consideration of benefits and privileges which may be more than what will accrue to them in overtime pay. (see Meralco Workers Union vs Meralco, GR No. L-11876, May 29, 1959)

OVERTIME WORK (ART. 87)

PROBLEM: ABC Corporation wants to implement a 2-shift work schedule daily, with each shift working for 12 hours. In payment for the 12 hour working period, the Corporation is intending to pay the employees a 80 pesos per hour which is 5 pesos higher than the prevailing minimum wage in the City. Is this kind of scheme valid? If yes, what are the conditions if any?

ANSWER:

Composite or package pay / all-inclusive salary – overtime pay is included in the basic salary. Valid if: (a) there is express agreement of the employee; (b) the mathematical result shows that the agreed legal wage rate and the overtime pay, computed separately, are equal to or higher than the separate amounts legally due.

2 MEANINGS OF “PREMIUM PAY”:

1. Article 87 2nd sentence – “Work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus thirty (30%) percent thereof.”
2. Article 93 – additional compensation equivalent to not less than 30/50% of the regular pay for work within 8 hours during rest day or special holiday or special holiday-rest day

WHAT IS THE MEANING OF “REGULAR PAY/BASE PAY”?

- Excludes money received in different concepts such as Christmas bonus and other fringe benefits (Bisig ng Manggagawa ng Philippine Refining Co vs Phil. Refining Co, GR No. L-27761, September 30, 1981)
- Cash wage plus value of facilities (Art. 90)

Facilities – articles or services for the benefit of the employee or his family but shall not include tools of the trade or articles or service primarily for the benefit of the employer or necessary to the conduct of the employer’s business. It is wage deductible.

Supplements – extra remuneration or special privileges or benefits given to or received by laborers over and above their ordinary earning or wages. Supplements are non-wage deductible.

OVERTIME WORK (ART. 87)

In the Letran Calamba vs NLRC case, the Supreme Court declared that overload honorarium shall be excluded in the computation of the 13th month pay because it is in the nature of an extra work or assignment in excess of the teaching load. If overload is beyond the 8-hour daily work period, how much is the additional premium and premium pay, if any?

FACTUAL AND LEGAL BASIS OF CLAIM FOR OVERTIME PAY:

- **FACTUAL BASIS** – employee has to show by substantial evidence that he/she rendered work beyond 8 hours.
- **LEGAL BASIS** – that the overtime work complies with the principles of “hours worked” under Art. 84 and the IRR

PROOF OF PAYMENT – Employer has the burden to prove payment because it is in the best position to do so considering that all records evidencing its payment or non-payment are in its possession. (see *Pigcaulan vs Security and Credit Investigation*, GR No 173648, January 16, 2012)

FACTS:

A seaman stays on board the vessel of his employer 24/7. As such, there is a claim that he may be summoned anytime by the ship captain or their immediate superior even after their 8-hour working time. Is there legal basis to automatically grant overtime pay to the seaman?

RESOLUTION: None. Seamen are required to stay on board the vessel by the very nature of their duties. The real criterion in determining whether or not they are entitled to overtime pay is if they actually rendered services in excess of the 8-hour working period. (see *Cagampan vs NLRC*, GR No. 85122-24, March 2, 1991)

OVERTIME WORK (ART. 87)

FACTS:

XYZ Corporation is implementing a policy which provides that any undertime of an employee shall be deducted from his/her accrued leave credits. Such employee is also asked to compensate the undertime by working beyond the regular hour without overtime premium. Is this a valid company policy?

RESOLUTION:

No. “Undertime work on any particular day shall not be offset by overtime work on any other day. Permission given to the employee to go on leave on some other day of the week shall not exempt the employer from paying the additional compensation required in this Chapter.” (Art. 88)

EMERGENCY OVERTIME WORK (ART. 89)

1. When the country is at war or when any other national or local emergency has been declared by the National Assembly (Congress) or the Chief Executive;
2. When it is necessary to prevent loss of life or property or in case of imminent danger to public safety due to an actual or impending emergency in the locality caused by serious accidents, fire, flood, typhoon, earthquake, epidemic, or other disaster or calamity;
3. When there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to the employer or some other cause of similar nature;
4. When the work is necessary to prevent loss or damage to perishable goods; and
5. When the completion or continuation of the work started before the eight hour is necessary to prevent serious obstruction or prejudice to the business or operation of the employer.

WEEKLY REST PERIOD (ART. 91)

CONCEPT: A 24-hour period granted by law to an employee for his or her personal enjoyment.

APPLICATION: After 6 consecutive days of work

**PREMIUM PAY
IF WORKED:**

At least 30% of regular wage (if not special holiday)

At least 50% of regular wage if also a special holiday

WORK ON A SUNDAY (ART. 91)

If work is performed on a Sunday, is the employee entitled to premium pay?

No, unless (a) it is the scheduled rest day of the employee; or (2) the nature of his work is such that no regular workdays and no regular rest days can be scheduled, he shall be paid an additional compensation of at least 30% of his regular wage for work performed on Sundays and holidays.

WORK ON A SUNDAY (ART. 91)

If a holiday falls on a Sunday, is the following Monday considered a holiday?

The IRR says No because of Letter of Instruction NO. 1087 series of 1980 provides: “When a holiday falls on a Sunday, the following Monday shall not be a holiday, unless a proclamation is issued declaring it a special holiday.”

BUT RA 9492 (Holiday Economics Law) says that when a holiday falls on a Sunday, it shall be observed on the following day (Monday) – so is there now conflict between the IRR and RA 9492?

VALID GROUND TO REQUIRE REST DAY WORK(ART. 92)

1. In case of actual or impending emergency caused by serious accident, fire, flood typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety;
2. In case of urgent work to be performed on machinery, equipment, or installation, to avoid serious loss which the employer would otherwise suffer;
3. In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;
4. To prevent loss or damage to perishable goods;
5. Where the nature of the work requires continuous operations and the stoppage of work may result in irreparable injury or loss to the employer; and
6. Under other circumstances analogous or similar to the foregoing as determined by the SOLE.

SPECIAL NON-WORKING HOLIDAY (ART. 93)

APPLICATION: NO-WORK-NO-PAY

PREMIUM PAY
IF WORKED:

At least 30% of regular wage (if not also
the scheduled rest day)

At least 50% of regular wage if also the
scheduled rest day

SPECIAL NON-WORKING HOLIDAYS (SOURCE: PP 368 - 2024)

1. Additional Special Non-working Day (Feb. 9)
2. Chinese New Year (Feb. 10)
3. Black Saturday
4. Ninoy Aquino Day

5. All Saints' Day (Nov. 1)
6. All Souls' Day (Nov. 2)
7. Feast of the Immaculate Conception of Mary
8. Christmas Eve
9. Last Day of the Year

The list changes from year
to year – depending on the
President's discretion

REGULAR HOLIDAY (ART. 94)

APPLICATION: 100% of regular wage if unworked

PREMIUM PAY
IF WORKED: At least 200% of regular wage (if not also
the scheduled rest day)

At least 260% of regular wage if also the
scheduled rest day

COVERED REGULAR HOLIDAYS:

- | | | |
|-----------------------|-------------------------|------------------------|
| 1. New Year's Day | 5. Labor Day | 9. Christmas Day |
| 2. Maundy Thursday | 6. Independence Day | 10. Rizal Day |
| 3. Good Friday | 7. National Heroes' Day | 11. <i>Eid ul-Fitr</i> |
| 4. Araw ng Kagitingan | 8. Bonifacio Day | 12. <i>Eid ul-Adha</i> |

Not applicable:

- Retail/service establishments employing less than 10 employees

ARE THERE SPECIAL RULES ON HOLIDAY PAYMENT FOR:

(a) Double holidays and (b) Successive holidays

For double holidays – if unworked = 200% of the daily wage
if worked = + at least 100% of the daily wage (300%)

For successive holidays – if unworked = no pay for both if employee was absent on the day immediately preceding the first holiday, unless he works on the first holiday, in which case he is entitled to his holiday pay on the second holiday. (see Sec. 10, Rule IV, IRR of Book III)

If worked on both days = 200% of daily wage for each holiday or 400%

RULES ON ABSENCES: (Sec. 6, Rule IV IRR of Bk III)

1. If on paid leave on the day prior = entitled
2. If absent on the day prior = NOT entitled unless worked during the holiday
3. Employers shall grant the same percentage of holiday pay as the benefit granted by competent authority in the form of employee's compensation or social security payment, whichever is higher, if the employees are not reporting for work during such leave benefits
4. If immediately preceding day is non-work day or scheduled rest day (not considered on leave of absence on that day) = entitled if worked on the day immediately preceding the non-work day.

REGULAR HOLIDAY FALLING ON REST DAY OR SUNDAY: (Sec. 9, Rule IV IRR of Bk III)

- a. Regular holiday falling on rest day – compensable (100% of the regular wage)
- b. Regular holiday falling on a Sunday – the following day shall be considered a special holiday for purposes of the Labor Code, unless said day is also a special holiday
 - If unworked = no pay
 - If worked = 130% of the regular wage
 - If also a regular holiday:
 - ☐ Unworked = 100% of the regular wage
 - ☐ Worked = 200% of the regular wage

The State's remedy: R.A. No. 9492 Holiday Economics Law

REGULAR HOLIDAY DURING TEMPORARY SHUTDOWN AND CLOSURES: (Sec. 7, Rule IV IRR of Bk III)

- a. Temporary shutdown – compensated
- b. Closure authorized by the SOLE – not compensable

Are monthly-paid employees entitled to holiday pay? If yes, how should their holiday pay computed?

Situation 1: The monthly pay of the employee is Php19,000 based on 365 days in a year

Situation 2: The monthly pay of the employee is Php15,000 based on 365 days in a year

ANSWER:

Entitlement depends on whether or not the divisor used includes all the 12 regular holidays. Hence the divisor should be explained clearly to the employee. (see *Insular Bank of Asia and America Employees Union vs Inciong*, GR No. L-52415, October 23, 1984)

Are they entitled to holiday pay?

“Private school teachers, including faculty members of colleges and universities, may NOT be paid for the regular holidays during semestral vacations. They shall, however, be paid for the regular holidays during Christmas vacations.” (Sec. 8a, Rule IV IRR of Bk III)

❑ REMEMBER:

- UPANG and JRC cases: Monthly paid teachers are not entitled to holiday pay because it is already included in the computation of their monthly salary. Hourly-paid teachers ARE NOT entitled to holiday pay during regular semesters and semestral breaks. But they are entitled to their regular wage during suspended classes due to special non-working days or natural and man-made calamity.

HOLIDAY PAY OF CERTAIN WORKERS:

“Where a covered employee, is paid by results or output, such as payment on piecework, his holiday pay shall not be less than his average daily earnings for the last seven (7) actual working days preceding the regular holiday; Provided, However, that in no case shall the holiday pay be less than the applicable statutory minimum wage rate.” (Sec. 8b, Rule IV IRR of Bk III)

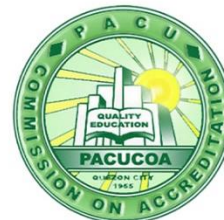
“Seasonal workers may not be paid the required holiday pay during off-season when they are not at work.” (Sec. 8c, Rule IV IRR of Bk III)

“Workers who have no regular working days shall be entitled to the benefits provided in this Rule.” (Sec. 8d, Rule IV IRR of Bk III)



THANK
YOU

📍 General Luna Road, Baguio City, Philippines 2600
☎ (074)442-3306
🌐 ub@e.ubaguio.edu
🌐 www.ubaguio.edu



WAGES

TITLE II
ARTS. 97 TO 129

PART VII – LABOR LAW REVIEW

OUTLINE OF TOPICS:

1. Legal concept of “wage”
1. Principles governing payment of wage or salary
1. Different rules in the payment of wage or salary
1. Wage distortion and how to resolve it
1. Non-diminution rule
1. Visitorial and enforcement power of the SOLE and other labor officials
1. Jurisdiction over recovery of wages, simple money claims and other benefits

LEGAL DEFINITION OF “WAGE”:

WAGE (Art. 97[f], LCP)

- “Shall mean the remuneration or earnings, however designated, **capable of being expressed in terms of money**, whether fixed or ascertained on time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for **work done or to be done, or for services rendered or to be rendered** and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other **facilities customarily furnished by the employer** to the employee. “Fair and reasonable value” shall not include any profit to the employer or to any person affiliated with the employer.”

“WAGE” vs. “SALARY”

- ❑ The term “wages” applies to compensation for manual labor, skilled or unskilled, paid at stated times and measured by the day, week, month, or season, while “salary” denotes a higher degree of employment or a superior grade of services and implies a position of office; by contrast, the term wages indicates considerable pay for a lower and less responsible character of employment, while “salary” is suggestive of a larger and more important service.
- ❑ The exemption from attachment and execution under Article 1708 of the New Civil Code applies only to wages but not to salary.

Case: Gaa vs. CA, GR No. L-44169, December 3, 1985)

1. INCLUSIONS:

- All monies paid by an employer to the employee in consideration of work or service of the latter for the benefit of the former pursuant to a written or unwritten contract, regardless of how the parties designate them in their contract
 - Facilities – items of expense necessary for the laborer's and his family's existence and subsistence but shall not include tools of the trade or articles or services primarily for the benefit of the employer or necessary to the conduct of the employer's business.
- The above inclusions pertain to “basic wage” only. In special cases, there are other components of “wage” or “salary”.

REQUIREMENTS FOR VALID DEDUCTION OF THE VALUE OF FACILITIES FROM WAGE:

1. Proof must be shown that such facilities are customarily furnished by the trade;
2. The provision of the facility is voluntarily accepted in writing by the employee; and
3. Facilities must be charged at fair and reasonable value.

Q: Who has the burden to prove these requirements? What is the effect if these requirements are not met? Mabeza vs NLRC GR No. 118506, April 18, 1997

2. EXCLUSIONS:

- Supplements – extra remuneration or special privileges or benefits over and above the ordinary earnings or wages
- Bonuses UNLESS made part of the basic pay through collective bargaining or company policy or practice.
- For computation of 13th month pay – allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick leave, overtime, premium, night shift differential, holiday pay, and cost-of-living-allowance (COLA) UNLESS these salary-related benefits are considered part of the basic salary through individual or collective bargaining agreement, or favorable company practice or policy. (Read PD 852 as amended and its IRR)

2. EXCLUSIONS:

- In the computation of retirement and other benefits payable to the employee – allowances are not included

Read: Cebu Institute of Technology vs Ople, GR No. 58870,
December 18, 1987

Principles in payment of wages

1. “Fair day’s wage for a fair day’s labor”

- If no work is performed by the employee there can be no wage or pay UNLESS the laborer was able, ready, and willing to work but was prevented by the management or was illegally dismissed, locked out, or suspended.
- Exceptions:
 - a) Holiday pay
 - b) Favorable company practice or policy or CBA stipulations entitling the employee to wage during rest day and/or special non-working days

2. “Equal pay for equal work”

- Workers performing similar functions and responsibilities under similar working conditions should be paid equal wage.
- If an employer accords employees the same position and rank, the presumption is that these employees perform equal work.
- Read again: International School Alliance of Educators vs Quisumbing, GR No. 128845, June 1, 2000

3. AGRICULTURAL WORK

- “farming in all its branches and, among other things, includes the cultivation, growing and harvesting of any agricultural and horticultural commodities, the raising of livestock or poultry, and any practices performed by a farmer on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing or processing of sugar, coconuts, abaca, tobacco, pineapples or other farm products.”
- Activities or work not embraced in the definition (including farm activities that are not purely agricultural) are considered as INDUSTRIAL WORK
- Agricultural rate of pay is LOWER than industrial wage rates.

