

# LABOR STANDARDS COMPLIANCE UNDER DOLE'S LABOR INSPECTION SYSTEM

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*International Labor Organization / Employers Confederation of the Philippines  
Building the Capacity of the Philippines Labour Inspectorate*

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# ABOUT THE AUTHOR

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Atty. Bitonio obtained degrees in Bachelor of Arts and Bachelor of Laws from the University of the Philippines (UP). He obtained a Master in Public Management degree under a scholarship from the National University of Singapore (NUS) during which he was also an Executive Fellow at the Kennedy School of Government, Harvard University.

# ABOUT THE MODULE

***This material serves as a guide to help employers and HR practitioners to comply with labor standards. Its specific objectives are:***

- To know and understand the different employment relationships before applying the relevant labor standards
- To enhance the technical knowledge of users on employment labor standards as defined in the Labor Code, its implementing rules and other relevant regulations.
- To introduce users to the DOLE-prescribed tools for assessing compliance with labor standards.
- To encourage users to use social dialogue approaches, particularly negotiation, conciliation and mediation, in efficiently and effectively addressing incidents of non-compliance.

# **MODULE I: OVERVIEW OF LABOR LAW**

OVERVIEW OF LABOR LAW

EMPLOYER – EMPLOYEE RELATIONSHIP

CATEGORIES OF EMPLOYMENT

CLASSIFICATION OF EMPLOYEES

# Overview of labor law

## What is Labor?

Labor is often synonymous with work. It the use of mental and physical effort for one's self or somebody else. Right to work is a property right.

"x x x the property which every man has is his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable." (Adam Smith, **Wealth of Nations**)

And it is also protected by the due process clause (Art. III, Sec. 1, Constitution which states that "No person shall be deprived of . . . property without due process of law, nor . . . shall be denied equal protection of the laws.

## Fundamental principles and premises

Labor is not a commodity. It is a primary social economic force. The State shall protect the rights of workers and promote their welfare. (ART. II, Sec. 18, **Constitution**). A labor contract is not an ordinary contract. It affects public interest and is regulated by special laws.

## Working and being employed

An employment relationship (or employee-employer relationship) arises when a person devotes time to and places herself under the control of another to do work for the interest of the latter and for compensation purposes of the employee. The most important dimension of being employed is time that one devotes to work for the interest of another, such as all time during which an employee is required to be on duty or to be at a prescribed workplace and all time during which an employee is suffered or permitted to work including rest periods of short duration (Art. 84, LCP).

## **Sources of labor policy and regulation**

- The Constitution
- International treaties, conventions and agreements
- The Labor Code of the Philippines (LCP), with its implementing rules
- Other labor and related laws
- Employment contracts
- Individual contracts
- Collective bargaining agreements (CBAs)
- Jurisprudence

## **Scope of labor protection**

(Constitution, ART. XIII, Sec. 3)

The Overall policy is protection to labor, such as:

- ✓ Full employment and equality of employment opportunities
- ✓ Self-organization
- ✓ Collective bargaining and negotiations
- ✓ Peaceful concerted activities, including right to strike
- ✓ Security of tenure
- ✓ Humane conditions of work
- ✓ Living wage
- ✓ Participation in policy and decision-making processes affecting workers' rights and benefits

According to Art. 3, LCP "The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work."

## **Labor rights and management prerogative**

### ***Law equally recognizes employer rights***

The Employer rights are equal to MANAGEMENT PREROGATIVE. This includes the right to make reasonable returns or profits on investment and the right to run, expand and grow the business, or freedom to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, layoff of workers and discipline, dismissal, and recall of workers. Like labor, management prerogative is a property right protected by the due process clause.

But management prerogative has limitations. The Courts (and the State as a whole) will not interfere with the business judgment or prerogative of an employer to run the business provided its exercise does not violate the law, collective bargaining agreement, and the general principles of justice and fair play. The Constitution, the Labor Code and other laws, in protecting labor, also limit management prerogative - Focus of protection and limitations is on working conditions or those directly affecting the rights, benefits and obligations of workers.

### ***How is management prerogative expressed?***

Management prerogative is expressed thru company policies and manuals, i.e., "the exclusive control over all functions, to the direction of the entire work force, and to be the sole judge of competency in the assigned work, etc."

- *Schedule work hours*
- *Assign or rotate employees*
- *Plan, schedule, direct, curtail or control operations*
- *Use technology or process*
- *Hire, discipline and fire*

### ***Some employers express management prerogative positively***

Management goals seek to balance production results with harmonious relations among employees. Specific objectives are to achieve superior quality in all manufactured products and keep customers satisfied and loyal, to Produce when there is demand, and to Form and nurture one happy family where everyone works with commitment, coordination, communication and consensus.

## **Employer – employee relationship**

### **Basic principle**

The employee-employer relationship involves the following:

- Parties
- The four-fold test and two-tiered test
- Classifications and categories of employment
- Employment involving contracting and subcontracting arrangements
- Problem areas

### **Who are the employers?**

Employers include any person acting directly or indirectly in the interest of an employer in relation to an employee, such as 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). As well as the principal and the C/S under Art. 106-109, LCP, and D.O. 174

It excludes any labor organization or any of its officers or agents except when acting as employer (Art. 219 [212]. [e], LCP)

## **Who are employees?**

It includes any individual employed by an employer (Art. 97 [c], LCP) or one who is permitted or suffered to work (Art. 218 [212].2 [e], LCP). That are not limited to the employees of a particular employer or 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.

To be employed means to spend one's time for work: (a) all time during which an employee is required to be on duty or to be at a prescribed workplace; and (b) all time during which an employee is suffered or permitted to work including rest periods of short duration (Art. 84, LCP).

## **Types of employment arrangements**

It is a direct or bilateral employment arrangements between an employer and an employee. Employment in C/S arrangements under Arts. 106-109, LCP and D.O. 174 which involves a principal, a C/S and the employees of the C/S and Involving a principal, an LOC who is an ostensible employer, and workers employed under this arrangement. While indirect employment relationship involves a person, not being an employer, who engages a contractor who in turn employs workers.

## **How is ER-EE relationship established?**

### ***The four-fold test***

- ✓ Hire (recruitment and engagement)
- ✓ Payment of wages
- ✓ Fire (power to dismiss)
- ✓ Control not only to achieve desired results but more importantly the means and methods to bring about such results

***The two-tiered test based on the totality of circumstances (Francisco v. NLRC (2006), citing Sevilla v. CA (1988), etc - . . .*** in certain cases the control test is not sufficient to give a complete picture of the relationship between the parties, owing to the complexity of such a relationship where several positions have been held by the worker. There are instances when, aside from the employers power to control the employee with respect to the means and methods by which the work is to be accomplished, economic realities of the employment relations help provide a comprehensive analysis of the true classification of the individual, whether as employee, independent contractor, corporate officer or some other capacity.

1. The putative employers power to control the employee with respect to the means and methods by which the work is to be accomplished;
2. The underlying economic realities of the activity or relationship.

### **Factors in applying totality of economic circumstances of the worker or of the whole economic activity**

1. The extent to which the services performed are an integral part of the employers' business;
2. The extent of the workers investment in equipment and facilities;
3. The nature and degree of control exercised by the employer;
4. The workers 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.

## **ER-EE relationship in contracting/subcontracting (c/S) arrangements**

Under Art. 106, LCP, recognizes C/S as a legal arrangement, such as

- ✓ An employer may contract with another person for the performance of the former's work. Employees of contractor or subcontractor shall be paid in accordance with the LCP.
- ✓ If C/S fails to pay the wages of its employees, employer shall be jointly and severally liable with the C/S for the unpaid wages.
- ✓ Secretary of Labor and Employment may restrict C/S to protect workers, prohibit labor-only contracting and other forms of C/S, and determine who among the parties involved shall be the employer of the employees of the C/S.

## **Parties to an ER-EE relationship under c/s**

Based on Arts. 106-109, LCP, and D.O. 174, all parties to any arrangement where employee-employer relationship exists (S. 2), including:

- ✓ All principals
- ✓ All C/S, including cooperatives serving as C/S
- ✓ All workers who are employees of the C/S

With the exception of Except contractors and subcontractors in the construction industry (S. 33). And entities or persons acting as private recruitment and placement agencies (PRPAs) are prohibited from engaging in C/S.

