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Informal Sector: Labour Laws and Industrial Relations

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1. Introduction

The objectives of this paper are threefold: first, to outline the various labour laws in the country, particularly those defining the different labour relations and labour standard rights of the workers; second, to analyze the applicability of these labour laws to informal sector workers; and third, to identify alternative legal approaches to the issue of extending protection to informal sector workers.

For the purpose of this paper, the following definition[1] of the informal sector is adopted:

"The informal sector consists of small-scale, self-employed activities, with or without hired workers, typically operating with a low level of organization and technology with the primary objective of generating employment and incomes for their participants; to the extent that these activities are carried out without formal appproval from the authorities and escape the administrative machinery responsible for enforcing legislation and other similar instruments concerning fiscal and administrative matters and conditions of work, they are concealed."

The above is further amplified in the following definition by the International Labour Organization (ILO)[2], which says that informal sector units are

". . . very small scale units producing and distributing goods and services, and consisting largely of independent self-employed producers in urban areas of developing countries, some of whom also employ family labour and/or a few hired workers or apprentices; which operate with very little capital or none at all; which utilize a low level of technology and skills; which therefore operate at a low level of productivity; and which generally provide very low and irregular incomes and highly unstable employment to those who work in it. They are informal in the sense that they are for the most part unregistered and unrecorded in official statistics; they tend to have little or no access to organized markets, to credit institutions, or to many public services and amenities; they are not recognized, supported or regulated by the government; they are often compelled by circumstances to operate outside of the framework of the law and even where they are registered and respect certain aspects of the law they are almost invariably beyond the pale of social protection, labour legislation and protective measures of the workplace."

From the foregoing ILO definitions, informal sector workers can be either self-employed or hired workers in low-technology urban-based micro-enterprises not registered or formally approved by the authorities.

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[1] From the terms of reference of the Interdepartmental Project on the Urban Informal Sector, LEG/REL, ILO Geneva.

[2] International Labour Organization, *Development of Urban Informal Sector: Policies and Strategies*, Discussion Paper, Geneva: World Employment Programme, January 1993.

2. Overview of Labour Laws and Protective Labour Institutions in the Philippines

Brief historical overview of labour laws. Before and after World War II,[3] labour laws were confined mainly to two areas: labour relations and labour standards. Labour relations is focused on union registration, collective bargaining and dispute settlement; labour standards, on giving protection to workers in the areas of wages, health and safety, hours of work, employee compensation schemes, etc. Both functions have inordinately been oriented primarily towards the formal sector firms where there are clear employer-employee relations.

After the declaration of martial law in 1972, labour laws were expanded and codified. The Labor Code of the Philippines (LCP), which was enacted on May 1, 1974 as Presidential Decree (PD) No. 442, codified the diverse laws on labour relations (from union registration and collective bargaining to dispute settlement), labour standards (on wages and hours of work up to health and safety standards), and some laws on employment facilitation.

The Code strengthened employment promotion (through the Bureau of Employment Services [BES] and the then National Seaman Board [NSB] and Overseas Employment Development Board [OEDB]), and manpower development through a reinvigorated National Manpower and Youth Council (NMYC).

The Code also formally elevated tripartism as a national labour policy, with the Code itself being subjected to several tripartite consultations (1973, 1974 and 1975). However, under the martial rule in the 1970s, certain restrictions on labour rights were decreed, e.g. ban on strikes. These restrictions were complemented with the strengthening of the system of compulsory arbitration, principally through the creation of the National Labor Relations Commission (NLRC), which formally replaced the pre-war Court of Industrial Relations (1936-72).

In the 1980s, radical changes in the economy and the political system led to major amendments in the Code. The dramatic growth of overseas employment necessitated the fusion of NSB and OEDB into a Philippine Overseas Employment Administration (POEA), and the creation of the Overseas Workers' Welfare Administration (OWWA).

On the other hand, the lifting of martial law in 1981 and the labour unrest that raged until the middle of the 1980s forced the government to enact amendments tightening the rules on the conduct of strikes and the settlement of disputes.

However, the EDSA Revolt in 1986 ushered in a more liberal democratic order and, subsequently, a more liberal labour relations system. A number of restrictions on organizing were lifted.

A long list of labour rights was also enshrined in the 1987 Constitution. In line with this and in response to the waves of labour strikes in the mid-80s, the government created

[3] See *Compilation of Labor and Social Legislation*, Manila: Central Book Supply, Inc., 1964.

the National Conciliation and Mediation Board (NCMB) to promote conciliation, mediation, voluntary arbitration and plant-level labour-management council (LMC). As to the repeated labour agitations for the regular upward adjustment of minimum wages, Congress enacted a law establishing the Regional Tripartite Wage and Productivity Boards (RTWPBs) and merging the National Productivity Commission (NPC) and the National Wages Council (NWC) into the National Productivity and Wages Commission (NWPC).