POWER TO FIX RATES (Arts. 99; 120-127)

- ❑ Authority granted by law to the RTWPBs subject to the policies set in the Labor Code and by the NWPC. An exemption from the coverage of a wage order granted by the RTWPB without the consent of the NWPC is void. (Read: Nasipit Lumber vs NWPC, 1998)
 - ❑ No estoppel in recovery of deficiency of wage by the employee
 - ❑ Duty to pay minimum wage DOES NOT depend on the employer's ability to pay – however, employer's capacity to pay is one criterion that the RTWPBs shall consider in exercising its wage-fixing authority. (Art. 124[h])
 - ❑ Workers paid by result, piecework, takay, pakyaw or task basis shall be paid the statutory minimum wage rate for the normal working hours which shall not exceed 8 hours a day, or a proportion of work less than the normal working hours. (Sec 9 Ch1, Rule VII IRR of Bk III; Art. 126))
-

POWER TO FIX RATES (Arts. 99; 120-127)

- ❑ Wage Order – issued by the RTWPBs based on the standards and criteria provided by the Code; arrived at after public hearing/consultation with employer and employee groups, together with local government officials and other interested parties; takes effect after 15 days from publication in a newspaper of general circulation in the region.
 - ❑ Appeals – aggrieved party may appeal a WO with the Commission within 10 calendar days from publication; but the appeal does not stay the order unless with appellant's surety to pay the wages of the employees affected by the WO if the order is affirmed.
 - ❑ Prohibition against injunction – No court, tribunal or other entity shall issue a preliminary or permanent injunction or TRO against any proceedings before the NTWPC or the RTWPBs.
-

EXCEPTIONS FROM THE MINIMUM WAGE RULE:

- 1.household, domestic helpers, including family drivers and persons in the personal service of another – subject to the Kasambahay Law
 - 1.Homeworkers engaged in needlework;
 - 1.Establishments registered with the NaCIDA (RA No. 3470) if their workers perform their work in their respective homes.
 - 1.Duly registered cooperatives when so recommended by the CDA and upon approval of the SOLE only upon the ground that the exemption is given for the purpose of making the cooperative viable and that the cooperative cannot resort to tother remedial measures without serious loss or prejudice to its operations except through the exemption.
 - 1.Barangay micro business enterprise (BMBE Act of 2002, RA No. 9178)
-

FORM OF PAYMENT (Arts. 102):

- ❑ FORM: “No employer shall pay the wages of an employee by means of promissory notes, vouchers, coupons, tokens tickets, chits or any object other than legal tender, even when expressly requested by the employee.”
 - “Payment of wages by check or money order shall be allowed when such manner of payment is customary on the date of effectivity of this Code (Labor Code), or is necessary because of special circumstances as specified in appropriate regulations to be issued by the Secretary of Labor and Employment or as stipulated in a collective bargaining agreement.” (Art. 102)
-

TIME OF PAYMENT (Arts. 103):

- ❑ TIME: “Wages shall be paid at least once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days. If on account of force majeure or circumstances beyond the employer’s control, payment of wages on or within the time herein provided cannot be made, the employer shall pay the wages immediately after such force majeure or circumstances have ceased. No employer shall make payment with less frequency than once a month.”

 - “The payment of wages of employees engaged to perform a task which cannot be completed in two (2) weeks shall be subject to the following conditions, in the absence of a collective bargaining agreement or arbitration award:
 1. That payments are made at intervals not exceeding sixteen (16) days, in proportion to the amount of work completed;
 2. That final settlement is made upon completion of the work.”
-

PLACE OF PAYMENT (Arts. 104):

- ❑ PLACE: “Payment of wages shall be made at or near the place of undertaking, except as otherwise provided by such regulations as the Secretary of Labor and Employment may prescribe under conditions to ensure greater protection of wages.”
 - ❑ See modifications by the following:
 - Sec. 7, RA No. 6727 (WRA) – written permission of majority of workers
 - 1996 Labor Advisory on Payment of salaries thru ATM
 - Labor Advisory No. 26 series of 2020 – payment of wages through transaction accounts
-

DIRECT PAYMENT OF WAGE (ART. 105):

- ❑ General rule: wages shall be paid directly to the employee.

 - ❑ Exceptions:
 - (1) Employee grants another person written authority to receive his/her wage on his/her behalf; or
 - (2) Upon the death of the employee, payment of his/her wage may be made to the heirs without need of any intestate proceedings provided the heir submits an affidavit attesting to his/her relationship with the employee and the fact that they are his/her heirs, to the exclusion of all other persons.
-

PROHIBITIONS REGARDING WAGES

1. Non-interference in disposal of wages – Art. 112
2. Unauthorized deductions:
 - a. No deductions from wages – Art. 113
 - b. No withholding of wages or inducement to give up any part thereof by FIST or other means without employee's consent – Art. 116
 - c. No deduction from wages as consideration of a promise of employment or retention of employment – Art. 117
3. Deposits for loss or damage – unless: practice of making deductions or requiring deposits is recognized industry practice or determined by SOLE regulations as necessary or desirable – Art. 114
 - Even if deposit or deduction is allowed, employee shall be heard first and his/her responsibility is established. – Art. 115
4. Retaliatory measure – discrimination against an employee who has filed a complaint or testified against the employer for violation of Title II of Book III of the Labor Code – Art. 118
5. False reporting – Art. 119

AUTHORIZED DEDUCTIONS FROM WAGES

1. Facilities (Art. 97[f]) – REQUISITES:
 - a. Customarily furnished by the employer;
 - b. Facilities voluntarily accepted in writing by the employee; and
 - c. Facilities is charged at fair and reasonable value.
 2. Insurance premium if the employee gave consent to the insurance contract. (Art. 113[a])
 3. Right to check-off union dues recognized by the employer or authorized in writing by the employee (Art. 113[b])
 4. Union service fees – voluntarily accepted by the employee
 5. Due and demandable debt of the employee to the employer;
 6. If authorized by law or regulations issued by SOLE (e.g. withholding tax, SSS, PhilHealth, Pag-IBIG contributions) (Art. 113[c])
 7. As a form of penalty for absences – due process must be observed
 8. If expressly authorized in writing by the employee
-

Other Rights In Relation To Wage

- ❑ Preference of credit in favor of unpaid wages and other monetary claims

“In the event of bankruptcy or liquidation of an employer’s business, his workers shall enjoy first preference as regards their wages and other monetary claims, any provisions of law to the contrary notwithstanding. Such unpaid wages and other monetary claims shall be paid in full before claims of the government and other creditors may be paid.” (Art. 110)

Other Rights In Relation To Wage

- ❑ Preference of credit in favor of unpaid wages and other monetary claims
 - It is clear from the wording of the law that the preferential right accorded to employees and workers under Article 110 may be invoked only during bankruptcy or judicial liquidation proceedings against the employer. The law is unequivocal and admits of no other construction x x What Article 110 establishes is not a lien, but a preference of credit in favor of employees. This simply means that during bankruptcy, insolvency or liquidation proceedings involving the existing properties of the employer, the employees have the advantage of having their unpaid wages satisfied ahead of certain claims which may be proved therein. (DBP vs SOLE, GR No. 79351, November 28, 1989)
-

Other Rights In Relation To Wage

❑ Lien over the goods manufactured

“The laborer’s wages shall be a **lien** on the goods manufactured or work done.”
(Art. 1707, New Civil Code)

- This was interpreted by the SC to include only chattels and not immovables. Moreover, this Article seems to apply only when the owner has hired the worker to manufacture the goods or do the work and not when a contractor is involved to produce the goods or perform the work.” (Bautista vs The Auditor General, GR No. L-6799, June 29, 1955 cited in Azucena)

Other Rights In Relation To Wage

❑ Attachment and garnishment of wages

“The laborer’s wage is not subject to execution or attachment, except for debts incurred for food, shelter, clothing, and medical attendance.” (Art. 1708, New Civil Code)

- Obviously, the exemption under Rule 39 of the Rules of Court and Article 1708 of the New Civil Code is meant to favor only laboring men or women whose works are manual. Persons belonging to this class usually look to the reward of a day’s labor for immediate or present support, and such persons are more in need of the exemption than any other. (Gaa vs CA, 1985; D’Armoured Security and Investigation Agency vs Orpia, et.al., 2005)
-

WAGE DISTORTION - Definition

Rule VI, Sec. 1, NWPC
Guidelines No. 3 series
of 2020:

- ❑ “Wage distortion exists where the application of any prescribed wage increase by virtue of a law or Wage order results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical basis of differentiation.
-

WAGE DISTORTION – Elements:

Rule VI, Sec. 2, NWPC
Guidelines No. 3 series
of 2020; NWPC Advisory
1 series of 2023

Prubankers Association vs
Prudential Bank and Trust
Company, GR No. 131247,
January 25, 1999

1. Existing hierarchy of positions with corresponding salary rates;
1. A significant change in the salary rates of a lower pay class without a concomitant increase in the salary rate of a higher one;
1. The elimination of the distinction between the two (2) levels; and
1. The existence of the distortion is limited to the same jobs or positions under the same employer in the same region.

WAGE DISTORTION - Principles

NaFLU vs NLRC,
234 SCRA 311)

1. There is an existing grouping or classification of employees which establishes distinctions among such employees on some relevant or legitimate basis. This is reflected through a salary scale/grading system.
1. Wage distortion is the result of government decreed increases to minimum wages or merger of corporations with different classification of employees and wages.
1. There is no requirement for the employer to restore the wage differentiation exactly to their original rates prior to occurrence of wage distortion.
1. Correction of wage distortion should be endeavored through voluntary negotiation or grievance procedure. If these fail, through voluntary arbitration. If still a failure, the NLRC may take cognizance. Wage distortion is NON strikeable

WAGE DISTORTION – Ways to settle it

☐ In organized establishments:

- Collective bargaining
- Grievance procedure under the CBA
- Voluntary arbitration (10 calendar days to resolve from referral)

☐ In unorganized establishments:

- Negotiation
- Conciliation by NCMB (10 calendar days to conciliate)
- Compulsory arbitration by the NLRC (20 calendar days to resolve from referral)

(basis: Art. 124, 4th and 5th paragraphs; NWPC Advisory 1 series of 2023)

WAGE DISTORTION – Formula supplied by the Court:

Pineda Formula

$$\text{wage distortion adjustment} = \frac{\text{previous minimum wage}}{\text{wage of employee}} \times \text{mandated wage increase}$$

Pineda-Cruz So Formula

$$\text{wage distortion adjustment} = \left[\frac{\text{previous minimum wage}}{\text{wage of employee}} \right]^n \times \text{mandated wage increase}$$

Bagtas Approach

$$\text{wage distortion adjustment} = \frac{\text{mandated wage increase}}{\text{existing minimum wage}} \times \text{present wage of employees}$$

Jimenez, Ofreneo, Delas Alas Jr. (JODA) Formula

$$\text{wage distortion adjustment} = \frac{W_b - W_a}{2}$$

where: W_a = old daily minimum wage
 W_b = daily wage of employee (where $W_b > W_a$, or W_b is above W_a)
 W_c = new daily minimum wage
 $= W_a + \text{mandated wage increase}$

Source: <https://exeqserve.com/navigating-wage-distortions-in-complying-with-mandatory-wage-increase-in-the-philippines/>

WAGE DISTORTION – Formula supplied by the Court:

Percentile Approach Formula

$$\text{wage distortion adjustment} = \frac{\text{percentile weight of pay group}}{\text{mandated wage increase}} \times \text{mandated wage increase}$$

Wirerope Formula

$$\text{wage distortion adjustment} = \frac{\text{existing minimum wage}}{\text{present wage of employee}} \times (\text{mandated wage increase} - \text{creditable increase})$$

Philippine Construction Supply Formula

$$\text{wage distortion adjustment} = \frac{\text{existing minimum wage}}{\text{formula base range (FBR)}} \times \text{mandated wage increase}$$

where: FBR = actual wage rate + agreed amount of adjustment

Source: <https://exeqserve.com/navigating-wage-distortions-in-complying-with-mandatory-wage-increase-in-the-philippines/>

NON-DIMINUTION OF BENEFITS RULE

Concept: “Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.” (Art. 100)

Requisites :

1. The grant of the benefit is founded on a policy or has ripened into a practice over a long period;
2. The practice is consistent and deliberate;
3. The practice is not due to an error in the construction or application of a doubtful or difficult question of law; and
4. The diminution or discontinuance was done unilaterally by the employer.

Basis: TSPIC Corp. vs TSPIC Employee Union, GR No. 163419, February 13, 2008)

NON-DIMINUTION OF BENEFITS RULE

Kondo vs. Toyota
Boshoku [Phils] Corp.,
GR No. 201396,
September 11, 2019

Q: What are the conditions in order to consider a grant to have ripened to a regular company practice?

- ❑ “To be considered as a regular company practice, it must be shown by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately. There must be an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring the grant thereof. In sum, the benefit must be characterized by **regularity and voluntary and deliberate intent** of the employer to grant the benefit over a considerable period of time. The burden of proving that the benefit has ripened into practice rests in the employee.”
- ❑ If the grant of a service car, local driver, and free gasoline allocation was based neither on express policy or a written contract, withdrawal thereof by the employer is not a violation of Article 100 on non-diminution of benefit.

Supreme Steel Corp. vs Nagkakaisang
Manggagawa Ng Supreme Independent
Union, GR No. 185556, March 28, 2011

Q: Whose burden is it to prove that the giving of a benefit has ripened to a company policy or practice?

❑ “Company practice, just like any other fact, habits, customs, usage or patterns of conduct must be proven. The offering party must allege and prove specific, repetitive conduct that might constitute evidence of habit, or company practice. Evidently, the pay slips of the four employees do not serve as sufficient proof.”

NON-DIMINUTION OF BENEFITS RULE

NOT APPLICABLE IN:

- ☐ When the policy arose out of an erroneous application of a doubtful or difficult question of law and the employer merely corrected such error, no vested right may be said to have arisen nor any diminution of benefit under Article 100 of the Labor Code may be said to have resulted by virtue of the correction.

Case: Globe-Mckay Cable and Radio Corp. vs NLRC, GR No. L-74156, June 29, 1988

NON-DIMINUTION OF BENEFITS RULE

NOT APPLICABLE IN:

- ❑ Negotiated benefits – Benefits initiated through negotiation between employer and employees, such as those contained in a collective bargaining agreement, are not within the prohibition of Article 100 because, as products of bilateral contract, they can only be eliminated or diminished bilaterally. What the law forbids is elimination or modification done unilaterally by the employer.
-

NON-DIMINUTION OF BENEFITS RULE

NOT APPLICABLE IN:

- ☐ Diminution of benefit suggested by the union and impliedly ratified by a majority of its members.

Case: Insular Hotel Employees Union vs Waterfront Insular Hotel
Davao, GR No. 174040-41, September 22, 2010

NON-DIMINUTION OF BENEFITS RULE

NOT APPLICABLE IN:

- ☐ When the grant of a wage increase is in compliance to a Wage Order or erroneous interpretation of a CBA provision. In order to ripen into a company practice, the giving of the increase should not be by reason of a strict legal or contractual obligation, but by reason of an act of liberality on the part of the employer.