## **When is there an ER-EE relationship between c/s and its workers?**

C/s is the employer when it is engaged in permissible contracting. (Sec. 8, DO 174), such as:

- ✓ Engaged in distinct and independent business with capacity to perform the job or work under its own responsibility

- ✓ Substantial capital to carry out the job or work on its own account, manner and method. Investment in the forms of tools, equipment and machinery, and supervision
- ✓ Freedom from control and direction of the principal
- ✓ Service agreement ensures compliance with labor laws

**But principal is solidarily liable to the extent of the work performed under the contract.**

## **What is prohibited C/S?**

Labor-only contracting (LOC) under Art. 106, LCP, where -

The person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. Under D.O. 174, an arrangement where the C/S merely recruits, supplies or places workers to perform a job or work for a principal (S 3[h]). In LOC, er-ee relationship exists between the principal and the LOC workers.

## **What other types of c/s are prohibited?**

Illicit activities under S 6, D.O. 174 -

- ✓ When C/S is done with a particular entity, such as a “cabo” or an in-house agency or cooperative (S 6 [a]-[d])
- ✓ When C/S amounts to an interference with union rights or unfair labor practice (S 6 [d]-[e])
- ✓ When C/S consists of specific acts that undermines rights of employee to security of tenure and labor standards (S 6 [f]-[i])
- ✓ When C/S amounts to such other practices, schemes or employment arrangements designed to circumvent the right of workers to security of tenure

In all these, er-ee relationship is between the principal and C/S workers.

# Categories of employment

## Regular employment

**Regular employment** is necessary or desirable to the business of the employer and employment for over one year, continuous or broken. It is necessary or desirable to the business of the employer. Reasonable connection rule, meaning that the function or activity performed is reasonably expected to continue indefinitely or as long as the business exists. Employment for over one year, whether continuous or broken, while the activity exists.

### ***Apprenticeship and learnership are types of regular employment***

These are functions performed are necessary or desirable to the usual trade or business of the employer. It is also training within employment. Regular employment *subject* to satisfactory completion of training objectives in relation to particular technical skills. And it give employers an incentive to invest in training, subject to pre-approved training programs.

## Employment for a fixed period

**Employment for a fixed period** either Project, Seasonal or Regular employment but parties voluntarily agreed to a period, subject to certain conditions (***Brent School*** exception)

### ***Project***

- ✓ For a specific project or undertaking
- ✓ Completion or termination of such project determined at the time of employee's engagement
  - ***Seasonal (period is necessarily implied)***
  - ***Regular employment but parties agreed to a period (Brent School exception)***
    - Knowingly and voluntarily

- While on an equal footing
- Without undermining employee's security of tenure
- Common term used is "contractual" employment

*Project employment should not be confused with regular employment. Note that the nature of project employment is a particular job or undertaking within the regular or usual business of the employer company, but which is distinct and separate and identifiable as such, from the other undertakings of the company, or a particular job or undertaking that is not within the regular business of the employer. To safeguard the rights of workers against arbitrariness, employers should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also that there was indeed a project.*

### **Who is a project employee?**

A project employee is assigned to a project which begins and ends at determined or determinable times. Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as "project employees" may be lawfully terminated at the completion of the project. The test is whether or not the employees were assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time they were engaged for the project. (*Omni Hauling Services v. Bon, et al*, G. R. No. 199388, Sept. 3, 2014).

### **Who is a seasonal employee?**

*Universal Robina Sugar Milling Corp. v. Acibo, et al*, G.R. No. 186439 (2014). For an employee to be considered "seasonal" rather than regular, the employer must show that:

- the employee must be performing work or services that are seasonal in nature; and
- he had been employed for the duration of the season.

When "seasonal" workers are continuously and repeatedly hired to perform the same tasks or activities for several seasons or even after the cessation of the season, this length

of time may likewise serve as badge of **regular employment**. Even though denominated as "seasonal workers," workers called to work from time to time and are only temporarily laid off during the off-season are not considered separated from the service but simply on leave until re-employed.

## **What is casual employment?**

**Casual employment** is necessary or desirable, but not continuous meaning that the function or activity performed is not reasonably expected to continue as long as the business exists. It **becomes regular employment** by virtue of the reasonable connection rule **when the employment exceeds one year**, whether continuous or broken, while the activity exists.

### ***New terminologies, old concepts***

**Employment is sometimes grouped into STANDARD FORMS and NON-STANDARD FORMS OF EMPLOYMENT**

- ✓ ***Both forms pertain to work necessary or desirable to employer's business***
- ✓ ***Regular employment = standard employment***
- ✓ ***NSFEs are those other than regular employment***
  - Fixed period and casual employment
  - May exist under direct or bilateral employment arrangement or under contracting or subcontracting arrangement
  - Mis-categorization from regular to NSFE is the core of the "contractualization" or "endo" problem

## **Classification of employees**

### **Managers**

They are vested with powers and prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees. Managers primary duty consists of the management of the establishment in which they are employed of a department or subdivision thereof, and to other officer and members of the managerial staff.

## **Supervisors**

They are 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 but requires the use of independent judgment.

## **Rank-and-file**

Those who are neither managers nor supervisors.

## **Other classes**

**Confidential employees** who are neither managers nor supervisors cannot join a union if they (1) assist or act in a confidential capacity, (2) to persons who formulate, determine, and effectuate management policies in the field of labor relations.

**Field personnel** are those who regularly perform their duties away from the principal place of business and whose actual hours of work in the field cannot be determined with reasonable certainty.

## **How is employee classification determined?**

### ***Sequential steps***

What is the ***Job Title***?

In case of doubt on the Job Title, what is the ***Job Description***?

In case of doubt on the Job Description, what are the ***Actual Functions***

***. . . Actual Functions are ultimately controlling and determinative***

## **Take-away: beware of mis-categorization or misclassification**

“The provisions of written agreements 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 ...”

- ✓ ***Employment category cannot be contracted away***
- ✓ ***Regular employment is presumed***

- ✓ ***The employer claiming that employment is not regular has the burden of proving its claim***
- ✓ ***Regularization of the employee may be ordered.***
- ✓ ***By whom?***
  - Regional Director/Secretary of Labor if er-ee relationship still exists, under its inspection or visitorial and enforcement powers (Art. 128, LCP)
  - Labor Arbiter/NLRC (Art. 224, LCP)
  - Med-Arbiter/BLR/Secretary of Labor (Arts. 268-272. LCP)
- ✓ ***Unresolved questions***
  - Must it always be regularization?
  - Order is immediately executory?

## **MODULE II: GENERAL LABOR STANDARDS (GLS)**

Labor standards

*Working days and hours*

*Wages and other monetary benefits*

# Labor Standards

## Concept of labor standards (LS)

**Labor standards (LS)** are laws, rules and regulations that prescribe the minimum terms, conditions, and benefits of employment which employers must provide or comply with and to which employees are entitled as a matter of right, including the mechanisms by which these are administered or enforced. LS is also an area of labor law. **LS** is also one of the three major areas of labor law in the Philippines. The other two are –

- ***Social and welfare legislation***
- ***Labor relations***

In practice, **LS** and ***social and welfare legislation*** are usually taken as one area.

## Characteristics of LS

- Puts into effect the State policy to ensure just and humane terms and conditions of work.
- Formulated under the police power, general welfare, social justice and protection to labor clauses of the Constitution.
- Represents minimum statutory and legal obligations. An employer may grant better benefits, but not lower.
- Enforceable as a matter of right.
- Not waivable.
- Not negotiable.

## Types and sources of LS

- **General labor standards** or **GLS** (Book III, Labor Code, as amended; special laws on leaves).
- **Occupational safety and health standards** or **OSHS** (Book IV, Labor Code in relation to the OSH regulations issued by DOLE).
- **Social security standards** (Book IV, Labor Code on employees' compensation; SSS, Pag-Ibig and Philhealth laws).

## Coverage of LS

*LS covers –*

- **EMPLOYEES**
- **ESTABLISHMENTS** or **EMPLOYERS** who employ workers

*Basic rules -*

- All workers under an **EMPLOYER-EMPLOYEE RELATIONSHIP** are covered.
- All **PRIVATE ESTABLISHMENTS** are covered.
- Some standards may not apply to certain employees and establishments.