Today, the three main thrusts of the Labor Code can be grouped as:
A. Employment promotion and manpower development;
B. Labour welfare and standards; and
C. Labour relations.

For employment promotion and manpower development, the major DOLE offices are: POEA, Bureau of Local Employment (BLE), Bureau of Labor and Employment Statistics (BLES), Maritime Training Council (MTC), National Maritime Polytechnic (NMP) and the NMYC. *For workers' protection or labour standards*, the offices to consult are: Employees' Compensation Commission (ECC), NWPC, OWWA, Bureau of Rural Workers (BRW), Bureau of Women and Young Workers (BWYW) and Bureau of Working Conditions (BWC). *For the stabilization of labour-management relations*, the key offices involved are the NLRC, NCMB and the Bureau of Labor Relations (BLR). All the regional offices perform the three functions.

3. Main Features of the Labor Code

Book One of the Labor Code deals with the general issues of employment promotion and the regulation of recruitment and placement activities.

The promulgation of the Labor Code in 1974 led to the creation of the OEDB, National NSB and the BES. The establishment of the OEDB and the NSB was meant to systematize deployment of land-based and sea-based workers to other countries in the context of a rapidly-growing overseas labour market for Filipino workers. The Labor Code initially envisioned a government monopoly over the overseas employment programme.

However, unable to cope with the demand for workers in the Middle East, the government was forced to revive through Presidential Decree 1412 private sector participation in the recruitment and placement of Filipino workers, with the BES given the powers to regulate licensed private recruitment agencies.

In 1982, pressed by the need to streamline operations in the overseas employment programme, the government issued Executive Order (EO) No. 797 unifying the OEDB, NSB and the overseas employment programme of the BES into POEA. The BES was replaced by the Bureau of Local Employment, which is specifically required to concentrate on local employment facilitation.

Earlier, in 1981, the Welfare Fund for Overseas Workers (WELFUND) was created by Presidential Decree No. 1694, which institutionalized and expanded the Welfare and

Training Fund for Overseas Workers set up through Letter of Instruction No. 537 issued in 1977. The WELFUND is administered by the OWWA.

Book Two of the Labor Code deals with manpower development as a supplement to the formal educational system. It covers National Manpower Development (Title I) and Training and Employment of Special Workers. The main agencies cited in the Book are the National Manpower and Youth Council (NMYC), the country's lead agency in the conduct of skills development programmes for middle-level manpower required by industry, and the Department of Labor and Employment, which administers the National Apprenticeship Programme.

As a background, it should be pointed out that there are two government departments that have a relatively long history of involvement in manpower development -- the Department of Education, Culture and Sports (DECS) and the Department of Labor and Employment (DOLE). Through formal and non-formal educational programmes, DECS has been offering vocational and technical education courses through a network of technical vocational institutions. Its Bureau of Vocational Education has been expanded into a Bureau of Technical and Vocational Education (BTVE). On the other hand, DOLE has been administering since 1957 the government's apprenticeship programme based on the 1957 National Apprenticeship Act (Republic Act [RA] No. 1086). At one time, DOLE had an Apprenticeship Division, which later evolved into a Bureau of Apprenticeship. Until 1994, the apprenticeship programme was formally under the management of the BLE.

In 1969, manpower development received a tremendous boost with the creation of the NMYC through the enactment of the Manpower and Out-of-School Youth Development Act or RA No. 5462. With the help of the World Bank, ILO and the United Nations Development Programme (UNDP), the NMYC expanded its facilities in the 1970s to become the country's premier manpower development institution. The NMYC was then attached to DOLE for administrative coordination. Then in the first half of the 1980s, it was transferred to Malacanang, and then in the second half of the 1980s, re-attached to DOLE.

In 1994, the NMYC, the BTVE and the DOLE's Apprenticeship Programme were fused together into the Technical Education and Skills Development Authority (TESDA).

Book Three of the Labor Code is often referred to as the Book on Labor Standards. It covers the laws governing Hours of Work, Weekly Rest Periods, Holiday Pay Law, Service Incentive Leaves, and Service Charges.