Case: Pag-asa Steel Works vs CA, GR No. 166647, March 31, 2006

NON-DIMINUTION OF BENEFITS RULE

NOT APPLICABLE IN:

- ☐ When the reason behind a company policy authorizing reimbursement of employee's per diem expenses (such as when the employee did not spend anything for lodging or transportation while away on official duty) did not occur, there is no diminution of benefit if a request for reimbursement is denied by the employer.

Case: Lexal Laboratories vs CIR, GR No. L-24632, October 26, 1968

NON-DIMINUTION OF BENEFITS RULE

NOT APPLICABLE IN:

- ☐ When a company practice is temporarily suspended in exchange of an equal or better one.

Case: Asis vs Minister of Labor, GR No. 5894-95, March 15, 1989

NON-DIMINUTION OF BENEFITS RULE

NOT APPLICABLE IN:

- ☐ When the stoppage of benefit is due to reclassification of position or promotion in good faith. Thus, an employee who is reclassified or promoted to a supervisory position may lose his right to overtime pay without violation of Art. 100.

Case: National Sugar Refineries vs NLRC, GR No. 101761, March 24, 1993

NON-DIMINUTION OF BENEFITS RULE

NOT APPLICABLE IN:

- ☐ Year-end bonus given as an act of generosity (discretionary) by the employer, that is, when the amount is computed after the firm's annual net income and cash position were determined.

Case: Protacio vs Laya Mananghaya & Co., GR No. 168654, March 25, 2009

- ☐ When is the bonus considered as part of the wage or salary?
When the employer's promise is unconditional.

Case: Philippine Duplicators, Inc. vs. NLRC cited in Protacio, *supra*

VISITORIAL AND ENFORCEMENT POWER

APPLICATION:

- ❑ Visitorial – determine if an employer is compliant with the LCP, any labor law, wage order, or rules and regulations issued pursuant thereto
 - Visit employer's premises and gain access to its records
 - Copy the employer's records
 - Question any employee
 - Investigate any fact, matter or condition to determine if there is a violation of the LCP, other labor laws, wage order

Basis: Art. 128; DO No. 131-B (2016); DO 183-17

VISITORIAL AND ENFORCEMENT POWER

APPLICATION:

☐ Enforcement – power to issue:

- Compliance order after a determination of violation or non-compliance of labor standards, labor legislations (if there is still employer-employee relationship and that no claim for reinstatement; **total claim does not exceed 5,000 pesos**)
 - Writ of execution to enforce the compliance order, unless appeal is properly taken to the SOLE
 - Work stoppage/suspension order – if non-compliance poses grave and imminent danger to health and safety of workers in the workplace (e.g. violation of the OSH standards)
-

VISITORIAL AND ENFORCEMENT POWER

PROHIBITED ACTS DURING VISITATION OR ENFORCEMENT

1. Obstruction, impeding, delaying or rendering ineffective the orders of the SOLE or his authorized representatives
 1. Issuing injunction or TRO – not applicable against CA and SC because the law referred only to inferior court or entity
 1. Abuse of authority by government official – summary dismissal from the service
- ❑ Under Art. 128(b), as amended by RA No. 7730, the DOLE is fully empowered to make a determination as to the existence of an employer-employee relationship in the exercise of its visitorial and enforcement power, subject to judicial review, not review by the NLRC. (Bombo Radyo vs SOLE, March 6, 2012)
-

RECOVERY OF WAGES, SIMPLE MONEY CLAIMS, OTHER BENEFITS (Art. 129 in rel. Art. 224)

Del Monte Land Transport
Bus, Co. vs. Armenta,
et.al., 895 Phil 604 (2021)

Q: What is the extent of
DOLE's jurisdiction under
Article 129, as amended by RA
No. 7730 and the LA's
jurisdiction under Article 224?

❑ The issuance of RA 7730 on June 2, 1994, however, effectively removed the jurisdictional limitations brought about by the threshold amount found in Articles 129 and 224 of the Labor Code **insofar as the exercise of the visitorial and enforcement powers of the DOLE Secretary are concerned**. As it stands now, the authority under Article 128 may be exercised by the DOLE regardless of the amount of the award claimed for provided there exists employer-employee relationship.

RECOVERY OF WAGES, SIMPLE MONEY CLAIMS, OTHER BENEFITS (Art. 129 in rel. Art. 224)

People's Broadcasting Service (Bombo Radyo Phils., Inc.) vs. Sec. of DOLE, et al., En Banc, 683 Phil 509 (2012)

Q: What is the 'dividing' line between the jurisdiction of the DOLE Secretary and the NLRC/LA over labor disputes?

1. If the claim involves labor standards benefits mandated by the Labor Code or other labor legislation regardless of the amount prayed for and provided that there is an existing employer employee relationship, jurisdiction is with the DOLE regardless of whether the action was brought about by the filing of a complaint or not.
1. If the claim involves labor standards benefits mandated by the Labor Code or other labor legislation regardless of the amount prayed for and there is no existing employer-employee relationship or the claim is coupled with a prayer for reinstatement, jurisdiction is with the LA/NLRC.



THANK
YOU

📍 General Luna Road, Baguio City, Philippines 2600

☎ (074)442-3306

🌐 ub@e.ubaguio.edu

🌐 www.ubaguio.edu



TYPES OF EMPLOYMENT

RIGHT TO SECURITY OF TENURE

SUBSTANTIVE PROVISION:

Art. 295

“The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed **regular** where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been **fixed for a specific project or undertaking** the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is **seasonal** in nature and the employment is for the duration of the season.

An employment shall be deemed to be **casual** if it is not covered by the preceding paragraph. Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity **exists.**”

Question:

In 2011, Amer and Raj worked as welders on board the barges of Magiting Shipping Company (MSC), which later changed its corporate name to Perlas Corporation (PC). In 2018, PC verbally dismissed Amer and Raj from employment. Thus, they jointly filed a complaint for illegal dismissal against PC, which countered that it already had a separate and distinct personality from MSC. It also alleged that both complainants were not its regular employees as they were merely helpers brought in by its own regular employees on certain occasions when urgent repairs were required for its barges. The Labor Arbiter (LA) held that there was an employer-employee relationship between the parties based on Article 295 [280] of the Labor Code since Amer and Raj: 1) were engaged to perform activities which are usually necessary or desirable in the usual business or trade of PC; and 2) have rendered at least one year of service. **Was the LA correct in using Article 295 [280] as the basis?** Explain briefly.

WHAT ARTICLE 295 IS NOT ABOUT:

Philippine Global
Communication vs de
Vera, GR No. 157214,
June 7, 2005 (498
Phil 301)

- ❑ Article 295 (formerly Art. 208) is not the yardstick by which the question on the existence of employer-employee relationship shall be measured. As it is, the provision merely distinguishes between two kinds of employment: regular and casual. It does not apply where the very existence of an employment is in dispute.
-

TYPES OF EMPLOYEE UNDER ARTICLE 295:

- 1. Regular employee** – engaged to perform activities that are usually necessary or desirable to the trade or business of the employer, or a casual employee who has rendered work for more than one year (but only as regards the activity for which the employee was hired)
- 2. Casual employee** – engaged to perform activities that are NOT necessary or desirable to usual trade or business of the employer, provided that the employment has not exceeded one year. Neither seasonal nor project-based.
- 3. Project-based employee** – one whose employment is coterminous with a particular undertaking or project the date/time of completion of which has been determined at the time of engagement.
- 4. Seasonal employee** – one whose employment is seasonal in nature and the employment is for the duration of the season.

ESTOPPEL:

Universal Robina Sugar Milling Corp. vs Nagkahiusang Mamumuno sa URSUMCO-National Federation of Labor (NAMA-URSUMCO-NFL), GR No. 224558, November 29, 2018, 887 SCRA 415

 Is the union estopped from questioning the status of employment of its members by agreeing to the CBA? (e.g. the CBA denominated the employees as seasonal employees)

❑ The parties are given wide latitude on what may be negotiated and agreed upon in the CBA. Nevertheless, the employment status cannot be bargained away with as the same is defined by law. In other words, notwithstanding the stipulations in an employment contract or a duly negotiated CBA, the employment status of an employee is ultimately determined by law. Hence, estoppel cannot be applied against the union seeking the regularization of employees even if the CBA had already laid out the categories of employment in the company.

TESTS OF REGULAR EMPLOYMENT:

(a) Nature of work: employee is hired to perform work that is necessary or desirable in the usual trade or business of the employer;

❑ NOTE: Bar Exams 2014-2019, 2022, 2023



Reasonable connection between employee's work and employer's trade or business

(b) Length of service: a casual employee who is allowed to work for at least one year, whether continuous or broken, but only with respect to the activity in which he is employed.



Casual employment is NOT necessary or desirable to the employer's trade or business. If it is, it is not casual and therefore apply (a).

Del Rosario vs ABS-CBN

Broadcasting Corporation, GR No. 202481, September 8, 2020 (950 SCRA 180)

- ☐ Employer cannot dictate the nature of employment

- A talent contract does not necessarily prevent an employee from acquiring regular status. The nature of the employment does not depend on the will or word of the employer or on the procedure for hiring and the manner of designating the employee, but on the **activities performed by the employee in relation to the employer's business**. Besides, it must be remembered that labor contracts are subject to the **police power** of the State and are placed on a higher plane than ordinary contracts.

Del Rosario vs ABS-CBN

Broadcasting Corporation, GR No. 202481, September 8, 2020 (950 SCRA 180)

- ❑ Essential characteristic of regular employment as defined under Art. 295 (formerly Art. 280)

- An essential characteristic of regular employment as defined under Art. 280 (now Art. 295) of the Labor Code is the performance by the employee of activities considered necessary and desirable to the overall business or trade of the employer. The necessity of the functions performed by the workers and their connection with the main business of an employer shall be ascertained “by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety.”

Del Rosario vs ABS-CBN
Broadcasting Corporation, GR No.
202481, September 8, 2020 (950
SCRA 180)

❑ Two kinds of employees in
the broadcast industry
under DOLE Policy
Instruction No. 40

- “The first of which are the regular station employees characterized as: x x x [T]hose whose services are engaged to discharge functions which are usually necessary and desirable to the operation of the station and whose usefulness is not affected by changes of programs, ratings or formats and who observe normal working hours.:
- “The other classification of broadcast employees pertains to program employees, who are: x x x [T]hose whose skills, talents or services are engaged by the station for a particular or specific program or undertaking and who are not required to observe normal working hours x x x and are allowed to enter into employment contracts with other persons, stations, advertising agencies or sponsoring companies.”

REGULAR EMPLOYMENT:

Del Rosario vs ABS-CBN
Broadcasting Corporation, GR No.
202481, September 8, 2020 (950
SCRA 180)

- ❑ The employer may establish a 'work pool' similar to that of the construction, shipping, security, and film industries

- The broadcast industry is a business that is allied with the film industry. Similar to the business of producing and creating films, the production of programs in the broadcast industry likewise involves periods with a foreseeable suspension of work.
- The description of a work pool perfectly suits the distinct nature of the broadcast industry: A work pool may exist although the workers in the pool do not receive salaries and are free to seek other employment during temporary breaks in the business, provided that the worker shall be available when called to report for a project.
- This can be applied to project workers insofar as the effect of temporary cessation of work is concerned.

Del Rosario vs ABS-CBN
Broadcasting Corporation, GR No.
202481, September 8, 2020 (950
SCRA 180)

☐ Conditions for the validity
of a 'work pool' scheme

- The creation of a work pool is a valid exercise of management prerogative – to control and manage its enterprise effectively, and freely conduct its business operations to achieve its purpose.
- In order not be used to circumvent the employee's security of tenure, the employer must prove that (1) a work pool in fact exists, (2) the members therein are free to leave anytime and offer their services to other employers.

Del Rosario vs ABS-CBN
Broadcasting Corporation, GR No.
202481, September 8, 2020 (950
SCRA 180)

❑ Status of employment of
workers in a ‘work pool’
and consequences in case
of illegal dismissal

- The continuous rehiring of workers in the “work pool” bestow upon them regular status which means that they cannot be separated from service without cause.
- Even if the workers in the ‘work pool’ are allowed to offer their services to other employers during the lulls in the production business, they shall still be regarded as regular employees who are simply “on leave” during such periods of suspension in production.
- In case of illegal dismissal or workers in the work pool, they shall be entitled to reinstatement in the work pool without loss of seniority rights and other privileges, backwages and other allowances and benefits from the time these are withheld from them until their actual reinstatement.

PROJECT-BASED EMPLOYMENT: Test

Mirandilla, et al. vs Jose Calma Dev't Corp., et al., GR No. 242834, January 26, 2019, 855 Phil. 498

 Who is considered a project-based employee?

- ☐ The principal test for determining whether particular employees are properly characterized as project employees as distinguished from regular employees, is whether or not: (a) the employees were assigned to carry out a specific project or undertaking; and (b) duration and scope of which were specified at the time the employees were engaged for that project.

 - ☐ The employer should not only prove that the duration and scope of the employment were specified at the time they were engaged, but also that there was indeed a project.
-

First strand of cases: Purported project employment is actually regular because the employer failed to prove that the initial engagement was for a specific project, or that the employer failed to prove the project employment, or that the employee was, at the time of engagement, informed of the project nature of his employment and its specific completion.

- ❑ Capitol Industrial Construction Groups vs NLRC, 293 Phil. 508, 221 SCRA 469 (1993) – “project” employees did not just work in the project sites but were made to work in-house as welders, inventory clerks, truck helpers, machinists, batterymen, and warehousemen in the contractor’s central shop, central warehouse, and central office, thereby performing work that is usually necessary and desirable in the employer’s usual business or trade .

First strand of cases: Purported project employment is actually regular because the employer failed to prove that the initial engagement was for a specific project, or that the employer failed to prove the project employment, or that the employee was, at the time of engagement, informed of the project nature of his employment and its specific completion.

- ❑ Tomas Lao Construction vs NLRC, 344 Phil. 268, 278 SCRA 716 (1997) – the employer failed to execute project employment contract from the beginning and tried to subterfuge that omission by subsequently requiring the supposed project employees to sign employment contracts stipulating their employment as project-based, albeit belatedly.

First strand of cases: Purported project employment is actually regular because the employer failed to prove that the initial engagement was for a specific project, or that the employer failed to prove the project employment, or that the employee was, at the time of engagement, informed of the project nature of his employment and its specific completion.

- ❑ *Brahm Industries, Inc. vs NLRC*, 345 Phil. 1077, 280 SCRA 828 (1997) – the employer failed to adduce documentary evidence such as contract, payroll or any other convincing evidence which may attest to the nature of the employment of the supposed project employees. Self-serving affidavits of other employees attesting that they are project employees just like the complainants are inadequate to prove the latter’s nature of employment.

First strand of cases: Purported project employment is actually regular because the employer failed to prove that the initial engagement was for a specific project, or that the employer failed to prove the project employment, or that the employee was, at the time of engagement, informed of the project nature of his employment and its specific completion.

- ❑ Violeta vs NLRC, 345 Phil. 762, 280 SCRA 520 (1997); Chua vs CA, 483 Phil. 126, 440 SCRA 121 (2004) – the project employment contract shall conform with the requirements of Article 295 (formerly Art. 280) of the Labor Code. It should not only identify the specific project or undertaking for which the employee was hired but shall also stipulate the specific completion date of such project or undertaking at the time of engagement. Otherwise, the employment is presumed regular.