# General labor standards (GLS)

## Coverage

All time-rated rank and file employees are covered by the lcp provisions on working hours, ***except those classified as -***

**Managers:** a) those whose primary duty consists of the management of the establishment in which they are employed of a department or subdivision thereof, and to other officer and members of the managerial staff (Book III); and b) those vested with powers and prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees (Book V).

**Supervisors:** 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 but requires the use of independent judgment.

**Field personnel** are those who regularly perform their duties away from the principal place of business and whose actual hours of work in the field cannot be determined with reasonable certainty.

**Workers paid by results** are those whose work is measured by specific piece or unit of output, provided an employee-employer relationship exists.

**Workers covered by compressed work week schemes** agreed upon by the employer and the employees in accordance with DOLE's rules on compressed work week

## Working days and hours

Time is the most important dimension of work. Work may be *time-rated* or *piece-rated* (output or results-based). For time-rated work:

**Hours worked** include (a) all time during which an employee is required to work or be at a prescribed workplace, and (b) all time during which an employee is suffered or permitted to work. Rest periods of short duration shall be counted as hours worked.

Piece-rated or output-rated employees are not directly covered by the rules on working time. **Key consideration is freedom to use one's time.** If the employee surrenders this freedom to the employer such that he/she cannot use it as he/she pleases, he/she is deemed to be at work.

## **Normal work hours and days**

***The normal work hours is 8 hours a day*** (Art. 83, LCP).

Each hour worked is compensable including breaks of short duration (Art. 84, LCP) and Lactation periods for nursing mothers of not less than 40 minutes for every 8-hour working period (R. A. No. 10028). But it excludes meal breaks of at least one hour (Art. 85, LCP). Work rendered between 10 p.m. to 6 a.m. is compensable by an additional night shift differential of at least 10% of basic wage (Art. 86, LCP).

***The normal work hours is 8 hours a day.*** Scheduling of work is a management prerogative, subject to legal limitations on night work and work for pregnant women. Flexible work arrangements may be adopted by the employer, such as – Sliding schedule, Staggered working time, and Compressed work week.

## **Work at night**

***RA No. 10151 (2011) repealed the prohibition against night work for women used to be under Arts. 130-131, LCP. Night*** is any period of 7 consecutive hours, which must include an interval between 12 midnight to 5 a.m. Night work is work between 10 p.m. to 6 p.m. A ***night worker*** is any employed person whose work requires a substantial number of hours of night work which exceeds a specified limit, except those in agriculture, stock raising, fishing, maritime transport and inland navigation.

## **Rights and limitations on night work**

***Under RA No. 10151, every person may work at night. However, new rights are recognized for night workers such as right:***

- To request for health assessment, without cost to them, before or during assignment, or when experiencing health problems during assignment that are not work-related

- To mandatory facilities
- To be transferred to similar job, whenever practicable, if unfit to work at night
- To alternatives to night work for pregnant women
- Of Union to be regularly consulted on night work schedules

## **Overtime (OT)**

Work beyond 8 hours is considered OT work. It is compensable by a premium of at least 25% of basic wage, except when the work is covered by a compressed work week scheme. OT work may be compulsory or non-compulsory. Whether compulsory or non-compulsory, all OT work shall be paid with OT premium. In compulsory OT, the employee may not refuse to render work without justifiable reason. Refusal to render compulsory OT may be a ground for disciplinary action.

## **Employer may not compel employee to work OT; exceptions**

The employer may not compel the employee to render OT except on the following grounds:

- Country is at war or in any other national or local emergency.
- To prevent loss of life or in case of imminent danger to public safety due to an actual or impending emergency.
- There is urgent work to be performed on machines, installation or equipment to avoid serious loss or damage to the employer.
- To prevent loss or damage to perishable goods.
- Work started before the 8<sup>th</sup> hour must be completed to prevent serious obstruction or prejudice to employer's business operations.

## **Work week and rest days**

- The normal work week is 6 days, except in hospitals where the normal work week is 5 days.
- The employee is entitled to a rest day after 6 consecutive days of work, except health personnel in cities and municipalities with population of over 1 M where the employee must have a rest day after 5 consecutive hours of work.

- The work week may start and end at any day of the week. Scheduling of an employee's work week is a management prerogative. In scheduling, the employer shall take into account the religious preferences of the employee.
- Premium pay refers to the additional compensation for work performed within eight (8) hours on nonwork days, such as rest days and special days.
- Work rendered on a rest day is compensable by an additional rest day premium of at least 30% of basic wage.
- In situations covered by a compressed work week scheme, the normal workweek may be less than 5 days.

## **Work on rest days**

May be compulsory or non-compulsory

- ✓ Compulsory grounds – Art. 92, LCP (in the nature of public emergencies or to prevent serious loss to the employer)
- ✓ If compulsory, the employee may not refuse to render work without justifiable reason. Refusal may be a ground for disciplinary action.

Compensable by rest day premium, regardless of ground (Art. 93, LCP).

- ✓ At least 30% of basic wage
- ✓ If performed on a holiday, one combined premium of at least 50% for both rest day and holiday.

## **Employer may not compel employee to work on rest days; exceptions**

- Country is at war or there exists any other national or local emergency.
- To prevent loss of life or in case of imminent danger to public safety due to an actual or impending emergency.
- There is urgent work to be performed on machines, installation or equipment to avoid serious loss or damage to the employer.
- In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures.
- To prevent loss or damage to perishable goods.

- Where the nature of the work requires continuous operation and the stoppage of work may result in irreparable injury or loss to the employer.
- Analogous or similar grounds as determined by the Secretary of Labor.

## Holiday pay

Holiday pay is a legislated benefit enacted as part of the Constitutional imperative that the State shall afford protection to labor. Its purpose is not merely "to prevent diminution of the monthly income of the workers on account of work interruptions. In other words, although the worker is forced to take a rest, he earns what he should earn, that is, his holiday pay." It is also intended to enable the worker to participate in the national celebrations held during the days identified as with great historical and cultural significance. (*Asian Transmission Corp. v. Court of Appeals*)

## Holidays: basic rules

- The Labor Code prescribes the rules on holidays. Republic Act No. 9849 specifies the holidays.
- Holiday rules mandatory to all employers, except in relation to field personnel and in retail and service establishments employing less than 10 employees.
- Two types of national holidays – 12 **regular** and 3 **special**. Difference lies in right to compensation if the holiday is worked or unworked. Local holidays may be declared from time to time.

## Regular holidays

- New Year's Day: *January 1*
- Maundy Thursday: *Movable Date*
- Good Friday: *Movable Date*
- Araw ng Kagitingan: *Monday nearest April 9*
- Labor Day: *Monday nearest May 1*
- Independence Day: *Monday nearest June 12*
- National Heroes Day: *Last Sunday of August*
- Bonifacio Day: *Monday nearest November 30*

- Eidul Fitr: *Movable Date*
- Eidul Adha: *Movable date*
- Christmas Day: *December 25*
- Rizal Day: *Monday nearest December 30*

## **Holidays: more basic rules**

- Religious holidays are to be enjoyed by all employees, regardless of the religion to which they belong.
- R. A. 9849 specifies holidays with movable dates, with the date to be fixed by a Presidential proclamation every year. Unless fixed, the holiday will be celebrated on the date specified in the law.

## **Why is there holiday pay?**

Holiday pay is a legislated benefit enacted as part of the Constitutional imperative that the State shall afford protection to labor. Its purpose is not merely "to prevent diminution of the monthly income of the workers on account of work interruptions. In other words, although the worker is forced to take a rest, he earns what he should earn, that is, his holiday pay." It is also intended to enable the worker to participate in the national celebrations held during the days identified as with great historical and cultural significance. (*Asian Transmission Corp. v. Court of Appeals*)

## **Work and pay on regular holidays**

- If it is an employee's regular workday
  - If unworked, 100% paid
  - If worked
    - 1st 8 hours - 200%
    - Excess of 8 hours - + 30% of hourly rate on said day
- If it is an employee's rest day
  - If unworked, 100% paid
  - If worked
    - 1st 8 hours - plus 30% of 200%
    - excess of 8 hours - + 30% of hourly rate on said day

## Special days, R. A. 9849

Ninoy Aquino Day: Monday nearest August 21

All Saints' Day: November 1

Last Day of the Year: December 31

Days declared as special days such as Special Non-Working Day, Special Public Holiday, or Special National Holiday. For those declared as special working holidays, an employee is entitled only to his basic rate. No premium pay is required since work performed on said days is considered work on ordinary working days.

## Work and pay on special days

- If unworked
  - No pay, unless there is a favorable company policy, practice or collective bargaining agreement (CBA) granting payment of wages on special days even if unworked.
- If worked
  - 1st 8 hours - plus 30% of the daily rate of 100%
  - excess of 8 hours - plus 30% of hourly rate on said day
- Falling on the employee's rest day and if worked
  - 1st 8 hours - plus 50% of the daily rate of 100%
  - excess of 8 hours - plus 30% of hourly rate on said day

## Work and pay on special working holidays

For work performed on days that are declared as *special working holidays*, an employee is entitled only to his basic rate. No premium pay is required since work performed on said days is considered work on ordinary working days.

## A holiday problem

The monthly salary thus fixed actually covers payment for 314 days of the year, *including regular and special holidays, as well as days when no work is done by reason of fortuitous cause, as above specified, or causes not attributable to the employees*. In fixing the monthly salary of its employees, *Wellington* took into account "every working day of the year including the holidays specified by law and excluding only Sunday." (*Wellington v. Trajano*)

## **Double holiday**

Araw ng Kagitingan (April 9), a regular holiday, coincides with Good Friday, another regular holiday.

- If unworked, will the employee be entitled to holiday pay? If so, how much?
- If worked
  - How much will the employee be paid?
  - If the employee worked overtime, how much will be his OT rate?
  - If the holiday fell on the employee's rest day and he was made to work, how much will he be paid?

## **Holiday falling on a Sunday**

A monthly-paid employee receives a fixed compensation computed using the factor of 314 days per year as basis for computing the monthly salary. This factor was arrived at by deducting the 51 Sundays from the total number of days a year.

A regular holiday fell on a Sunday. Is the employee entitled to an additional pay aside from his usual holiday pay, whenever a regular holiday falls on a Sunday?

## **Holiday solution: double holiday rule**

Holiday pay is a statutory benefit demandable under the law. Since a worker is entitled to the enjoyment of ten (now 12) paid regular holidays, the fact that two holidays fall on the same date should not operate to reduce [to nine] the [ten] holiday pay benefits a worker is entitled to receive. (*Asian Transmission Corp. v. Trajano*). Double holiday rule applies to regular holidays whether an employee is daily-paid or monthly paid. For special days, the rule on no work, no pay applies.

## **Holiday solution: holiday falling on a Sunday**

The monthly salary thus fixed actually covers payment for 314 days of the year, *including regular and special holidays, as well as days when no work is done by reason of fortuitous cause, as above specified, or causes not attributable to the employees*. In fixing the monthly salary of its employees, *Wellington* took into account "every working day of the year including the holidays specified by law and excluding only. Sunday." (*Wellington v. Trajano*)

## **All establishments are covered by the rules on holiday pay; exception**

***Retail and service establishments with less than 10 employees are not covered by the holiday pay rules.***

- “Retail Establishment” is one principally engaged in the sale of goods to end-users for personal or household use. A retail establishment that regularly engages in wholesale activities loses its retail character.
- “Service Establishment” is one principally engaged in the sale of service to individuals for their own or household use and is generally recognized as such, and is regularly employing not more than ten (10) workers regardless of status, except the owner/s, for at least six (6) months in any calendar year.

## **Statutory leaves**

- Service incentive leave (SIL)
- Maternity leave
- Paternity leave
- Solo parents’ leave (R. A. 8972)
- Special leave under the Magna Carta for Women (R. A. 9710)
- Victims’ leave (R. A. 9262)
- Adoptive parents’ leave (R. A. 8552, Domestic Adoption Act of 1998)

## **Statutory leaves: rules on SIL**

- Mandatory to employers regularly employing 10 or more workers and who do not provide their employees any leave benefits.
- The employer has the prerogative of granting better benefits, in which case the better benefits and not the SIL shall apply.
- To be entitled, employee must have rendered at least one year of service.
- Commutable and cumulative.
- Calculated pro-rata for purposes of computing accumulated leave credits.

## Statutory leaves: rules on paternity leave

- Benefit: 7 days full pay, non-commutable
- Preconditions: legally married male employee entitled when at the time he was employed:
  - Employee's wife gives birth or suffers a miscarriage
  - He was cohabiting with his wife
  - Covers up to the first four deliveries or miscarriage

## Wage

### What is wage?

#### **Wage synonymous with salary: broad inclusion rule**

Art. 97(f). "Wage" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a 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.

**Note: Wage may be *time-rated* or *piece-rated*.**

#### **Basic salary included under broad concept of wage but is not synonymous with it.**

"Basic salary" is to be understood in its common, generally-accepted meaning, i.e., as a rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime, commissions, COLA and other benefits not integrated as part of basic salary (see *Boie-Takeda v. Dela Serna*, 228 SCRA 329 [1993]). Only the basic salary is considered for purposes of computing wage-related benefits (i. e., OT, 13<sup>th</sup> month pay, etc).

## Wage and wage -related concepts

- **13<sup>th</sup> month pay** is 1/12 of the total basic salary earned during the calendar year
- **Allowances** under a law or company policy
- **Supplements** given as special privileges or benefits over and above ordinary earnings
- **Facilities** for the employee's benefit or convenience
- **Bonuses** given regularly under a law or a company bonus scheme, or simply as extra remuneration granted out of the liberality of the employer given from time to time
- **Commission** thru a pre-determined amount or a bonus scheme
- **Service charges** collected in hotels, restaurants, etc.

## Right to wage is a property right protected by law

The Constitution and the law classify labor as a **property right**. Accordingly, ***the right to wage as the fruit of labor is also classified as a property right***. A property right consists of a **bundle of rights**, such as:

- Right to **own**, including the right to use, to enjoy and to exercise all acts of ownership subject only to restrictions prescribed by law.
- Right to **possess**. Right to the **fruits**.
- Right to **dispose**.

Legal protection on wages is designed to secure this bundle of rights.

## How the law protects right to wage

### ***Fundamental principles: means of protection***

- Setting minimum wages setting thru the RTWPBs.
- Penalties against underpayment or non-payment of minimum wage (Sec. 12, RA 6727)
- Double indemnity rule (RA 8187)
- Encouraging employers and employees to freely bargain collectively in order to fix terms and conditions of employment, including wages, that are above the minimum (Arts. 127 and 218, LCP) .

- Non-diminution principle (Arts. 100 and 125, LCP).
- Solidary liability and indirect employer principles (Arts. 106-109, LCP)
- Ensuring compliance with LS through exercise of inspection or visitorial and enforcement powers of DOLE (Art. 128) or adjudicatory powers of the NLRC (Art. 224).

## **Specific protective measures under the Labor Code**

### Regulations on form and manner of payment

- Immediate utility: form of payment must be in legal tender.
- Predictability and promptness: payment must be made at least every two weeks or not exceeding 16 days, at the place of work.
- Personal: payment must be made directly to the worker, either at the place of work or through ATMs
- Secondary recourse in case of non-payment: Solidary liability and indirect employer doctrine.

### Prohibitions: the employer cannot –

- Interfere with employee's freedom to dispose of his wages
- Make deductions unless authorized by law or consented to by the employee.
- Require the employee to make a deposit from which reimbursement for loss or damage to tools, materials or equipment supplied by the employer, except when there is a recognized trade, occupational or business practice as determined by the DOLE Secretary.

### Prohibitions: unlawful acts by an employer

- Withholding wages, exacting kickbacks or inducing an employee to give up any part of his wages.
- Making deductions to ensure employment.
- Taking retaliatory measures by refusing to pay or reducing the pay or benefits, discharging or in any manner discriminating against any employee who has filed a complaint or is about to give testimony regarding wage violations.
- Knowingly making false statement, report or record in the records required to be kept by the employer.