First strand of cases: Purported project employment is actually regular because the employer failed to prove that the initial engagement was for a specific project, or that the employer failed to prove the project employment, or that the employee was, at the time of engagement, informed of the project nature of his employment and its specific completion.

- ❑ *Inocentes vs R. Syjuco Construction, Inc.*, GR No. 237020, July 29, 2019, 911 SCRA 350 – A summary which only listed the projects after workers were assigned to them but did not reflect that the workers were informed at the time of engagement that their work was only for the duration of a project is not sufficient to prove the existence of project employment. For failure of the employer to prove project employment, the workers are presumed as its regular employees.

First strand of cases: Purported project employment is actually regular because the employer failed to prove that the initial engagement was for a specific project, or that the employer failed to prove the project employment, or that the employee was, at the time of engagement, informed of the project nature of his employment and its specific completion.

- ❑ PNOC-Energy Development Corporation vs NLRC, 549 Phil. 733, 521 SCRA 222 (2007) – The project employment contract should specify the particular project or undertaking for which the employee was engaged, in order that the same comply with Art. 295 of the Labor Code. Listing the employees along with the projects to which they were assigned is too vague or imprecise and therefore not sufficient.

Second strand of cases: An initial project employment will ripen into regular employment if there is continuous rehiring of the same employee for different successive projects.

- ❑ Caramol vs NLRC, 296-A Phil. 609, 225 SCRA 582 (1993) – The employment contract was renewed 44 times, spanning 13 years and without the employer submitting termination reports to the concerned DOLE Field Office. Fixed-term employment is valid as long as it is not used to preclude the acquisition of tenurial security by the employee.

Second strand of cases: An initial project employment will ripen into regular employment if there is continuous rehiring of the same employee for different successive projects.

- ❑ Salinas, Jr. vs NLRC, 377 Phil. 55, 319 SCRA 54 (1999) – The questioned employment contracts were renewed over the course of 5-10 years and the Court observed that the periods were imposed to undermine tenurial security and that the gaps between the project contracts spanned only a day or so.

Second strand of cases: An initial project employment will ripen into regular employment if there is continuous rehiring of the same employee for different successive projects.

- ❑ Phesco, Inc. vs NLRC, 309 Phil. 402, 239 SCRA 446 (1994) – The workers were engaged to work on a project site but, due to a strike, were later reassigned to the employer's aggregate processing plant. While the project site sourced its crushed rock inputs from the aggregate processing plant, the Court found that the plant also supplied to the general public, thereby untethering the initially-project employees' work from just the project site.

Second strand of cases: An initial project employment will ripen into regular employment if there is continuous rehiring of the same employee for different successive projects.

- ❑ Samson vs NLRC, 723 Phil. 135, 253 SCRA 112 (1996) – The worker was rehired for the same kind of work spanning 28 years. He was rehired immediately, with gaps of 1 day to 1 week, in between projects.
- ❑ The Court also distinguished the import of the non submission of the termination report to the DOLE under the old rule in Policy Instruction No. 20 and the new rule under D.O. No. 19-93. While the old rule declared that the non-submission of such termination report is a “clear indication” of nonproject employment, the new rule merely recognized it as just among the “indicators” of such nonproject employment.

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Second strand of cases: An initial project employment will ripen into regular employment if there is continuous rehiring of the same employee for different successive projects.

- ❑ Integrated Contractor and Plumbing Works, Inc. vs NLRC, 503 Phil. 875, 466 SCRA 265 (2005) – Employee was repeatedly hired for various construction projects for 4 years. The Court declared this as indication of the necessity and indispensability of the employee's services to the employer's business.

Second strand of cases: An initial project employment will ripen into regular employment if there is continuous rehiring of the same employee for different successive projects.

- ❑ D.M. Consunji vs Jamin, 686 Phil. 220, 670 SCRA 235 (2012) – The employment history of the employee with DMCI stands out for his continuous, repeated, and successive rehiring in the company’s construction projects so as to constitute an unbroken string of rehiring.
- ❑ NOTE: The employer submitted the necessary termination reports to the concerned DOLE Field Office. Still, the Court used the pattern of rehiring as indicative of necessity and indispensability of the employee’s services to the employer’s business.

Second strand of cases: An initial project employment will ripen into regular employment if there is continuous rehiring of the same employee for different successive projects.

- ❑ D.M. Consunji Corp. vs Bello, 715 Phil. 335, 702 SCRA 347 (2013) – The repeated rehiring of the employee to do the same work as a mason spanning around 8 years is indicative of the necessity and indispensability of the employee's services to the business of the employer.
- ❑ The Court rejected the suggestion of the employer to treat each employment contract separately.

Carpio vs Modair Manila Co. Ltd.,
Inc., GR No. 239622, June 21,
2021, 988 SCRA 87, 904 Phil. 942

❖ PRINCIPLE 1: PRESUMPTION OF REGULARITY OF EMPLOYMENT

- ❑ A worker is presumed a regular employee, unless the employer establishes that: (1) the employee was hired under a contract specifying that the employment will last only for a specific undertaking, the termination of which is determined at the time of engagement; (2) there was indeed a project undertaken; and (3) the parties bargained on equal terms, with no vices of consent.

Carpio vs Modair Manila Co. Ltd.,
Inc., GR No. 239622, June 21,
2021, 988 SCRA 87, 904 Phil. 942

❖ PRINCIPLE 2: SUBSEQUENT
EXECUTION OF PROJECT
EMPLOYMENT CONTRACT IS
MERELY A CONTINUATION

❑ If considered a regular employee at the outset, security of tenure already attaches, and the subsequent execution of project employment contracts cannot undermine such security, but will simply be considered a continuation in the regular employment of such employee.

Carpio vs Modair Manila Co. Ltd.,
Inc., GR No. 239622, June 21,
2021, 988 SCRA 87, 904 Phil. 942

❖ PRINCIPLE 3: PROJECT-BASED
EMPLOYMENT MAY RIPEN TO
REGULAR EMPLOYMENT

- ❑ Even if initially engaged as a project employee, such nature of employment may ripen into regular status if: (1) there is a continuous rehiring of project employees even after cessation of a project; and (2) the tasks performed by the alleged “project employee” are vital, necessary and indispensable to the usual business or trade of the employer. Conversely, project-based employment will not ripen into regularity if the construction worker was truly engaged as a project-based employee, and between each successive project, the employer made no manifestations of any intent to treat the worker as a continuing resource for the main business.

Carpio vs Modair Manila Co. Ltd.,
Inc., GR No. 239622, June 21,
2021, 988 SCRA 87, 904 Phil. 942

❖ PRINCIPLE 4: “NO WORK NO
PAY” PRINCIPLE APPLIES TO
REGULAR PROJECT EMPLOYEES

❑ Regularized construction workers are subject to the “no work no pay” principle, such that the employer is not obligated to pay them a salary when “on leave.” In case of an oversupply of regularized construction workers, then the employer can exercise management prerogative to decide whom to engage for the limited projects and whom to consider as still “on leave.”

Carpio vs Modair Manila Co. Ltd.,
Inc., GR No. 239622, June 21,
2021, 988 SCRA 87, 904 Phil. 942

❖ PRINCIPLE 5: COMPLIANCE
WITH THE TERMINATION
REPORT REQUIREMENT IS JUST
AN “INDICATOR” OF PROJECT
EMPLOYMENT

❑ Submission of termination reports to the DOLE Field Office “may be considered” only as an indicator of project employment; conversely, non-submission does not automatically grant regular status. By themselves, such circumstances do not determine the nature of employment.

- ❑ A seasonal employee is one who is hired to perform work or services to be performed is seasonal in nature and the employment is for the duration of the season.

Universal Robina Sugar Milling Corp. vs Acibo, GR No. 186439, January 15, 2014, 713 SCRA 597

- ❑ Two requirements need to be satisfied to remove the engagement from the presumption of regularity of employment:
 1. The employee must be performing work or services that are seasonal in nature; and
 2. He had been employed for the duration of the season.
- ❑ Continuous or repeated hiring for the same tasks or activities may serve as a badge of regular employment.

REGULAR SEASONAL EMPLOYEE:

Universal Robina Sugar Milling Corp. vs Nagkahiusang Mamumuno sa URSUMCO-National Federation of Labor (NAMA-URSUMCO-NFL), GR No. 224558, November 29, 2018, 887 SCRA 415

 May a seasonal employee acquire a regular status? When?

❑ “Seasonal employment becomes regular seasonal employment when the employees are called to work from time to time. On the other hand, those who are employed only for a single season remain as seasonal employees. As a consequence of regular seasonal employment, the employees are not considered separated from service during the off-milling season, but are only temporarily laid off or on leave until re-employed. Nonetheless, in both regular seasonal employment and seasonal employment, the employee performs no work during the off-milling season.”

REGULAR & REGULAR SEASONAL EMPLOYEES:

Universal Robina Sugar Milling Corp. vs Acibo, GR No. 186439, January 15, 2014, 713 SCRA 597

 Is a regular seasonal employee similar to a regular employee?

❑ “Be that as it may, regular seasonal employees, like the respondents in this case, should not be confused with the regular employees of the sugar mill such as the administrative or office personnel who perform their tasks for the entire year regardless of the season. The NLRC, therefore, gravely erred when it declared the respondents regular employees of URSUMCO without qualification and that they were entitled to the benefits granted, under the CBA, to URSUMCO’s regular employees.”

OVERSEAS FILIPINO SEAFARERS: (BAR QUESTIONS)

❑ 2017 Bar Exam Question

Nonato had been continuously employed and deployed as a seaman who performed services that were necessary and desirable to the business of N- Train Shipping, through its local agent, Narita Maritime Services (Agency), in accordance with the 2010 Philippine Overseas Employment Administration Standard Employment Contract (2010 POEA-SEC). Nonato's last contract (for five months) expired on November 15, 2016. Nonato was then repatriated due to a "finished contract." He immediately reported to the Agency and complained that he had been experiencing dizziness, weakness, and difficulty in breathing. The Agency referred him to Dr. Neri, who examined, treated, and prescribed him with medications. After a few months of treatment and consultations, Nonato was declared fit to resume work as a seaman. Nonato went back to the Agency to ask for re-deployment but the Agency rejected his application. Nonato filed an illegal dismissal case against the Agency and its principal, with a claim for total disability benefits based on the ailments that he developed on board N- Train Shipping vessels. The claim was based on the certification of his own physician, Dr. Nunez, that he was unfit for sea duties because of his hypertension and diabetes.

❑ 2018 Bar Exam Question

Marciano was hired as Chief Engineer on board the vessel MN Australia. His contract of employment was for nine months. After nine months, he was re-hired. He was hired a third time after another nine months. He now claims entitlement to the benefits of a regular employee based on his having performed tasks usually necessary and desirable to the employer's business for a continuous period of more than one year. Is Marciano's claim tenable? Explain your answer. (3%)

OVERSEAS FILIPINO SEAFARERS ARE CONTRACTUAL

Millares vs National Labor Relations Commission, GR No. 110524, July 29, 2002, 434 Phil. 524

 Is Article 295 of the Labor Code applicable to sea-based overseas Filipino workers? Do they become regular employees for performing activities that are usually necessary or desirable to their employer's shipping business?

- ☐ “It is clear that seafarers are considered contractual employees. They can not be considered as regular employees under Article 280 (now Art. 295) of the Labor Code. Their employment is governed by the contracts they sign everytime they are rehired and employment is terminated when the contract expires.”
- ☐ NOTE: D.O. No. 231, Series of 2013 specifically make domestic seafarers covered by Article 295 of the Labor Code.

Art. 296

- ❑ “Probationary employment shall **not exceed six (6) months** from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a **just cause** or when he **fails to qualify** as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. **An employee who is allowed to work after a probationary period shall be considered a regular employee.**”
- ❑ It refers to an employment arrangement where the employer gives itself a period of six months to assess the qualification of the employee for regular status in accordance with reasonable standards made known to such employee at the time of engagement.

PROBATIONARY EMPLOYMENT:

CONDITION 1: AT THE TIME OF ENGAGEMENT, EXECUTION OF A PROBATIONARY CONTRACT WHERE THE EMPLOYEE IS INFORMED OF HIS PROBATIONARY STATUS AND THE REASONABLE STANDARDS TO QUALIFY FOR REGULAR STATUS

- ❑ A.M. Oreta & co., Inc. vs NLRC, G.R. No. 74004, August 10, 1989, 176 SCRA 218 – The employment contract between the employer and the employee should stipulate that the latter shall undergo a probationary period before he can qualify as a regular employee.
- ❑ Sampaguita Auto Transport Corp. vs NLRC, 702 Phil. 701 (2013) – If there is doubt as to the genuineness of the signature of the employee on the probationary appointment, it is incumbent upon the employer to disprove the claim of the employee that his signature is forged. Failure on the part of the employer to prove the genuineness of the signature, the doubt shall be resolved in favor of the employee.

PROBATIONARY EMPLOYMENT:

CONDITION 1: AT THE TIME OF ENGAGEMENT, EXECUTION OF A PROBATIONARY CONTRACT WHERE THE EMPLOYEE IS INFORMED OF HIS PROBATIONARY STATUS AND THE REASONABLE STANDARDS TO QUALIFY FOR REGULAR STATUS

- ❑ *Abbott Laboratories, Phils., et al. vs Alcaraz, 714 Phil. 510 (2013), En Banc* – Employers dealing with a probationary employee shall comply with two requirements: First, the employer must communicate the regularization standards to the probationary employee; and second, the employer must make such communication at the time of the probationary employee's engagement. If the employee fails to comply with either, the employee is deemed as a regular and not a probationary employee.
- ❑ If the employer complied with these requirements but failed to follow its own termination procedure (stipulated in the employment contract), its dismissal of the employee is procedurally infirm. It is liable for nominal damages to the employee but the dismissal remains valid.

CONDITION 1: AT THE TIME OF ENGAGEMENT, EXECUTION OF A PROBATIONARY CONTRACT WHERE THE EMPLOYEE IS INFORMED OF HIS PROBATIONARY STATUS AND THE REASONABLE STANDARDS TO QUALIFY FOR REGULAR STATUS

- ❑ *Agustin vs Alphaland Corp., et al.*, 883 Phil. 177 (2020) – The probationary contract should specify with clarity the standards by which the qualification of the employee for regular status will be tested. The stipulation that the employee is “expected to render the highest quality of professional service and to always pursue the interest of the company” is too general and does not meet the requirement that the employee shall be informed of the reasonable standards for regularization at the time of engagement.

CONDITION 2:
PROBATIONARY
EMPLOYMENT SHALL BE
LIMITED WITHIN THE
STIPULATED PERIOD
WHICH SHALL NOT
EXCEED SIX MONTHS
FROM THE TIME THE
EMPLOYEE STARTED
WORKING

International Catholic Migration Commission vs NLRC, 251
Phil. 560 (1989)

- ☐ Probation period less than 6 months is valid – It is within the exercise of the right to select his employees that the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him permanently.
- ☐ “Probationary” implies the purpose of the term or period but not its length – A probationary appointment is made to afford the employer an opportunity to observe the fitness of a probationer while at work, and to ascertain whether he will become a proper and efficient employee.