## Included as wage, but not as basic salary

- **13<sup>th</sup> month pay** is 1/12 of the total basic salary earned during the calendar year.
- **Allowances** (i. e., cost of living allowances) that are separately itemized are generally not considered part of basic salary. ***But COLA granted thru wage orders is part of the minimum daily rate for purposes of computing regular holiday pay.***
- **Supplements** are extra remuneration or special privileges or benefits given to workers over and above their ordinary earnings. Supplements are not part of basic salary.
- **Bonuses**, in its strict sense, are extra remuneration granted out of the liberality of the employer that are given from time to time. These are not part of basic salary.

## Commission is wage, but may or may not form part of basic salary

- **Part of basic salary.** *Commissions are part of basic salary when paid as direct remuneration for services rendered, as when it comprises a pre-determined percent of the selling price of the goods that are integrated into the fixed wage are included in the term “basic salary” for purposes of computing the 13th month pay.*
- **Not considered part of basic salary.** *Commissions not integrated to the basic salary because entitlement to payment is contingent on other factors (such as performance in the case of profit sharing bonuses) are not considered part of basic salary.*
- **Rule (Boie-Takeda case):** *Commission in the nature of productivity bonuses not part of basic salary.*
- **Exception for purposes of computing 13<sup>th</sup> month pay (Philippine Duplicators v. NLRC, 241 SCRA 380 [1995]):**
  - \* *Commissions comprising a pre-determined percent of the selling price of the goods included as “basic salary.”*
  - \* *Commissions as basic salary are direct remunerations for services rendered; the recompense, compensation or reward of an agent, salesman,*

*executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal.*

## **Other payments are included as wage**

### **Facilities as part of wage**

**Facilities** refer to articles or services provided by the employer for the benefit of the employee or his/her family but should 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. (Book III, Rule VII, Sec. 5, rules implementing the Labor Code).

Facilities as part of wage should not be confused with amenities or facilities prescribed by law (e.g., first-aid kits, clinics, separate toilet facilities, lactation stations, etc.) or those which are for the benefit of the employer.

For facilities to be considered as part of "wage," they must be recognized as such thru a Facilities Evaluation Order

DOLE Order No. 126-13: For facilities to be considered as part of "wage," they must be recognized as such thru a Facilities Evaluation Order. Facilities include meals, housing for dwelling purposes, fuel, including electricity, water and gas furnished for non-commercial purposes and for the personal use of the employee; transportation furnished to the employee between his home and work where travel time does not constitute hours work compensable under the LCP.

### **Share of service charges as part of wage**

**Service charges** are amounts collected by hotels, restaurants and similar establishments. Employees shall have a **SHARE** of service charges if the establishment is collecting service charges. This share is part of wage. The share shall be distributed at the rate of 85% for all covered employees equally among them, and 15% for management. ***In case the service charge is abolished, the employees' share shall be considered integrated in their wages.***

**Exception:** Retail and service establishments with less than 10 employees are not covered by this rule.

## 13<sup>th</sup> month pay

- 13th month pay is a form of monetary benefit equivalent to the monthly basic compensation received by an employee, computed pro-rata according to the number of months within a year that the employee has rendered service to the employer.
- All establishments regardless of the number of employees are required to pay their rank-and-file employees the 13th month pay.
- All rank-and-file employees regardless of the nature of their employment, and irrespective of the methods by which they are paid, provided they worked for at least one month during a calendar year.
- **Computation:** The 13th month pay is computed based on 1/12 of the total basic salary of an employee within a calendar year, or basic monthly salary for the whole year divided by 12 months.
- “Basic salary” shall include all remunerations or earnings paid by an employer to an employee for services rendered, but does not include 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 credits, overtime, premium, night differential and holiday pay. Basic salary includes cost-of-living allowances.
- However, these salary-related benefits should be included as part of the basic salary in the computation of the 13th month pay if, by individual or collective agreement or company practice or policy, the same are treated as part of the basic salary of the employees.
- Maternity leave benefits are not included in the computation of 13th month pay.
- The 13th month pay should be paid not later than December 24 of each year.
- A covered employer may pay one-half of the 13th month pay before opening of the regular school year and the other half on or before the 24th day of December of every year.
- As a matter of law, only rank-and-file employees are entitled to 13th month pay. The Labor Code, as amended, distinguishes a rank-and-file employee from a

managerial employee. A managerial employee is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, layoff, recall, discharge, assign, or discipline employees, or to effectively recommend such managerial actions. All employees not falling within this definition are considered rank-and-file employees.

- In practice, however, employers now extend 13<sup>th</sup> month pay benefits to managerial and supervisory employees.

### **13<sup>th</sup> month pay exemptions**

***Exempted from paying the 13<sup>th</sup> month pay are the following:***

- Government and any of its political subdivision, including government-owned and controlled corporations, except those corporations operating essentially as private subsidiaries of the Government (13<sup>th</sup> month pay of these employees are covered by a separate law);
- Employers already paying their employees 13th month pay or more in a calendar year or its equivalent at the time of this issuance;
- Persons in the personal service of another in relation to such workers;
- Employers who are paid on purely commission, boundary, or task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall grant the required shall grant the required 13th month pay to such workers.

## Wage related benefits

### Separation pay

For purposes of labor standards compliance, separation pay is the amount which an employer is required to pay an employee who is separated on the ground of authorized causes, specifically installation of labor saving devices, redundancy, retrenchment to prevent losses or closure of business operations under Art. 283 of the Labor Code, or disease under Art. 284. The amount of separation pay varies based on the ground for separation.

***Amounts of separation pay is based on 1 month pay for every year of service, a fraction of at least 6 months being considered as 1 year -***

- **1 month pay** for separation due to redundancy and installation of labor saving devices
- **1/2 month pay** for separation is due to –
  - Retrenchment to prevent losses (i.e., reduction of personnel effected by management to prevent losses)
  - Closure or cessation of operation of an establishment not due to serious losses or financial reverses; and
  - Employee is suffering from a disease not curable within 6 months and his/her continued employment is prejudicial to his/her health or to the health of his/her co-employees.
- **No separation pay** in case of closure due to serious business losses.

***Computation of separation pay is subject to the following rules –***

- One month pay includes basic monthly salary plus allowances that the employee is regularly receiving
- Separation pay, in any case, shall not be lower than one month pay.

## Retirement

Under Art. 287 of the Labor Code, in the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year. Retail, service and agricultural establishments or operations employing not more than 10 employees are exempted from the coverage of this provision.

***The minimum retirement pay shall be equivalent to 1/2 month salary for every year of service, a fraction of at least 6 months being considered as 1 year, computed as follows:***

- Fifteen (15) days salary based on the latest salary rate;
- Cash equivalent of five (5) days of service incentive leave;
- One-twelfth (1/12) of the 13<sup>th</sup> month pay ( $1/12 \times 365/12 = .083 \times 30.41 = 2.5$ )

***Thus, ½ month salary is equivalent to 22.5 days*** (Capitol Wireless, Inc. v. Confesor, G. R. No. 117174, November 13, 1996).

***Art. 287 of the Labor Code is a minimum standard -***

- Also under Art. 287, any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
- In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: ***Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided under the law.***

## **Social protection benefits**

- Compulsory social insurance benefits –
  - Employees compensation benefits
  - SSS benefits
  - PhilHealth benefits
  - Pag-ibig benefits
- Social insurance schemes are contributory, except for ECC.
- Payment of the benefit is from the social insurance/social security fund.
- To show compliance, employers must have proof of remittances to the SSS, Philhealth and Pag-Ibig.

### ***Note very well -***

- All employers are compulsorily covered by social legislation from the start of their operations.
- All employees are compulsorily covered from their first day of employment.
- Failure of employers to register themselves and make remittances of contributions may be a ground for administrative and criminal action against them.

## **Other labor-related laws**

- Anti-sexual harassment law
  - Committee on Decorum
- Dangerous drugs-free workplace policy
- HIV/AIDS policy
- Anti-Age Discrimination Law

## **MODULE III: OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

- *Objectives and purpose of OSHS*
- *Key concepts*
- *Technical safety*
- *Common issues*
- *Employee's compensation*

# Objectives and purpose of OSHS

## Sources of OSHS

- **Sources –**
  - Book IV, Labor Code
  - DOLE's Occupational Safety and Health Standards
  - Specialized regulations on specific workplaces
- **Stakeholders -**
  - Government
  - Social partners
  - Safety organizations

## Key concepts

- **Health** connotes a sound state of the body and mind of the worker, which enables him to perform his job normally, in a state of well-being.
- **Safe or Safety** refers to the physical or environmental conditions of work or employment, which substantially comply with the provisions of this Standards.
- **Workplace** means the office, premises or work site, where the workers are habitually employed and shall include the office or place where the workers, who have no fixed or definite work site, regularly report for assignment in the course of their employment.
- **Work Accident** means an unplanned or unexpected occurrence that may or may not result in personal injury, property damage, work stoppage or interference or any combination thereof, which arises out of and in the course of employment.
- **Work Injury** means any injury or occupational illness suffered by a person, which arises out of or in the course of his employment.
- **Occupational Illness** means any illness caused by environmental factors, the exposure to which is characterized or peculiar to a particular process, trade or occupation and to which an employee or worker is not ordinarily subjected to or exposed outside of or away from such employment.

- **Recognized Hazards** are those which do not require technical or testing devices to detect.
- **Imminent Danger** is a condition or practice that could reasonably be expected to cause death or serious physical harm before abatement under the enforcement procedures can be accomplished.

***OSHS are about securing the worker's ability to work without interruption***

## **Rule 1000, OSH Standards –**

The objective of this issuance is to protect every workingman against the dangers of injury, sickness or death through safe and healthful working conditions, thereby assuring the conservation of valuable manpower resources and the prevention of loss or damage to lives and properties, consistent with national development goals and with the State's commitment for the total development of every worker as a complete human being. This standards shall apply to all places of employment except as otherwise provided in this Standard.

### **Strategic framework of OSHS: basic assumptions**

- A healthy worker is a productive worker.
- The worker has nothing but his labor for him to make a living. His ability to perform labor in an uninterrupted manner should be protected.
- OSHS are intended to protect the employee from risks or hazards arising from work or from the work environment that could result in the impairment, diminution or elimination of his ability to work.
- Worker education and employer responsibility are the key strategic elements to effectively implement OSHS.

## **Strategic framework of OSHS: four dimensions**

*OSHS has four dimensions - preventive, protective, remedial and curative.*

### **1) Preventive**

- Health program
- Qualified health personnel and safety committees
- Appropriate lay-out and work environment

### **2) Protective**

- Use of PPEs
- Putting up of signages
- Installation of railings

### **3) Remedial**

- First aid treatment
- Medical and dental services
- Provisions for emergency

### **4) Curative and rehabilitative**

- Compensation for work related injuries or disabilities

## **Types of workplaces**

**Two types of workplaces: hazardous and non-hazardous**

***Under Rule 1013, a workplace is hazardous –***

- Where the nature of work exposes the workers to dangerous environmental elements, contaminants or work conditions including ionizing radiation, chemicals, fire, flammable substances, noxious components and the like.
- Where the workers are engaged in construction work, logging, fire fighting, mining, quarrying, blasting, stevedoring, dock work, deep-sea fishing and mechanized farming.
- Where the workers are engaged in the manufacture or handling of explosives and other pyrotechnic products.

- Where the workers use or are exposed to power driven or explosive powder actuated tools.
- Where the workers are exposed to biologic agents such as bacteria, fungi, viruses, protozoas, nematodes, and other parasites.

## Technical safety

### Hazardous workplaces and technical OSHS

Different materials and tools, as well as different work processes and environments, may engender different hazards. Technical safety and health standards are put in place to prevent or reduce the risk of contracting any disease, injury or disability arising from these hazards.

- Technical standards are contained in DOLE's Occupational Safety and Health Standards.
- Individual enterprises can adopt more rigorous standards but may not diminish or reduce DOLE's standards.

## Common issues on compliance

### Common non-compliances: registration of establishments

*Rule 1020 requires –*

- All establishments to be registered with DOLE. If an employer has more than one workplace, all workplaces must be registered.
- Registration shall include a layout plan of the place of work floor by floors showing all the physical features of the workplace including storage, exits, aisles, machinery, clinic, emergency devices and location.

### Common non-compliances: Rule 1030 requires trained Safety Man

| Number of workers                 | No. of safety man            |
|-----------------------------------|------------------------------|
| <b><i>Hazardous workplace</i></b> |                              |
| 200 and below                     | One (1) part-time safety man |
| Over 200 – 1000                   | One (1) full-time safety man |

for every 1000 workers    One (1) full-time safety  
man

***Non-hazardous Workplace***

less than 1 000                    One (1) part-time  
safety man

for every 1 000                    One (1) full-time safety  
man

**Common non-compliances: Rule 1047 - duties of the Safety Man**

- Act as the employers' principal assistant and consultant in the application of programs to remove the hazards from the workplace and to correct unsafe work practices.
- Acts as Secretary to the Health and Safety Committee.
- Adviser on all matters pertaining to health and safety.
- Investigates accidents and submits report thereon.
- Coordinates all health and safety training programs for the employees and employer.
- Conducts health and safety inspection.
- Maintains or helps in the maintenance of an efficient accident record system and coordinates actions taken by supervisors to eliminate accident causes.
- Provides assistance to government agencies in the conduct of safety and health inspection, accident investigation or any other related programs.
- For purposes of effectiveness in a workplace where full-time safety man is required, he shall report directly to the employer.

**Common non-compliances: Health & Safety Committee**

***Rule 1030 requires that –***

In every place of employment, a health and safety committee shall be organized within sixty (60) days after this Standards takes effect and for new establishments within one (1) month from the date the business starts operating. In both cases the Committee shall reorganize every January of the following year. The Chairman of the Committee shall be the top official of the establishment or his representative.

## **Common non-compliances: Health & Safety Committee composition**

**Rule 1042.01, Type A** - In every workplace having a total of over four hundred (400) workers the following shall compose the Health and Safety Committee:

- Chairman - the manager or his authorized representative who must be a top operating official.
- Members - Two department heads, Four workers (must be union members, if organized), the company physician
- Secretary - the safety man

**Rule 1042.02, Type B** - In every workplace having a total of over two hundred (200) to four hundred (400) workers, the following shall compose the Health and Safety Committee:

- Chairman - The manager or his authorized representative who must be a top operating official.
- Members -One supervisor, Three workers (must be union members, if organized), the company physician or the company nurse.
- Secretary - the safetyman.

**Rule 1042.03, Type C** - In every workplace with one hundred (100) to two hundred (200) workers, the following shall compose the Health and Safety Committee:

- Chairman-Manager or his authorized representative
- Members - One foreman, three workers (must be union members, if organized), the nurse
- Secretary - the part-time safetyman

**Rule 1042.04, Type D** - In every workplace with less than one hundred (100) workers, the following shall compose the Health and Safety Committee:

- Chairman – Manager

- Members - One foreman, Three workers (must be union members, if organized), the nurse/first-aider
- Secretary - the part-time safety man

In this workplace, the line type as defined in 1048.02 may be organized.

**Rule 1042.05, Type E** - When two or more establishments are housed under one building, the health and safety committee organized in each workplace shall form themselves into a Joint Coordinating Committee to plan and implement programs and activities concerning all the establishments, composed of:

- Chairman - The chairman of the establishment committee
- Members - Two supervisors from two different establishments, Two workers from two different establishments (union members, if organized)
- Secretary - Appointed by the Chairman (in high rise, the Secretary shall be the building administrator)

## **Common non-compliances: alternative compliance for safety committee**

**Rule 1048** : subject to the approval of the Secretary or his duly authorized representative, the employer may establish in his place of employment the **line** or **staff** type of organization.

**Line Type** - a form of organization where the general manager or head of the establishment directs the health and safety programs and assumes overall responsibility for the safety in the establishment. He in turn delegates the application of health and safety programs to plant personnel occupying line positions.

**Rule 1048** : subject to the approval of the Secretary or his duly authorized representative, the employer may establish in his place of employment the **line** or **staff** type of organization.

**Staff Type** - Staff safety organization or safety engineer type consists of a line organization with specialized personnel employed to advise and assist management in all matters of safety. Said

personnel are responsible to the top executive exercising staff functions, serve all departments in an advisory capacity and supervise the application of the health and safety program in the workplace.