CONDITION 2:
PROBATIONARY
EMPLOYMENT SHALL BE
LIMITED WITHIN THE
STIPULATED PERIOD
WHICH SHALL NOT
EXCEED SIX MONTHS
FROM THE TIME THE
EMPLOYEE STARTED
WORKING

International Catholic Migration Commission vs NLRC, 251
Phil. 560 (1989)

- ☐ Employer need not wait for the expiration of the 6-month period – There is nothing under Art. 281 (now Art. 295) of the Labor Code that would preclude the employer from extending a regular or a permanent appointment to an employee once the employer finds that the employee is qualified for regular employment even before the expiration of the probationary period. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, Art. 281 (now Art. 295) of the Labor Code does not likewise preclude the employer from terminating the probationary employment on justifiable causes.

CONDITION 2:
PROBATIONARY
EMPLOYMENT SHALL BE
LIMITED WITHIN THE
STIPULATED PERIOD
WHICH SHALL NOT
EXCEED SIX MONTHS
FROM THE TIME THE
EMPLOYEE STARTED
WORKING

Canadian Opportunities Unlimited, Inc. vs Dalangin, Jr., 681
Phil. 21 (2012)

☐ Parties may agree but not exceeding 6 months – The “trial period” or the length of time the probationary employee remains on probation depends on the parties’ agreement, **but shall not exceed six (6) months** under Article 281 (now Art. 295) of the Labor Code, **unless** it is covered by an apprenticeship agreement stipulating a longer period. The word “probationary” as used to describe the period of employment, implies the purpose of the term or period, but not its length. Thus, the fact that Dalangin was separated from the service after only about four weeks does not necessarily mean that his separation from the service is without basis.

CONDITION 2:
PROBATIONARY
EMPLOYMENT SHALL BE
LIMITED WITHIN THE
STIPULATED PERIOD
WHICH SHALL NOT
EXCEED SIX MONTHS
FROM THE TIME THE
EMPLOYEE STARTED
WORKING

Buiser, et al. vs Hon. Vicente Leogardo, Jr., 216 Phil. 144 (1984)

- ❑ Generally, the probationary period of employment is limited to six (6) months. The exception to this general rule is when the parties to an employment contract may agree otherwise, such as when the same is established by company policy or when the same is required by the nature of the work to be performed by the employee. In the latter case, **there is recognition of the existence of managerial prerogatives in requiring a longer period** of probationary employment, such as in the present case where the probationary period was set for eighteen months x x x especially where the employee must learn a particular kind of work such as selling, or when the job requires certain qualifications, skills, experience or training.

CONDITION 2:
PROBATIONARY
EMPLOYMENT SHALL BE
LIMITED WITHIN THE
STIPULATED PERIOD
WHICH SHALL NOT
EXCEED SIX MONTHS
FROM THE TIME THE
EMPLOYEE STARTED
WORKING

CALS Poultry Supply Corp. vs Roco, 434 Phil. 720 (2002)

- ❑ “ In Cebu Royo vs Deputy Minister of Labor, our computation of the 6-month probationary period is reckoned from the date of appointment up to the same **calendar date** of the month following.”

Alcira vs National Labor Relations Commission, 475 Phil. 455 (2004)

- ❑ “ We reiterate our ruling in CALS Poultry Supply: our computation of the 6-month probationary period is reckoned from the date of appointment up to the same **calendar date** of the month following.”

CONDITION 2:
PROBATIONARY
EMPLOYMENT SHALL BE
LIMITED WITHIN THE
STIPULATED PERIOD
WHICH SHALL NOT
EXCEED SIX MONTHS
FROM THE TIME THE
EMPLOYEE STARTED
WORKING

Mitsubishi Motors Philippines Corporation vs Chrysler
Philippines Labor Union, 477 Phil. 241 (2004)

□ “Applying Article 13 of the Civil Code, the probationary period of six (6) months consists of one hundred eighty (180) days. This is in conformity with paragraph one, Article 13 of the Civil Code, which provides that the months which are not designated by their names shall be understood as consisting of thirty (30) days each. The number of months in the probationary period, six (6) should then be multiplied by the number of days within a month, thirty (30); hence, the period of one hundred eighty (180) days.”

CONDITION 2:
PROBATIONARY
EMPLOYMENT SHALL BE
LIMITED WITHIN THE
STIPULATED PERIOD
WHICH SHALL NOT
EXCEED SIX MONTHS
FROM THE TIME THE
EMPLOYEE STARTED
WORKING

Mariwasa Manufacturing, Inc. vs Dazo, et al., 251 Phil. 417
(1989)

❑ “The extension of Dequila’s probation was *ex gratia*, an act of liberality on the part of his employer affording him a second chance to make good after having initially failed to prove his worth as an employee. Such an act cannot now unjustly be turned against said employer’s account to compel it to keep on its payroll one who could not perform according to its work standards. The law, surely, was never meant to produce such an inequitable result.”

Department of Education D.O. No. 88, series of 2010 (Manual of Regulations for Private Schools in Basic Education, or MORBE)

Sec. 63. A probationary period of not more than three years in the case of the school teaching personnel and not more than six months for non-teaching personnel shall be required for employment in private schools. A school personnel who has successfully undergone the probationary period herein specified and who is fully qualified under existing rules and standards of the school shall be considered permanent.

Commission on Higher Education
Memorandum Order No. 40 series
of 2008 (Manual of Regulations for
Private Higher Education or
MORPHE)

Sec. 117. An academic teaching personnel, who does not possess the minimum academic qualifications prescribed under Sections 35 and 36 of this Manual shall be considered as part-time employee, and therefore cannot avail of the status and privileges of a probationary employment. A part-time employee cannot acquire regular permanent status, and hence, may be terminated when a qualified teacher becomes available.

The probationary employment of academic teaching personnel shall not be more than a period of six (6) consecutive semesters or nine (9) consecutive trimesters of satisfactory service, as the case may be.

Palgan vs Holy Name University, 896
Phil. 497 (2021)

- ❑ In *Lacuesta v Ateneo de Manila University*, the Supreme Court held that the Manual of Regulations for Private Schools and not the Labor Code determines whether or not a faculty member in a private educational institution has attained a permanent or regular status.
- ❑ The following are the requisites before a private school teacher acquires permanent status: 1) the teacher serves full-time; 2) he/she must have rendered six (6) consecutive semesters or nine (9) consecutive trimesters of service, as the case maybe; 3) such service must be satisfactory

Fallarme, et al. vs San Juan de Dios Educational Foundation, Inc., et al., 795 Phil. 74 (2016)

- ❑ SCHOOL SHOULD STILL COMPLY WITH THE STANDARDS LAID DOWN IN ABBOTT LABORATORIES CASE – With respect to the regularization of probationary teachers, the standards laid down in Abbott Laboratories apply to the third requisite under the 1992 Manual: *that they must have rendered satisfactory service*. Thus, the school shall: (1) the employer must have made known to the probationary employee the reasonable standard that the latter must comply with to qualify as a regular employee; and (2) the employer must have informed the probationary employee of the applicable performance standard at the time of the latter's engagement. Failing in one or both ripens the probationary status to regular.

Fallarme, et al. vs San Juan de Dios Educational Foundation, Inc., et al., 795 Phil. 74 (2016)

- ❑ ADMINISTRATIVE PREROGATIVE IS AN EXTENSION OF ACADEMIC FREEDOM – the determination of whether the performance of probationary teaching personnel has been sufficiently satisfactory as to warrant their regularization lies in the hands of the school pursuant to its administrative prerogative which is an extension of its academic freedom under Section 5(2), Article XIV of the Constitution. Academic freedom gives the school the discretion and the prerogative to impose standards on its teachers and to determine whether these have been met upon the conclusion of the probationary period.

Mercado, et al. vs AMA Computer College-Parañaque City, Inc., 632 Phil. 229 (2010)

 When a teacher is hired for a full-time teaching position and given a fixed-term contract (1 semester or 1 school year), how should the employment status be characterized – probationary or fixed-term?

❑ “Given the clear constitutional and statutory intents, we cannot but conclude that **in a situation where the probationary status overlaps with a fixed-term contract *NOT SPECIFICALLY USED FOR THE FIXED TERM IT OFFERS*, Article 281 (now Art. 296) should assume primacy and the fixed-term period character of the contract must give way.**”

FIXED-TERM EMPLOYMENT:

Brent School,
Inc. vs Zamora,
260 Phil. 747
(1990)

- ❑ The Labor Code does not prohibit an employment contract with a fixed period, provided it is entered into by the parties without any force, duress or improper pressure being brought to bear upon either party, particularly the employee, and absent any other circumstance vitiating consent. Such employment for a defined period is allowed even where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer. There is nothing essentially contradictory between a definite period of employment and the nature of the employee's duties.
-

FIXED-TERM EMPLOYMENT:

Ditiangkin vs Lazada
E-Services
Philippines, Inc.,
930 Phil. 250 (2022)

For a fixed-term employment to be valid, either of these circumstances must be proven:

1. The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
 2. It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter
-

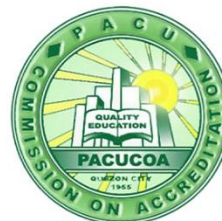
BAR EXAM QUESTION: 2022

 Sigaw Corp., a media entity, produces television shows. To streamline its processes, it created a database of camera crew and sound engineers whom it usually engages for its television shows. Sigaw Corp. pays them only “talent fees” each time they are engaged for a show. After several years of this set-up, the camera crew and sound engineers filed a complaint for regularization against Sigaw Corp. before the Labor Arbiter. On the other hand, Sigaw Corp., claims that they are not regular employees but independent contractors or talents because they are engaged and paid for their specific technical skills.” Rule on the complaint. Explain briefly. (5 points)



THANK
YOU

📍 General Luna Road, Baguio City, Philippines 2600
☎ (074)442-3306
🌐 ub@e.ubaguio.edu
🌐 www.ubaguio.edu



POST-EMPLOYMENT

BOOK VI – Arts. 293 to 302

RIGHT TO SECURITY OF TENURE

CONCEPT:

“Art. 294. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be reinstated without loss of seniority rights and privileges and to his full backwages, inclusive of allowances, and his other benefits or their monetary equivalent computed from the time of his compensation was withheld from him up to the time of his actual reinstatement.”

TYPES OF EMPLOYMENT:

1. Regular employment

- ☐ Nature of employment
- ☐ Probationary – predetermined and not more than 6 months (except: MORBE, MORPHE)

2. Casual employment

- ☐ Not regular employment and should not exceed 1 year

3. Project-based employment

- ☐ Pre-determined project and period of completion

4. Seasonal employment

- ☐ Pre-determined duration

5. Fixed-term employment

- ☐ Pre-determined start and end of employment + equity during negotiation

NOTE: Project-based, seasonal, and fixed-term employees may be performing activities that are usually necessary or desirable to the employer's trade or business.

THE RIGHT TO DISCIPLINE AND DISMISS EMPLOYEES:

❑ Two contending constitutional rights:

- Management prerogative (property right, return on investment) vs Security of tenure (property right)
- Law strikes a balance between the two
- The employer may dismiss an employee subject to:

VALID CAUSE (substantial due process)

+

VALID PROCESS (procedural due process)



If none ILLEGAL
DISMISSAL

VALIDITY OF DISMISSAL: (Substantive due process)

Q: What are the fundamental principles in illegal dismissal cases?

A: In labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof required is substantial evidence, defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." The burden of proof rests upon the party who asserts the affirmative of an issue.

VALIDITY OF DISMISSAL: (Substantive due process)

Q: What are the fundamental principles in illegal dismissal cases?

A: The Court recognizes the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause. However, there are cases wherein the facts and the evidence do not establish prima facie that the employee was dismissed from employment. Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.” (Maria Vilma Doctor and Jaime Lao vs NII Enterprises, GR No. 194001, November 2017)

EMPLOYEE burden of proof: Fact of dismissal

Q: What is the condition sine qua non before the employer's burden to prove the validity of the cause of dismissal arises?

A: "Petitioners' bare allegation that they were dismissed from employment by respondents, unsubstantiated by impartial and independent evidence, is insufficient to establish such fact of dismissal. Petitioners' general claims that they were barred by respondents from entering the work premises and that respondents did not heed petitioners' efforts to continue their employment lacked substantial details to be credible. The Court reiterates the basic rule of evidence that each party must prove his affirmative allegation, that mere allegation is not evidence. The Court also stresses that the evidence to prove the fact of the employee's termination from employment must be clear, positive, and convincing. Absent any showing of an overt or positive act proving that respondents had dismissed petitioners, the latter's claim of illegal dismissal cannot be sustained as the same would be self-serving, conjectural, and of no probative value." (Maria Vilma Doctor and Jaime Lao vs NII Enterprises, GR No. 194001, November 2017)

Substitution of parties in Illegal dismissal cases:

Q: May an heir substitute for the deceased employee-complainant in an illegal dismissal case?

- ☐ Fontana Development vs Vukasinovic, 363 Phil 263 (2016)
- ☐ Nedira vs NJ World Corp. GR No. 240005, December 6, 2022)

A: Yes under Rule V Sec. 20 of the 2011 NLRC Rules as amended by the NLRC En Banc in 2017. “We (SC) rule that an illegal dismissal complaint cannot be classified as to cause or foundation like an ordinary civil action insofar as the effect of death of any of the parties is concerned. To do so would be to oversimplify the nature of a complaint for illegal dismissal and, in the process, ignore certain characteristics of illegal dismissal complaints which distinguish and prevent them from fitting said mold of ordinary civil actions. The abundance of cases where substitution was allowed demonstrate and reflect this view.” Thus, the SC applied the amendment retroactively in this case which was originally started in 2013

❑ Termination by the employer (Arts. 297-299)

Just causes:

- a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b) Gave and habitual neglect by the employee of his duties;
- c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- e) Other causes analogous to the foregoing

Authorized causes:

- a) Installation of labor-saving devices;
- b) Redundancy;
- c) Retrenchment to prevent losses
- d) Closing or cessation of operation of the establishment or undertaking
- e) Disease

TERMINATION OF EMPLOYMENT:

- ❑ Termination by the employee (Arts. 300)
 - a) Resignation – subject to a one-month advance notice (damages)
 - b) Serious insult by the employer or his representative on the honor and person of the employee;
 - c) Inhuman or unbearable treatment accorded the employee by the employer or his representative;
 - d) Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and
 - e) Other causes analogous to any of the foregoing

- ❑ Natural cause: (strictly NO dismissal under these circumstances)
 - a) Retirement (Art. 302)
 - b) Completion of project (project-based)
 - c) Arrival of resolutory period (casual, fixed-term)

JUST CAUSES OF DISMISSAL:

SERIOUS MISCONDUCT - Elements:

- ❑ For misconduct or improper behavior to be a just cause for dismissal:
 - a) it must be serious;
 - b) it must relate to the performance of the employer's duties; and
 - c) it must show that the employee has become unfit to continue working for the employer. (Coffee Bean vs Arenas, 2015)

Substantive
due
process:
Valid cause
of dismissal

JUST CAUSES OF DISMISSAL:

Q: Is pregnancy out of wedlock considered serious misconduct if committed by a teacher?

Leus vs St. Scholastica College, GR
No. 187226, January 28, 2015

A: No. When the law refers to morality, it necessarily pertains to **public and secular morality and not religious morality**. There is no law which penalizes an unmarried mother by reason of her sexual conduct or proscribes consensual sexual activity between two unmarried persons and such conduct is not denounced by public secular morality. It may be an unusual arrangement, but it certainly is not disgraceful or immoral within the contemplation of the law.