### **Common non-compliances: anti-drugs use policy**

- Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act, is the governing law against the possession, use, or sale or distribution of prohibited drugs.
- Use, possession, sale or distribution of prohibited drugs is a criminal offense in an situation.
- In workplaces, the pertinent DOLE guidelines for private sector employers is embodied in DOLE Department Order No. 53-03, under which employers shall adopt measures to ensure that all their workplaces and employees are drug-free.
- Zero tolerance policy on drug possession, use or sale or distribution is encouraged.
- An anti-drugs policy in the workplace should embody the following basic principles
  - - Due process in drug testing: a positive first test must be verified or confirmed by a second test.
    - Rehabilitate first, don't dismiss: on first offense of drug use, employee may be suspended without pay and given a chance to undergo rehabilitation.
    - Repetition of drug use is a ground for dismissal.
    - Drug pushing a ground for dismissal, even in first offense.

### **Common non-compliances: lactation stations in all establishments**

All health and non-health facilities, establishments or institutions shall establish lactation stations. The lactation stations shall have adequate equipment and facilities, such as: lavatory for hand-washing, unless there is an easily-accessible lavatory nearby; refrigeration or appropriate cooling facilities for storing expressed breastmilk; electrical outlets for breast pumps; a small table; comfortable seats; and other items, the standards of which shall be defined by the Department of Health. The lactation station shall not be located in the toilet. (Section 11, R. A. No. 10028).

# Employee's compensation

## Policy (Art. 166, Labor Code)

The State shall promote and develop a tax-exempt employees' compensation program whereby employees and their dependents in the event of ***work-connected disability or death***, may promptly secure adequate ***income benefit***, and ***medical or related benefits***.

## The employees' compensation program

Program is funded out of the ***State Insurance Fund (SIF)***, a ***non-contributory social insurance scheme*** administered by the ***Employees' Compensation Commission (ECC)*** and managed by the ***Social Security System (SSS)*** for the private sector and by the ***Government Service Insurance System (GSIS)*** for the public sector. Designed to spread the risks and costs of dealing with a work-related disability, disease, injury or death among employers who are members of the SSS and GSIS. Benefit is available to the employee, his/her beneficiaries and dependents.

## Key concepts

- ***Injury*** means any harmful change in the human organism from any accident arising out of and in the course of employment.
- ***Sickness*** means any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof that the risk of contracting the same is increased by working conditions.
- ***Death*** means loss of life resulting from injury or illness.
- ***Disability*** means any loss or impairment of a physical or mental function resulting from injury or sickness.

## Requisites for compensability: sickness or disease

- Must be work-related
  - Any sickness or disease listed by the ECC as an occupational or work-related disease.

- Any sickness or disease which, even if not listed, is shown by adequate evidence to have been caused by working conditions (theory of increased risks).
- There is loss of life or disability/impairment of a physical or mental function resulting from the disease or sickness. Disability or impairment may be:
  - Temporary or permanent disability.
  - Partial or total disability.

### **Requisites for compensability: injury**

- The employee must have been injured at the place where his work requires him to be.
- The employee must have been performing his official function.
- If the injury is sustained in a place other than the place of work, the injury must have been executing an order for the employer.
- There is loss of life or disability/impairment of a physical or mental function resulting from the disease or sickness. Disability or impairment may be:
  - Temporary or permanent disability.
  - Partial or total disability.

### **Employees' compensation: common problems**

#### ***Application of the requisites of compensability may be problematic in some areas***

- When the sickness or disease is not listed as compensable.
- Injuries sustained outside the place of work.
- Going to or coming from work.
- Proximity to ingress to or egress from the place of work.
- Special errands.
- Employee aboard employer-provided transportation.
- 24 x 7 duties.

***In case of doubt, resolve in favor of compensability*** (therefore in favor of labor).

## **MODULE III: ROLE OF SOCIAL DIALOGUE AND THE SINGLE ENTRY APPROACH**

## **Core principles and values underlying LS**

LS apply to situations when there is an employee-employer relationship. It represents the minimum requirements of what constitute just and humane conditions of work. LS compliance is both a duty and obligation of employers. LS implementation and enforcement is the responsibility of labor administrators.

***State policy seeks to promote COMPLIANCE with LS, whether VOLUNTARY or ENFORCED***

Conventional strategy to implement policy is thru enforcement power vested in the DOLE Secretary or duly authorized representatives under Art. 128, LCP. Conventional mode of implementation is thru inspection, with findings of violations and issuance of compliance orders and writs of execution, as the case may be, as indicators of success and effectiveness.

### **Who enforces labor standards**

Art. 128 of the Labor Code gives the DOLE Secretary, thru the Regional Directors and Labor Law Compliance Officers (LLCOs) the power to administer and enforce labor standards.

- All employers must comply with LS.
- Employees must receive what is due them under the law.
- Implementing rules and regulations on inspection is DOLE Department Order No. 131-B (2016) known as the Labor Laws Compliance System (LLCS)
- Labor standards complaints are subject to conciliation and mediation

## **Visitorial and enforcement power (art. 128, lcp)**

Vested in the DOLE Secretary and his duly authorized officers

- Regional Director
- Labor Law Compliance Officer (LLCO). In LCP, Labor Enforcement Officer. In practice, Inspector

Purpose is to determine existence of violations and aid enforcement of the Labor Code, other labor laws, wage orders, or other relevant rules and regulations

- GLS
- OSHS

Rooted in the “police power” of the State and includes power to:

- Access employer’s records and premises;
- Issue compliance orders and writs of execution;
- Stop work or suspend operations based on imminent danger to the health and safety of the workers in the workplace (Rule VIII, D.O. 131-B)

Exercised thru inspection

- As to coverage: GLS or OSH, or both
- As to manner: joint assessment, routine or upon complaint

Exercise of power not subject to injunction

### ***Accessory provisions in aid of enforcement***

DOLE Secretary may issue regulations requiring employers to keep and maintain employment records as may be necessary in aid of its visitorial and enforcement powers

- Relate to prohibition against false reporting in Art. 119, LCP
- Implemented by Rule IV, Sec. 2, D.O. 131-B (2016)
- Prohibition against obstruction and injunction
- Whistleblower protection against retaliatory measures (Art. 118)

## **Social dialogue and LS**

**Social Dialogue (SD)** includes all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers on issues of common interest relating to economic and social policy, as well as to productivity, terms and conditions of employment, and the welfare and well-being of workers. Primary objective of SD is workers' participation in policy and decision-making processes affecting their rights and welfare.

- Joint Assessment under DO 131-B is a form of SD in the workplace.
- Settlement thru conciliation- mediation under SeNA also a form of SD

## **Social dialogue and LS compliance thru sena**

- SeNA requires conciliation and mediation as the initial process of 3<sup>rd</sup> party intervention in resolving labor disputes (R.A. 10396 and D.O. 151-16).
- Conciliation and mediation is an extended form of SD.
- Labor standards cases can be the subject of SD
  - During assessment, correction or remediation process
  - When submitted to SeNA
  - During the mandatory conference before the Regional Director in case violation is not corrected

### **Sena now a preferred approach**

- Conciliation and mediation now a preferred approach in enforcing LS -
  - ✓ Administrative approach to provide a speedy, impartial, inexpensive and accessible settlement procedure of all labor issues (DOLE Order No. 151-16)
  - ✓ Speedy, impartial, and inexpensive proceedings through conciliation-mediation where parties are given the opportunity to settle amicably the compliance deficiencies and to prevent them from ripening into full blown disputes. (DOLE 131.B-16)

## Rules on settlement

***Social dialogue and SEnA could lead to settlements embodied in compromise agreements or quitclaims. Rule on compromise agreements and quitclaims –***

Quitclaims executed by employees are often frowned upon as contrary to public policy. Hence, deeds of release or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel.

***To be valid, compromise agreements and quitclaims must comply with the following conditions (Jiao v. Global Business Bank, G. R. No. 182332, April 18, 2012):***

- Employee executes the deed of quitclaim voluntarily;
- No fraud or deceit is employed by any of the parties;
- The consideration of the quitclaim is credible and reasonable, as when it is more than the amount prescribed by law; and
- ***The quitclaim is not contrary to law***, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.