JUST CAUSES OF DISMISSAL:

Q: Is pregnancy out of wedlock considered serious misconduct if committed by a teacher?

- ❑ Santos Jr vs NLRC, GR No. 115795, March 6, 1998

A: A teacher, both in his personal and official conduct, must display exemplary behavior. When a teacher engages in extra-marital relationship, especially when the parties are both married, such behavior amounts to immorality, justifying his dismissal from employment.

Q: Is a second marriage contracted in accordance with Sharia Law by a Moslem convert during the subsistence of his first marriage solemnized under the Family Code bigamous? If yes, is it considered serious misconduct too?

JUST CAUSES OF DISMISSAL:

- ❑ Sexual harassment is a valid cause for separation from service. (Villarama vs NLRC, 1994)
- ❑ An employer is considered constructively dismissed if he or she was harassed by her superior and her employer failed to act on his or her complaint with prompt and sensitivity. In such case, the employer is deemed to have authorized or be complicit to the acts of its erring employee. (LBC Express-Inc. vs Palco, GR No. 217101, February 12, 2020)

Elements of work-related or employment environment sexual harassment :

- (a) An employer, employee, manager, supervisor, agent of the employer, or any other person who has authority, influence or moral ascendancy over another demands, requests or otherwise requires any sexual favor from the other, regardless of whether or not the latter acceded to the demand or request;
- (b) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
- (c) The above acts would impair the employee's rights and privileges under existing labor laws or would result in an intimidating, hostile, or offensive environment for the employee. (Sec. 3, RA No. 7877)

JUST CAUSES OF DISMISSAL:

Domingo vs Riyala, consolidated cases,
G.R. No. 155831, February 18, 2008)

Q: Is it required that the ‘demand or request’ for sexual favor under Section 3 be articulated clearly? Or that it is the condition for continued employment?

- ☐ But it is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender. Holding and squeezing Domingo’s shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones – all these acts of Rayala resound with deafening clarity the unspoken request for a sexual favor.
- ☐ It is not essential that the demand, request or requirement be made as a condition for continued employment or for promotion to a higher position. It is enough that the respondent’s acts result in creating an intimidating, hostile or offensive environment for the employee.

JUST CAUSES OF DISMISSAL:

Q: May an OFW Seafarer file a complaint for sexual harassment against his foreign employer under RA 7877? Is he entitled to recover compensation due to work-related injury (e.g. PTSD caused by the act of sexual harassment upon him)?

Toliongco vs. CA, et.al., G.R. No. 231748, July 8, 2020

A: Yes. The provisions of the POEA Standard Employment Contract strikes a balance between the interests of the employer and the seafarer. It provides for the process for recovery of compensation as a result of occupational hazards suffered by the seafarer. The structure of the POEA Standard Employment Contract theorizes that a seafarer will file for claims based on contractual obligations. However, this should not be the case. To afford full protection to labor, our seafarers should not be limited to what is provided by contract. xxx The existence and due execution of the POEA Standard Employment Contract does not mean that seafarers waive their rights to file claims on the basis of substantive law.

JUST CAUSES OF DISMISSAL:

SAFE SPACES ACT – R.A. No. 11313; Art. IV Sec. 16

- (a) An act or series of acts involving any unwelcome sexual advances, requests or demand for sexual favors or any act of sexual nature, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems, that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities;
- (b) A conduct of sexual nature and other conduct-based on sex affecting the dignity of a person, which is unwelcome, unreasonable, and offensive to the recipient, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems;
- (c) A conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient: Provided, That the crime of gender-based sexual harassment may also be committed between peers and those committed to a superior officer by a subordinate, or to a teacher by a student, or to a trainer by a trainee; and
- (d) Information and communication system refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar devices by or in which data are recorded or stored and any procedure related to the recording or storage of electronic data messages or electronic documents.

JUST CAUSES OF DISMISSAL:

OTHER EXAMPLES OF SERIOUS MISCONDUCT:

- ☐ Sexual intercourse within the company premises (Imasen Philippine Manufacturing Corp. vs. Ramonchito T. Alcon and Joann S. Papa, GR No. 194884, October 22, 2014)
- ☐ Profane conversations with coworkers during office hours and sending company information to one's personal email address in violation of company rules. (Janssen D. Perez vs. JP Morgan Chase Bank, GR No. 256939, November 13, 2023)
- ☐ Accusatory and inflammatory language by an employee to the employer or superior contained in the former's letter of explanation. (Nissan Motors vs Victorino Angelo, GR No. 164181, September 14, 2011)

JUST CAUSES OF DISMISSAL:

Willful disobedience by the employee of the lawful order of this employer or representative in connection with his work

Requisites:

- a) the employer's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude,
- b) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge. (Gold City Integrated Port Services vs NLRC, 1990)

JUST CAUSES OF DISMISSAL:

Q: Is violation of a company policy that prohibits intermarriages between and among the employees a valid cause of dismissal for willful disobedience of a lawful order?

Star Paper Corp. vs Simbol, GR No. 164774, April 12, 2006

A: No. The employer has to prove a legitimate business concern in imposing the questioned policy. Otherwise, such policy is discriminatory and cannot justify the dismissal of employees.

JUST CAUSES OF DISMISSAL:

Q: Is ignorance of a company policy a valid defense against a charge for willful disobedience of a lawful order?

Sampaguita Auto Transport vs NLRC,
GR No. 197384, January 30, 2013

A: Generally, an employee has to be informed of company rules and policies before they can be used against him. Ignorance of fundamental and universal rules however is not an excuse. A passenger bus driver who commits reckless driving in violation of company policy may be validly dismissed even if he is “ignorant” of such company policy.

JUST CAUSES OF DISMISSAL:

Gross and habitual neglect by the employee of his duties

- gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. (Orient Express vs NLRC, 1997)
 - Abandonment of a job (SM vs NLRC, 1989)
 - Habitual tardiness and absenteeism
 - Plagiarism committed by teachers (UE vs VMM, 2018)
 - To justify dismissal of an employee for neglect of duties, however, it does not seem necessary that the employer show that he has incurred actual loss, damage, or prejudice by reason of the employee's conduct. It is sufficient that the gross and habitual neglect by the employee of his duties tends to prejudice the employer's interest since it would be unreasonable to require the employer to wait until he is materially injured before removing the cause of the impending evil. (DOLE Manual)
-

JUST CAUSES OF DISMISSAL:

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative

- ❑ Loss of confidence against rank-and-file employees: With respect to rank-and-file employees, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and a mere uncorroborated assertion and accusation by the employer will not be sufficient.
-

JUST CAUSES OF DISMISSAL:

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative

- ☐ Loss of confidence against a managerial employee: mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Proof beyond reasonable doubt is not required.

JUST CAUSES OF DISMISSAL:

Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

Other causes analogous to the foregoing.

- ❑ “In fine, an employee’s failure to meet sales or work quotas falls under the concept of gross inefficiency, which in turn is analogous to gross neglect of duty that is a just cause for dismissal under Article 282 (now Art. 297) of the Code.” (Aliling vs Feliciano, 2012)
-

AUTHORIZED CAUSES OF DISMISSAL:

1. Introduction of labor-saving devices
 2. Redundancy – must be based on fair and reasonable criteria of selection whom to dismiss, such as: a) less preferred status (e.g. temporary employee); b) efficiency; c) seniority. The presence to these criteria used by the employer shows good faith on its part and is evidence that the implementation of redundancy was painstakingly done by the employer in order to properly justify the termination from the service of its employees. (Global Thread vs NLRC, 1999)
-

AUTHORIZED CAUSES OF DISMISSAL:

3. Retrenchment – requisites: a) the retrenchment is necessary to prevent or minimize losses and such losses are proven; b) written notice is given to the employees and the DOLE at least one month before the intended date of retrenchment; and c) separation pay is paid.
 4. Closure of business – if the business is not losing but its owner, for reasons of his own, wants to get out of the business, in good faith can lawfully do so anytime. Just as no law forces anyone to go into business, no law compels anybody to stay in business.
-

AUTHORIZED CAUSES OF DISMISSAL:

5. Sale in good faith – A bona fide sale of the business enterprise may result in the dismissal of the employees of the seller-employer. The purchaser, unless he agrees to do so, has no legal obligation to continue employing the employees of the seller. The seller is obliged however to pay his employees separation pay and other benefits founded on law, policy, or contract. If the sale is in bad faith, the law and rulings on unfair labor practice and the doctrine of successor employer may apply.
-

AUTHORIZED CAUSES OF DISMISSAL:

6. Disease – Conditions:

- a. An employee has been found to be suffering from any disease;
 - b. His continued employment is prohibited by law or prejudicial to his health, or to the health of his co-employees;
 - c. A competent public health authority certifies that the disease is of such nature or at such a stage that it cannot be cured within a period of **six months** even with proper medical treatment;
 - d. Payment of separation pay equivalent to 1 month or ½ month salary for every year of service, whichever is greater, a fraction of at least six months being considered as one whole year.
-

DUE PROCESS REQUIREMENT:

Application in just cause termination:

1. A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
 2. A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
 3. A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (See IRR of Book VI)
-

DUE PROCESS REQUIREMENT:

Application in authorized cause termination

It shall be sufficient that the employer serves a written notice to the employee and the DOLE at least 30 days before the effectivity date of the termination, specifying the ground/s for termination.

SEPARATION PAY FOR VALID DISMISSAL:

Amount of separation pay - only for dismissal due to authorized causes:

- Installation of labor-saving device, redundancy – 1 month pay, or 1 month for every year of service, whichever is higher
 - Retrenchment, closure or cessation of business, disease – 1 month or ½ month pay for every year of service, whichever is higher
-

SEPARATION PAY FOR VALID DISMISSAL:

- ❑ In exceptional cases, financial assistance was granted to legally dismissed employees as an act of “social justice” or based on “equity” so long as the dismissal was not for serious misconduct, does not reflect on the employee’s moral character, or would involve moral turpitude.

 - Example: The non-licensees were dismissed for failure to qualify under RA No. 7836 which is not a serious misconduct reflecting on their moral character. Moreover, they were in the employ for 5-9 years and SJAV has not shown any dissatisfaction with their teaching services. (St. Joseph Academy of Valenzuela Faculty Association vs St. Joseph Academy of Valenzuela, 2013)
-

SEPARATION PAY FOR VALID DISMISSAL:

- ❑ Benefits that have already accrued (anniversary bonus, service awards, performance bonus) prior to dismissal must still be given despite such separation of the employee. The employee has already rendered the service required. However, the value of the performance and anniversary bonuses may be prorated to the number of months that the employee has served prior to his separation from the company. (LG Marcos vs NLRC, 1995)
-

DISMISSAL FOR A VALID CAUSE BUT WITHOUT DUE PROCESS:

- ❑ Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of “dismiss now, pay later,” which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.” (*Agabon vs NLRC*, GR No. 158693, November 17, 2004)
- ❑ The employee is entitled to nominal damages based on the Civil Code principle that “nominal damages may be awarded to a plaintiff whose right was violated or invaded by the employer for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him.” (*Fontana Resort vs Tan*, 2012)

DISMISSAL FOR A VALID CAUSE BUT WITHOUT DUE PROCESS:

Nominal damages higher in authorized dismissal cases vis-à-vis just cause dismissals:

Jaka Food Processing vs
Pacot, et al., GR No.
151378, March 28, 2005

- ❑ “Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 (now Art. 297) but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 (now Arts. 298-299) but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer’s exercise of his management prerogative.”
-

DISMISSAL FOR A VALID CAUSE BUT WITHOUT DUE PROCESS:

Q: Is the validly dismissed employee entitled to salary differentials, unpaid 13th month pay and holiday pay?

Libcap Marketing Corp.,
et al. vs Baquial, GR No.
192011, June 30, 2014

A: “We (Supreme Court) affirm the award of salary differentials, 13th month pay and holiday pay, awarded by the NLRC and the Court of Appeals. We note that although petitioner company had cause to terminate Madriaga, this has no bearing on the issue of award of salary differentials, holiday pay and 13th month pay because prior to his valid dismissal, he performed work as a regular employee of petitioner company, and he is entitled to the benefits provided under the law. Thus, in the case of Agabon, even while the Court found that the dismissal was for a just cause, the employee was still awarded his monetary claims.”

ILLEGAL DISMISSAL = NO VALID CAUSE

- ❑ Two components of a decision in illegal dismissal case:
 - First, finding of the illegality of the dismissal and payment of backwages, reinstatement (or separation pay if proper);
 - Second, computation of monetary awards (Session Delights Ice Cream and Fast Foods vs CA, GR No. 172149, February 8, 2010)
 - ❑ : What is the coverage of the monetary awards? (e.g. backwages and separation pay)
-

ILLEGAL DISMISSAL = NO VALID CAUSE

- ❑ Reinstatement without loss of seniority rights – restoration of the employee to the position from which he or she has been unjustly removed. The employee should be treated in matter involving seniority and continuity of employment as though he or she had not been dismissed from work.
- ❑ If reinstatement is no longer feasible due to strained relations between the employer and employee – SEPARATION PAY IN LIEU OF REINSTATEMENT
- ❑ : How much is the separation pay in lieu of reinstatement – 1 month pay for every year of service. (Sargasso Construction and Development Corp. vs NLRC, GR No. 164118, February 9, 2010)

ILLEGAL DISMISSAL = FORMULA OF BW & SP

- ❑ If reinstatement is proper
 - Backwages = From the ***time the compensation was withheld*** until the ***date of actual reinstatement***. (Art. 294)
 - ❑ If reinstatement is not proper because of strained relations
 - Separation pay and backwages = from the ***time the employee was illegally dismissed*** until the ***finality of the decision ordering payment of their separation pay, in lieu of reinstatement*** (Bani Rural Bank, Inc. vs de Guzman, GR No. 170904, November 13, 2013)
-

ILLEGAL DISMISSAL = NO VALID CAUSE

 Are monetary benefits and salary differential due to wage increase after the employee's illegal dismissal included in the computation of backwages?

- ❑ **First category:** Salary increases and benefits that are contingent on the fulfillment of certain conditions (such as merit increase based on performance, company's fiscal position, management's benevolent initiative)
 - **NOT INCLUDED** (see *Paguio vs PLDT* and *Equitable Banking Corp. vs Sadac* cases)
- ❑ **Second category:** Guaranteed salary increases and benefits (mandated by law, standard company policy, or CBA)
 - **INCLUDED** (see *Dumapis vs. LCMC*. GR No. GR No. 204060, September 15, 2020)

ILLEGAL DISMISSAL = NO VALID CAUSE

Attorney's fees

- ❑ The “Attorney’s fees” is for the employee and not his/her counsel. It’s a compensation awarded by law for being forced to litigate his/her money claims against the employer. The “Attorney’s fees” of the counsel is subject to agreement with the client, and always based on the principle of quantum meruit.
-

FINANCIAL ASSISTANCE

- ❑ **General Rule:** Financial assistance is allowed only in instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. But when there is no dismissal to speak of (e.g. valid resignation by the employee not constructive dismissal), an award of financial assistance is not in order. (Lemery Savings and Loan Bank vs. NLRC, GR No. 96439, January 27, 1992; Arc-Men Food Industries vs. NLRC, GR No. 127086, August 22, 2002)

 - ❑ **Exception:** If special circumstances are present which indubitably merit equitable concessions, via the principle of “compassionate justice” for the working class. (see Eastern Shipping Lines, Inc. vs. Dioscoro D. Sedan, GR No. 159354, April 7, 2006)
-

VOLUNTARY TERMINATION OF EMPLOYMENT:

By the employee:

1. Resignation – Without just cause; employee shall serve written notice to employer at least 1 month in advance.
 - Consequence of no prior notice: Employer may sue employee for damages.

INVOLUNTARY TERMINATION OF EMPLOYMENT:

By the employee:

2. Constructive dismissal/forced resignation – With just cause; no need for 1-month advance notice; Grounds:
 - a. Serious insult by the employer or his representative on the honor and person of the employee;
 - b. Inhuman and unbearable treatment accorded the employee by the employer or his representative;
 - c. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and
 - d. Other causes analogous to any of the foregoing.
-

INVOLUNTARY TERMINATION OF EMPLOYMENT:

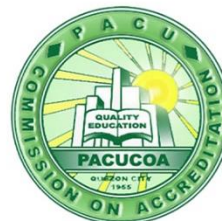
By the employee:

2. Constructive dismissal/forced resignation – With just cause; no need for 1-month advance notice; Grounds:
 - A transfer is tantamount to constructive dismissal when it is "unreasonable, unlikely, inconvenient, impossible, or prejudicial to the employee." The employer has the burden of proving that the transfer was for just and valid grounds, and that it was compelled by a genuine business necessity. Failure to overcome this burden of proof taints the transfer, making it constructive dismissal.
-



THANK
YOU

📍 General Luna Road, Baguio City, Philippines 2600
☎ (074)442-3306
🌐 ub@e.ubaguio.edu
🌐 www.ubaguio.edu



LABOR RELATIONS:

PART X
LABOR LAW REVIEW

BOOK V – Arts. 218; Titles IV, V, VI, VII, VIII, IX

STATE POLICIES:

1. Primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation as modes of settling labor or industrial disputes;
 2. Free trade unionism as instrument of democracy, social justice and development;
 3. Strong and united labor movement
 4. Enlightenment of workers
 5. Administrative machinery for expeditious settlement of labor or industrial disputes
 6. Stable but dynamic and just industrial peace
 7. Participation of workers in policy and decision-making processes affecting their rights, duties and welfare (Art. 218[A])
 8. Prohibition against courts and administrative agencies and officials in fixing wages, rates of pay, hours of work, and other terms and conditions of employment except to determine the minimum standards thereof. (Art. 218[B])
-

CONCEPT OF THE RIGHT TO SELF-ORGANIZATION

Art. 257

- ❑ It shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization. Such right shall include the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for the same purpose or for their mutual aid and protection, subject to the provisions of Art. 279.
-

COVERAGE: (Arts. 253-257)

Who can legally unionize for collective bargaining and negotiation:

1. Rank-and-file employees in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions whether operating for profit or not
 - ❑ Employees of cooperatives who are not members thereof also enjoy the right to join, assist, or form labor organizations. (San Jose Electric Cooperative vs Ministry of Labor, 1989)
 - ❑ Under RA No. 10911 – it shall be unlawful for a labor organization to deny membership, exclude from its membership, cause or attempt to cause an employer to discriminate against an individual because of such individual's age. (Section 5[c])
-

COVERAGE:

Who can legally unionize for collective bargaining and negotiation:

2. Supervisory employees

- But they are not eligible for membership in the collective bargaining unit of the rank-and-file employees. Be that as it may, the rank-and-file union and supervisory employee union operating under the same establishment may join the same federation or national union.
 - Comixing of supervisory employees in the labor union of rank-and-file employees shall only result in their automatic removal therefrom but not the cancellation of registration of the labor union.
-

COVERAGE:

Who could not legally join labor unions for collective bargaining purposes:

1. Managerial employees
 2. Employees of cooperatives who are also members thereof. (San Jose Electric Service Cooperative, *supra*)
 3. Confidential employees (other than managerial employees) are not considered as rank-and-file because of the nature of their function. Confidential employees are those who by reason of their position or nature of work are required to assist or act in a fiduciary manner to managerial employees and hence, are likewise privy to sensitive and highly confidential records. By the very nature of their functions, they assist in a confidential capacity to, or have access of confidential matters of, persons who exercise managerial functions in the field of labor relations. (Metrolab Industries vs Confesor, 1996)
-

COVERAGE:

4. Employees of government agencies with original charter
- EO No. 180 – they may negotiate with the government such terms and conditions of work not otherwise fixed by law. Matters that require appropriation of funds and management prerogatives are non-negotiable.
 - Excluded by EO 180:
 - a. AFP, PNP, BFP, BJMP
 - b. High level employees – one whose functions are normally considered policy determining, managerial or one whose duties are highly confidential in nature.
-

COVERAGE:

Q: May employees of international organizations unionize?

A: No. A petition for certification election, although not a suit against the organization, could not be viewed as an independent or isolated process. It could trigger off a series of events in the collective bargaining process together with related incidents and/or concerted activities, which could inevitably involve them in the legal process which includes any penal, civil an administrative proceedings. (International Catholic Migration Commission vs. Hon. Pura Calleja, GR No. 85750; Kapisanan ng mga Manggagawa at TAC sa IRRI-OLALIA vs Secretary of Labor, GR No. 89331, September 28, 1990)

❑ The immunity of the organization however does not deprive labor of its basic rights which are guaranteed by Article II, Section 18 and Art. XIII, Section 3, of the 1987 Constitution.

RIGHTS AND CONDITIONS OF MEMBERSHIP:

- ❑ Rights and conditions of membership – see Art. 250
- ❑ Impeachment of a union officer; Expulsion of a member – allowed for a valid cause and by following the procedure laid down in the union's constitution and by-laws. (Litton Mills Employees Association vs Ferrer-Calleja, GR No. L-78061, November 24, 1988; Ferrer vs NLRC. GR No. 100898, July 5, 1993)
- ❑ Arbitrary expulsion of a union member may amount to ULP by the union – it violates the member's right to self-organization
- ❑ Intra-union disputes should be resolved first in accordance with the union's constitution and by-laws. A complaint filed directly with the DOLE without following the by-laws is premature. (Diamonon vs Department of Labor, GR No. 108951, March 7, 200)
- ❑ Unless prior resort thereto would practically amount to a denial of justice. (Kapisanan ng mga Manggagawa sa MRR vs. Hernandez. 20 SCRA 109)

LEGITIMATE LABOR ORGANIZATION (LLO):

Q: What are the ways to acquire an LLO status?

A: Under Art. 240 of the Labor Code, a federation, national union or industry or trade union center or an independent union shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon the issuance of the certificate of registration.

1. **Independent registration** – obtained by the union organizers in an enterprise, or a national union or federation, through their own action instead of through issuance of a charter by a federation or national union. An independent union has a legal personality of its own not derived from that of a federation. It may affiliate with a federation or national union, in which case, it may also be called an affiliate.

2 TYPES:

- (a) Independent Labor Union at the enterprise level
- (b) National union or Federation, industry unions, trade union centers and alliances of national unions or federations

CONDITIONS FOR REGISTRATION

- ❑ For all unions independently registered in general
 - See Art. 240 (a) fees required (b) names and addresses of officers, principal address of the union, minutes of organizational meetings and list of workers who participated therein (c) minimum number of membership (d) annual financial report if already in existence for more than 1 year and (e) copies of the CBL, minutes of its adoption or ratification, and list of workers who participated therein.

Q: Is there additional requirements for federations or national unions?

A: Article 244 imposes the following additional requirements for federations and national unions: (1) proof of affiliation of at least 10 locals or chapter union, each of which are recognized bargaining agents in the enterprise where they operate; (2) names and addresses of the companies where the local or chapter unions operate together with the names of their members.

CONDITIONS FOR REGISTRATION

- ❑ For all unions independently registered in general
 - See Art. 240 (a) fees required (b) names and addresses of officers, principal address of the union, minutes of organizational meetings and list of workers who participated therein (c) minimum number of membership (d) annual financial report if already in existence for more than 1 year and (e) copies of the CBL, minutes of its adoption or ratification, and list of workers who participated therein.

Q: Is the 20% minimum membership applicable during meetings?

A: Article 244(c) [**NOTE: This is now Art. 240c**] requires that a union applying for independent registration should be comprised of at least 20% of all the employees in the bargaining unit where it seeks to operate. However, the 20% requirement is not required during the organizational meeting or the ratification of the independent union's constitution and by-laws. (Takata Phils vs BLR, 2014)

WAYS OF ACQUIRING LEGITIMATE LO STATUS

2. Chartering – takes place when a duly registered federation or national union issues a charter certificate to a union in an enterprise and registers the creation of the chapter with the Regional Office where the applicant operates. The union recipient of the charter is called a chapter or local or chartered local. Its legal personality is derived from the federation/national union but it may subsequently register itself independently. (See Art. 241 for complete list of requirements)

Q: What are the rights of a Charter/Chapter?

A: Under Art. 241, the chapter shall acquire legal personality on the date of the issuance of a charter certificate and thus (1) is entitled to file a petition for certification election and (2) acquires all other rights and privileges of a legitimate labor organization subject to the submission of the additional documentary requirements under oath.

RIGHTS AND DUTIES OF LEGITIMATE LABOR ORGS

- ❑ A local union may disaffiliate from its mother union within the 60-day freedom period. However, it shall not have legal personality until it obtains an independent registration in accordance with the Code. (Abaria vs NLRC, 2011)
 - ❑ A contract between an employer and the federation as bargaining agent for the employees is terminated by the disaffiliation of the local of which the employees are members. Consequently, the employer should discontinue the check-off in favor of the federation. The employer has to be notified of the disaffiliation and of the members' withdrawal of their check-off authorization. (Volkschel Labor Union vs BLR, 1985)
-

PROHIBITED ACTS IN UNIONISM:

- ❑ Company union – a labor organization which, in whole or in part, is employer-controlled or employer-dominated. This is a prohibited form of unionism under Article 259(d) and punished as ULP.
- ❑ “Yellow dog” condition – a CBA provision whereby an employee agrees or promises that during the period of his employment he will not become a member of a labor union. This is also punishable as ULP under Article 259 (b).

Q: What is a ‘runaway shop’. Is it also a ULP?

A: A runaway shop refers to the act of the employer in moving its industrial plant from one location to another to escape union labor regulation or state laws, or to discriminate against employees at the old plant because of their union activities. It is an unfair labor practice because relocation is motivated by anti-union *animus* rather than for business reason. (See: *Compex Electronics Employees Association vs NLRC*, GR No. 121315, July 19, 1999)

Grounds under Art. 247:

1. Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of the ratification, and the list of the members who took part in the ratification;
2. Misrepresentation, false statement or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters; and
3. Voluntary dissolution by the members.

Q: What is the effect of filing a petition for cancellation of union registration to pending certification election proceedings?

A: A petition for cancellation of union registration shall not suspend the proceedings on certification election nor shall it prevent the filing of a petition for certification election. In case of cancellation, the affected union may seek just and equitable remedies in the appropriate courts.
(see Art. 246)

CANCELLATION OF REGISTRATION:

Voluntary cancellation – requisites:

1. Filed an application for cancellation of registration with the LRD/BLR, as the case maybe, signed by the union's governing board, attested to by its president;
 2. Petitioning union conducted a referendum by secret balloting among its members prior to the filing of the petition;
 3. Petition is supported by the affirmative vote of at least 2/3 of the general membership during such referendum
-

CANCELLATION OF REGISTRATION:

Ineligibility of membership:

- ❑ Art. 255 – Managerial employees are not eligible to join, assist, or form labor organizations; Supervisory employees are not eligible members of the collective bargaining unit of rank-and-file employees but may join, assist or form their separate collective bargaining unit

Q: If a managerial employee is allowed to join the supervisory employee union or the rank-and-file employee union, is this a ground for cancellation of union registration?

A: No. Article 256 provides that the inclusion as union members of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of members of said union.

CHOOSING THE EXCLUSIVE BARGAINING AGENT:

Choosing the bargaining representative:

Bargaining unit “refers to a group of employees sharing mutual interests within a given employer unit, comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit.”
(Section 1(d), Rule I, DO 40-03 IRR of Book V)

See: Arts. 267 to 272

CHOOSING THE EXCLUSIVE BARGAINING AGENT:

1. SEBA Certification

- ❑ A process where the union requests the DOLE-RD to recognize and certify the union as the sole and exclusive bargaining agent (SEBA) of the bargaining unit it purports to represent to negotiate a CBA with the employer. The certification will be granted if the following requisites are present:
 - The bargaining unit is organized;
 - The requesting union is the only union in that bargaining unit; and
 - The CBU majority are members of the requesting union.

CHOOSING THE EXCLUSIVE BARGAINING AGENT:

2. Certification election

- ❑ Means the process of determining through secret ballot the sole and exclusive bargaining representative of the employees in an appropriate bargaining unit, for purposes of collective bargaining or negotiation. (Section 1, Rule I, IRR Book V)

Statutory requirements:

- a. Verified petition (under oath) with DOLE-RO filed within the 60-day “freedom period” by either the: (a) ILU; (b) the national union or federation which has already issued a charter certificate to its local chapter participating in the CE; (c) local chapter which has been issued a charter certificate; and
 - b. Petition is supported by at least 25% of all the employees in the appropriate bargaining unit (ABU)
-

CHOOSING THE EXCLUSIVE BARGAINING AGENT:

May the employer itself file a petition for CE on behalf of its employees?
(Art. 270):

- Yes if the CBU has no registered CBA. The conduct of the CE becomes mandatory.

Employer as a by-stander Rule
(Art. 271):

- Once a petition for CE is filed, whether by an LLO or by the employer, the employer is considered as a by-stander to the proceedings. It shall not be considered as a party thereto with a concomitant right to oppose a petition for CE. Its participation thereto is limited to: (a) being notified or informed of petitions of such nature; (b) submit the list of employees during the pre-election conference when required by the Med-Arbiter.
-

CHOOSING THE EXCLUSIVE BARGAINING AGENT:

3. Consent Election

- May take place during the preliminary conference of the PCE before the Med-Arbiter
 - Med-Arbiter shall enter in the minutes of the hearing or preliminary conference the fact of the agreement of the contending unions to hold consent rather than certification elections and then cause the immediate scheduling of the pre-election conference.
 - Actual election shall take place only after the pre-election conference/s has/have been terminated.
-

CHOOSING THE EXCLUSIVE BARGAINING AGENT:

Canvassing of vote and declaration of winner?

Major ValVot – majority of the valid votes

CasVot – votes cast

Major ElVot – majority of eligible voters

TalVot Union – total votes for all contending unions

Great ValVot – greater valid votes cast

- Major ValVot, **if** CasVot = Major ElVot, and:
 1. No protest was perfected within the five-day period required by law;
 2. No challenge or eligibility issue was raised, or if one was raised, the resolution of the same will not materially affect the outcome of the elections.
-

CHOOSING THE EXCLUSIVE BARGAINING AGENT:

4. Re-run election – when and how?

- a. To break a tie between 2 unions or “No Union” and 1 contending union*
 - b. As a remedy if a failure of election is declared by the Election Officer*
 - If used as a tie-breaker election – winning union = highest votes cast during the re-run election
 - If used as a remedy for failure of election – winning union = Major ValVot
-

CHOOSING THE EXCLUSIVE BARGAINING AGENT:

5. Run-off election

No Major ValVot and TalVot unions is 50% of CasVot

- When an election that provides for three or more choices results in none of the contending unions receiving MAJOR VALVOT, and there are no objections or challenges which if sustained can materially alter the results, a run-off election between the labor unions receiving the 2 highest number of votes shall be conducted; provided, that the total number of votes for all the contending unions is at least 50% of the number of votes cast.