**TAKE AWAYS: don't settle for lower than ls**

***In settling LS disputes through social dialogue and SEnA, bear in mind that -*** Correction or remediation period is “deferred” compliance, not an exemption from compliance. ***More importantly, always bear in mind that –***

- LS represent the minimum requirements of what constitute just and humane conditions of work
- Implementation and enforcement of LS is a responsibility of labor administrators
- Compliance is both a duty and obligation of employers
- LS are non-waivable and non-negotiable

***If these principles are not observed, the fair, just and proper rule is for DOLE to enforce compliance.***

## **Enforced compliance**

***If no settlement or immediate correction, “hard” approaches to ensure LS compliance will be used -***

Work Stoppage Order by Regional Director for OSHS violations posing imminent danger (Rule VIII, D.O. 131-B). Compliance Order by the Regional Director (Rule XIII, D.O. 131-B)

- May be appealed to the Secretary of Labor within 10 days subject to posting of bond (Rule XV)
- Order cannot be implemented pending appeal (this may soon change)
  - Writ of Execution (Rule XVI)

# CASE STUDIES

## Case study 1: An ER-EE relationship, or something else? What about Leni?

Leni has a contract of talent with DNN, a broadcasting company. The contract is for one year and may be renewed by agreement of the parties. Leni's work consists of doing research and writing news features and documentaries. She reports to DNN for at least eight hours a day from Monday to Friday. She gets her assignment from DNN's Talent Director, to whom she also submits what is termed in her contract as "creative outputs" or "deliverables." The contract further states that she will be paid a monthly talent fee of P50,000.00 net of tax which represents all that she is entitled to receive from DNN and that nothing in the contract shall give rise to an employee-employer relationship. Under the terms of her contract, Leni cannot be considered an employee of DNN.

- ✓ A host of a tele-radio talk show.
- ✓ A cameraman in a TV network.
- ✓ A security guard who keeps spectators in line during live entertainment shows.
- ✓ A consultant who reports to work eight hours a day, 5 days a week.
- ✓ A subject matter expert who teaches a subject of his expertise in a University.
- ✓ A news reader.
- ✓ A journalist who writes a column for a newspaper once a week.
- ✓ A professional basketball player.
- ✓ A sports referee.

## **Case study 2: How much did Jane earn for the day?**

SCTEX Corp. is a manufacturing company with 24 x 7 operations and a six-day workweek. Its employees work in three regular shifts – the first shift is from 6:00 a.m. to 2:00 p.m.; the second shift from 2:00 p.m. to 10:00 p.m.; and the third shift from 10:00 p.m. to 6:00 a.m. the following day. Jane is a rank and file daily-paid employee in SCTEX Corp. Her basic daily wage rate is 640.00. Her regular shift is the third shift. At 10:00 p.m. on April 8, Jane went to work for her regular shift. She was to complete her shift at 6:00 a.m., April 9, which was *Araw ng Kagitingan* and a Maundy Thursday. It was also Jane's regular rest day. Prior to the end of her regular shift, Jane was informed by her supervisor that there were several absentees in the night shift. In order to meet the production quota for the night shift, Jane's supervisor required her to continue working beyond her regular shift. Jane complied. She eventually logged off from work at 9:00 a.m., April 9.

## **Case 3: Are LS subject to compromise?**

Rolando works in a company with 300 employees. Applicable minimum wage is P500.00/day. With a view to improving his terms of employment, Rolando had been trying to organize co-workers to form a union. For the last ten months, the company had been paying Rolando P430.00/day. At the standard formula of 26 working days a month, Rolando calculated he had been underpaid by at least 18,200.00 pesos ( $26 \times 10 \times 70$  pesos). Rolando went to DOLE SeNA Desk to file a complaint for underpayment with double indemnity. He also claimed that he was representing 200 other employees in the company similarly underpaid and entitled to double indemnity.

# **SOLUTIONS TO CASE STUDY**

## **Case Study 1**

### **Take-away: er-ee relationship cannot be contracted away**

Sometimes, contracts use terms other than “employee” or disclaim the existence of an er-ee relationship – Independent Contractor, Partner, Member, Talent, Associate, Professional service provider, Consultant, Subject matter expert

When the four-fold test, control test or economic reality test is established based on the facts and circumstances of the case, workers are employees regardless of how the contract calls them or of a disclaimer of er-ee relationship.

## **Case study 2**

Let's analyze Rolando's claim

### **Threat Values of Rolando**

- **Stop the loss (weak threat): Demand underpayment at P18.2K**
- **Break even: 18.2K + interest + compliance henceforth**
- **Win big: Demand double indemnity at P18.2K x 2 plus compliance henceforth**
- **Maximize threat: Represent employees similarly situated and demand 18.2K x2 x 200 + compliance**
- **Additional threat: Register the union**

### **Threat Values of Company**

- **Run; mini-max (lockout): Closure so workers get zero**
- **Use law; maxi-min: Company to pay if ordered to do so, but will use all legal avenues to delay payment**
- **Fight: Reject payment outright; oppose unionization**

**What's the solution?**

- **Waive the P18.2K, but pay the right amount henceforth. (Rolando loses, Company wins)**
- **Pay the P18.2K and pay the right amount henceforth. (Rolando loses, Company wins)**
- **Pay the 18.2K with interest, and pay the right amount henceforth. (Rolando wins little. Company doesn't lose.)**
- **Where's the ZOPA? (Rolando and workers get their due; Company respects its legal obligations)**
  - ✓ **An amount higher than 18.2K with interest but lower than 36.4K.**
  - ✓ **Compliance henceforth.**
  - ✓ **Same treatment for others similarly situated.**

**ANNEX**

**ADMINISTRATION AND ENFORCEMENT**

**ARTICLE 128, LABOR CODE AND DOLE**

**DEPARTMENT ORDER NO. 183-2017**

## **Compliance with LS is mandatory**

***State policy requires COMPLIANCE with LS, whether VOLUNTARY or ENFORCED***

- Power to enforce compliance is vested in the DOLE Secretary or duly authorized representatives under Art. 128, LC.
- Function of enforcement is also known as LABOR INSPECTION
- Purpose is to determine existence of violations and aid enforcement of the Labor Code, other labor laws, wage orders, or relevant regulations
- Implementing rules and regulations on inspection is DOLE Department Order No. 183-17

## **Nature and scope of VISITORIAL AND ENFORCEMENT POWER**

Rooted in the “police power” of the State and includes power to:

- Access employer’s records and premises;
- Issue compliance orders and writs of execution;
- Stop work or suspend operations based on imminent danger to the health and safety of the workers in the workplace

Exercised thru inspection

- As to coverage: GLS or OSH, or both
- As to manner: joint assessment, routine or upon complaint

Exercise of power not subject to injunction

## **Scope of VISITORIAL AND ENFORCEMENT POWER**

DOLE Secretary may issue regulations requiring employers to keep and maintain employment records as may be necessary in aid of its visitorial and enforcement powers

- Relate to prohibition against false reporting in Art. 119, LCP

Prohibition against obstruction and injunction

Whistleblower protection against retaliatory measures (Art. 118)

## **Modes of enforcement**

Three modes by the Labor Inspector

- Routine Inspection (Rule V)
- Complaint Inspection (VI)
- OSHA investigation (Rule VII) in cases involving imminent danger, dangerous occurrences, accident resulting in disabling injury
- OSHA violations committed in plain view

Special mode – inspection done by a composite team authorized by the Secretary of Labor (Rule III)

## **Consequences and remedies in case of violation**

- Correction or remediation with action plan(Rule V, Sec. 3[e] and [f])
- Compliance Order (Rule XI)
- Exceptional remedies
  - Double indemnity (Rule II, Sec. 1 [g])
  - Regularization of employees (Rule XI, Sec.2)
  - Work stoppage order (Rule VIII)
- Compromise Agreement (Rule XII)
- Execution (Rule XIV)

## **Rules on settlement**

### ***Rule on compromise agreements and quitclaims –***

Quitclaims executed by employees are often frowned upon as contrary to public policy. Hence, deeds of release or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel.

***Note: Don't settle for lower than labor standards.***

***To be valid, compromise agreements and quitclaims must comply with the following conditions (Jiao v. Global Business Bank, G. R. No. 182332, April 18, 2012):***

- Employee executes the deed of quitclaim voluntarily;
- No fraud or deceit is employed by any of the parties;
- The consideration of the quitclaim is credible and reasonable, as when it is more than the amount prescribed by law; and
- ***The quitclaim is not contrary to law***, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.