Winner = Great ValVot

SUSTAINING THE LABOR UNION:

Union security clause:

- ❑ “Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition of employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement.”. (Art. 259[e])

- ❑ “It is indeed compulsory union membership whose objective is to assure continued existence of the union. In a sense, there is discrimination when certain employees are obliged to join a particular union. But it is discrimination favoring unionism; it is a valid kind of “discrimination”.

(Quoted in BPI vs BPI Employees ,etc (GR No. 164301, August 10, 2010) cited in Azucena (2021) p.288)

SUSTAINING THE LABOR UNION:

Union security clause:

RATIONALE:

“The law allows stipulations for "union shop" and "closed shop" as a means of *encouraging workers to join and support the union of their choice in the protection of their rights and interests vis-à-vis* the employer. By thus promoting unionism, workers are able to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer. Employees have the right to disaffiliate from their union and form a new organization of their own; however, they must suffer the consequences of their separation from the union under the security clause of the Collective Bargaining Agreement. (BPIEU-DAVAO CITY-FUBU VS. BPI, G.R. No. 174912. July 24, 2013)

SUSTAINING THE LABOR UNION:

FORMS:

1. Closed shop – Only union members can be hired and must remain as union members to retain employment
 2. Union shop – Nonmembers may be hired but must become union members after a certain period in order to retain their employment. It applies to present and future employees.
 3. Modified union shop – Employees who are nonmembers at the time of the signing of the CBA need not join the union, but all workers hired thereafter must join.
-

SUSTAINING THE LABOR UNION:

4. Maintenance of membership shop – No employee is compelled to join the union, but all present and future members must, as a condition of employment, maintain membership in good standing.
 5. Exclusive bargaining shop – The union is recognized as the exclusive bargaining agent for all employees in the bargaining unit, whether union members or not.
 6. Bargaining for members only – The union is considered the bargaining agent only for its own members
 7. Agency shop/maintenance of treasury shop – employees may either join or pay the union as exclusive bargaining agent a sum equal to that paid by the members.
-

Q: May an employer, upon the request of the SEBA, dismiss an employee based on the union security arrangement under the CBA?

SLORD Development Corp. vs. Nova, GR No. 232687, February 4, 2019

A: “While not explicitly mentioned in the Labor Code, case law recognizes that dismissal from employment due to the enforcement of the union security clause in the CBA is another just cause for termination of employment. Similar to the enumerated just causes in the Labor Code, the violation of a union security clause amounts to a commission of a wrongful act or omission out of one's own volition; hence, it can be said that the dismissal process was initiated not by the employer but by the employee's indiscretion. Further, a stipulation in the CBA authorizing the dismissal of employees is of equal import as the statutory provisions on dismissal under the Labor Code, since a CBA is the law between the company and the union and compliance therewith is mandated by the express policy to give protection to labor; thus, there is parallel treatment between just causes and violation of the union security clause.”

Q: In case of merger, is the union security clause in the CBA between the surviving corporation and its employees binding to the workers of the absorbed corporation?

**Bank of the Philippine Islands vs BPI
Employees Union-Davao Chapter
Federation of Unions in BPI
Unibank, GR No. 134301, October
11, 2011**

A: In merger, the employment contracts are deemed automatically assumed by the surviving corporation, even in the absence of an express stipulation in the articles of merger, without break in the continuity of employment. Consequent to the absorption, the employees who are retained by the absorbing corporation are also bound to join the majority union in view of the union security clause in the CBA.

Q: Are there any exceptions from the rule?

See: R.A. No. 3350

Art. 252:

A: Yes.

- a. Religious objectors - In some jurisprudence, the Supreme Court recognized the right of members of certain religious organizations that forbid their members to form unionism.
- b. Members of minority union – a closed shop union security agreement is void if it allows dismissal of current workers belonging to another union unless they join the SEBA.
- c. Confidential employees – they are outside of the bargaining unit
- d. Employees expressly excluded by the CBA – autonomy of contract principle under the Civil Code

SUSTAINING THE LABOR UNION:

Q: Are employee excused from a closed shop stipulation in the CBA if they are unaware thereof?

Malayang Samahan ng mga Manggagawa sa M. Greenfield vs. Ramos, GR No. 113907, February 28, 2000

A: No. Even if the union members were not aware of the closed-shop stipulation in the CBA, they are bound by it. Neither their ignorance of , nor their dissatisfaction with its terms and conditions would justify breach thereof or the formation by them of a union of their own. This is so because a union member who is employed under an agreement between the union and his employer is bound by the provisions thereof since it is a joint and several contract of the members of the union entered into by the union as their agent.

NOTE: Union members, although entitled to disaffiliate from their union and to form a new organization of their own, must suffer the consequences of their separation from the union under the security clause of a collective bargaining agreement. (see **Tanduay Distillery Labor Union vs NLRC, GR No. L-75037, April 30, 1987**)

Check-off

Allowable deduction from wages if the right to check-off is recognized by the employer or authorized in writing by the employee. (see Art. 113)

LIMITATION:

No excessive or arbitrary initiation fees; no excessive, arbitrary, oppressive fine and forfeiture shall be imposed on members of the LLOs. (see Art. 250[a])

- ☐ “All unions are authorized to collect reasonable membership fees, union dues, assessments and fines and other contributions for labor education and research, mutual death and hospitalization benefits, welfare fund, strike fund and credit and cooperative undertakings.” [Article 292(a)].
- ☐ “For this purpose, registered labor organizations may assess reasonable dues to finance labor relations seminars and other labor education activities.” (second paragraph, Art. 250[p])
- ☐ “Except for mandatory activities under the Code, **no** special assessments, attorney’s fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to an employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction.” (Art. 250[o])

SUSTAINING THE LABOR UNION:

- ❑ Requisites for a valid check-off of special assessments for the Union's incidental expenses, attorney's fees and representation expenses:
 - (1) authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose;
 - (2) secretary's record of the minutes of the meeting;
 - (3) individual written authorization for check-off duly signed by the employee concerned. (ABS-CBN Supervisors Employees Union vs ABS-CBN, 1999)

Check-off

- ❑ **Agency fee** – Collected from employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent in an amount equivalent to the dues and other fees paid by members of the recognized collective bargaining agent if they accept the benefits under the CBA. The individual authorization required under Art. 250(o) does not apply to these nonmembers of the recognized bargaining agent. (see Article 259[e])

3 instances when individual written authorization is not required for check-off:

1. Union dues when the right to check-off is recognized by the employer (typically in the CBA) – see Art. 113
2. Mandatory union activities - Art. 250(o)
3. Agency fee – Art. 259(e)

UNFAIR LABOR PRACTICES

CONCEPT:

- Any act that violates the employee's right to self-organization, such as: (a) restraint, (b) interference, (c) discriminatory discharge, (d) refusal to bargain, or (e) combination of any or all of these.
- No need to specifically point out which violative act has been committed – what matters is that the act constitutes ULP in accordance with the Labor Code

TYPES OF ULP:

1. ULP by employers – Art. 259.
 2. ULP by labor organizations – Art. 260
-

UNFAIR LABOR PRACTICES BY EMPLOYER:

- Interfere, restrain, coerce (IRC)
 - Yellow dog contract
 - Illegal job contracting
 - Company union
 - Discriminatory terms and conditions of work – EXCEPT: UNION SECURITY CLAUSE
 - Retaliation (by dismissal, discharge, other prejudicial or discriminatory acts) for testimony against the employer
 - Refusal to bargain/violation of the duty to bargain collectively
 - Indirect bribery (negotiation and attorney's fees for CBA and labor disputes) – cross-relate with Art. 260
 - Gross violation of the economic provisions of the CBA – cross-refer with Art. 274
-

UNFAIR LABOR PRACTICES BY LABOR ORGANIZATION:

- a. Restrain or coerce employees
 - b. Inducing the employer to discriminate against or illegally dismiss any employee (EXCEPT: existing union security clause)
 - c. Violation or refusal to bargain collectively (EXCEPT: it is not SEBA)
 - d. Illegal exaction – causing or attempting to cause the employer to exact payments for services not performed or not to be performed, or for negotiation fees (Featherbedding or make-work arrangements);
 - e. Acceptance of negotiation and attorney's fees from the employer as part of the settlement of any issue is collective bargaining or any other dispute
 - f. Violation of the CBA
-

RIGHT TO STRIKE (Arts. 278 to 280)

CONDITIONS FOR VALIDITY:

1. PURPOSE: - lawful strikable grounds only: (a) ULP; (b) bargaining deadlock
 2. MEANS: - observance of jurisdictional requirements:
 - a. **Notice of strike or lockout** filed with the NCMB with copy furnish to the other party at least 30 (deadlock) or 15 (ULP) days except when it amounts to union-busting in which case union may act immediately after conducting the strike vote and reported its results to the NCMB RO
 - b. **Cooling-off period** – no strike (or lockout) during the 15-day period. NCMB may continue conciliation proceedings/grievance process may continue.
 - c. **Strike or lockout vote** – majority of the total union membership in the bargaining unit concerned obtained by secret balloting (must be reported to DOLE-RO and subject to the cooling-off period)
-

RIGHT TO STRIKE (Arts. 278 to 280)

CONDITIONS FOR VALIDITY:

3. Assumption of jurisdiction by the SOLE in industry indispensable to national interest
 - SOLE may either: (a) decide on the dispute; or (b) certify the same to the NLRC for compulsory arbitration
 - Effect: (a) automatic injunction – in strike (or lockout) has not yet been conducted; or (b) automatic back-to-work order – if S/L is already on-going
 - SOLE may seek the assistance of law enforcement agencies to ensure compliance to his/her orders by the parties (akin to a writ of execution)
-

RIGHT TO STRIKE (Arts. 278 to 280)

Bargaining deadlock

- Economic strike/lockout - Procedural requirements:



Improved balloting
(Art. 280)

Conditions:

1. Conducted before the 30th day of strike by referendum
2. Purpose is for union members to decide on the improved offer of the employer
3. Majority vote of union members – needed to accept the improved offer. Thence, back-to-work shall be issued after the signing of the new agreement.

RIGHT TO STRIKE (Arts. 278 to 280)

CONDITIONS FOR VALIDITY:

4. Prohibited activities: (by the striking employees)
 - (a) Before the actual strike - declaring a strike:
 - Before making a demand to bargain with the employer;
 - Before filing a notice of strike or conducting a strike vote
 - After assumption of jurisdiction by the SOLE or certification or submission of the dispute to compulsory or voluntary arbitration;
 - (b) During the pendency of the dispute/the actual strike:
 - Committing any act of violence, coercion or intimidation or obstruct free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.
-

RIGHT TO STRIKE (Arts. 278 to 280)

CONDITIONS FOR VALIDITY:

4. Prohibited activities: (by the employer, public officers, law-enforcers, by-standers)
 - Obstructing, impeding, or interfering with by force, violence, coercion, threats or intimidation any peaceful picketing or shall aid or abet such obstruction or interference
 - Using or employing strike-breaker, or getting employed as a strike-breaker
 - Escorting individuals who seek to replace strikers – referring to public officials and employees including all armed services
-

RIGHT TO STRIKE (Arts. 278 to 280)

Right to backwages during legal strike?

1. **Economic strike** – none. “fair days wage for a fair days work” – strike was by the employees’ voluntary act not because they were forced to do so due to discrimination, ULP, or refusal by the employer to admit them.
 2. **ULP Strike** – (a) if discriminatorily discharged – YES; (b) if merely protesting a ULP – No, unless after they abandoned their legal strike and unconditionally offered to return to work the employer refused to reinstate them, or imposes new conditions to their reinstatement that constitute ULP (the backwages will be from the time of the employer’s refusal to reinstate the workers)
-

RIGHT TO STRIKE (Arts. 278 to 280)

Consequences of illegal strike:

1. **Union officers** who organized and/or participated in an illegal strike are deemed to have lost their employment status. **Union members** who merely participated in an illegal strike may be deemed to have lost their employment status only if they committed any illegal acts during such strike. (Toyota Motors Phils Corp Workers Assoc vs. NLRC, 2007)
 2. **Union members** who merely participated in an illegal strike without committing any illegal act are not entitled to backwages during the strike following the principle of fair wage for a fair day's work. (Escario vs NRLC, 2010)
-

COLLECTIVE BARGAINING – A RIGHT AND DUTY

CONCEPT:

- “The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession.” (Art. 263)
-

COLLECTIVE BARGAINING – A RIGHT AND DUTY

MANDATORY SUBJECTS OF BARGAINING:

- (a) wages, other types of wages;
 - (b) working hours, days, shifts;
 - (c) vacation and holidays;
 - (d) bonuses;
 - (e) pension and retirement plans;
 - (f) seniority;
 - (g) transfer;
 - (h) lay-offs;
 - (i) workloads;
 - (j) work rules and regulations;
 - (k) rent of company houses;
 - (l) union security arrangements
-

COLLECTIVE BARGAINING – A RIGHT AND DUTY

JURISDICTIONAL PRECONDITIONS:

1. **Possession** of majority status
2. **Proof** of majority representation
3. **Demand** to bargain

RIGHTS OF THE WORKER: LABOR RELATIONS

Execution of Collective bargaining agreement

Terms of CBA:

Representation aspect – 5 years. No PCE may be entertained within the last 60 days of the 5th year of the CBA.

Economic aspect – 3 years. If successfully renegotiated, the parties should fix the term of the renegotiated aspect – 2 years to coincide with the representation aspect or 3 years as provided under Art. 265. (San Miguel Employees Union vs Confesor, 1996)

RIGHTS OF THE WORKER: LABOR RELATIONS

Execution of Collective bargaining agreement

Ratification – The CBA must be ratified or approved by the majority of all the workers in the bargaining unit. (Art. 237) The requirement of ratification of the new CBA shall include all the workers in the bargaining unit and not just the members of the SEBA.

Registration – The parties are required to register their CBA within 30 days from the execution thereof with the Regional Office which issued the certificate of registration/certificate of creation of chartered local of the labor union-party to the agreement, or with the BLR RO if the certificate of creation of the concerned chartered local was issued by it.

RIGHTS OF THE WORKER: LABOR RELATIONS

Execution of Collective bargaining agreement

Automatic renewal

Until a new CBA has been executed by and between the parties, they are required to maintain the status quo and to continue in full force and effect the terms and conditions of the existing agreement. The law does not provide for any exception nor qualification as to which of the economic provisions of the existing agreement are to retain force and effect, therefore, it must be understood as encompassing all the terms and conditions in the said agreement. Moreover, said automatically renewed terms and condition would apply to employees hired after the expiry of the CBA. (New Pacific Timber vs NLRC, 2000)



THANK
YOU

📍 General Luna Road, Baguio City, Philippines 2600
☎ (074)442-3306
🌐 ub@e.ubaguio.edu
🌐 www.ubaguio.edu