A very important labour standards law that seeks to assure workers a decent living wage is the Law on Wages, which is supplemented by the laws that provide for statutory minimum wages (PD No. 928, as amended; RA No. 6640, RA No. 6727, also PD No. 1790), cost-of living allowances (PD No. 525, as amended; EO No. 178 integrating the cost-of-living allowance into the basic pay of workers) and on the 13th month pay (PD No. 851 as amended).

Other important labour standards laws are those prescribing working conditions for special groups of employees, i.e. women, minors, househelpers and industrial homeworkers.

The above labour standards laws all seek to assure workers humane conditions of work. They are products of bitter industrial strifes in the past.

The most controversial labour standard pertains to the minimum wage, which was adjusted a number of times in the 1970s and 1980s, and, through the newly-created Regional Tripartite Wage and Productivity Boards, in 1990, 1991 and 1993.

Book Four of the Labor Code deals with the laws for the protection of the health and safety of workers, which are operationalized through the various provisions of the Medical and Dental Services Law and the Law on Occupational Health and Safety. Another important law under Book Four is the Employees' Compensation Law.

It is interesting to note that some of the earliest labour laws in the country pertain to employees' compensation. Act No. 1874, which was enacted in 1908, was also known as the Employers' Liability Act. It extended and regulated the responsibility of employers for personal injuries and deaths by their employees while at work. Act No. 3428, which was enacted in 1927 and became effective in 1928, was also known as the Workmen's Compensation Act. It prescribed the compensation to be received by employees for personal injuries, death or illness contracted in the performance of duties.

The present law on Employees' Compensation is Title II of the Book Four of the Labor Code. This law applies only to injury, sickness, disability or death.

Book Five deals with labour relations -- from union organizing and registration to collective bargaining and dispute settlement.

In the first half of the 1980s, the labour relations system experienced stresses that reached crisis proportions, resulting in the clogging of cases and the outbreak of numerous strikes.

In 1987, DOLE created the NCMB, which succeeded in initiating and gradually putting in place "voluntary" and "proactive" modes of dispute settlement such as the plant level labour-management councils (LMCs) and voluntary arbitration. Through its "preventive mediation" function, the NCMB has also prevented a number of strike notices from developing into actual strikes. These approaches have reduced the load on government in the settlement of disputes as they strengthen the bipartite role of labour and management in dispute settlement at the plant level.

A major achievement in the area of industrial peace promotion is the establishment in 1990 of the national Tripartite Industrial Peace Council (TIPC), which has become a consultative forum among the three major actors in labour relations (labour, management and government) on major labour issues. In 1992, DOLE started establishing regional and provincial TIPCs.

Book Six deals with the constitutional right of workers to security of tenure as regards those employed in the private sector. Article 279 of the Code provides:

"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 on Termination of Employment in the Labor Code. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."

From the above provision, it is clear that only regular employees enjoy the right to security of tenure, which is guaranteed by the proviso prohibiting the employer from terminating the services of regular employees except for a just cause or when otherwise authorized by law.

Since the regular status of an employee is the key to acquisition of security of tenure, the distinction between regular employment and casual, probationary and other types of employment is crucial.

Lastly, Book Six contains the law on retirement from service, including certain conditions and benefits related to retirement.

4. The Labor Code and Its Applicability to the Informal Sector

Theoretically, the labour laws are for the entire labour force, or that part of the working age population (15 years and above) either at work (employed) or actively looking for work (unemployed). The Constitution is very explicit on this. Article XIII, Section 3 of the charter reads as follows:

> "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 all 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 the 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 in 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 production and the right of enterprises to reasonable returns on investments, and to expansion and growth." (underscoring provided)

To repeat, the Constitution virtually extends to all workers, organized and unorganized, the same rights. The problem is the absence of enabling laws or provisions in the Labor Code for the enjoyment of such rights by the informal sector workers.

The Code, in Article 6, states that "All rights and benefits granted to workers under this Code shall . . . apply alike to all workers, whether agricultural or non-agricultural". This clearly envisions universal applicability of the laws. However, many of the specific provisions in the Code itself contemplate limited application of the law to the formal sector.

As pointed out earlier, the two original functions of DOLE itself -- stabilizing labour-management relations and maintaining labour standards -- are oriented mainly to formal sector firms and their workers. This is not surprising because the most organized workers happen to be in the formal sector of the economy. Concerted activities of organized workers in the past led to the development of labour relations institutions (e.g. unionism, collective bargaining, arbitration mechanism, tripartism) and labour standards (e.g. wages, hours of work, health and safety rules), which are codified in the Labor Code of the Philippines. Moreover, the enjoyment of the various labour standards and labour relations rights by workers generally requires clear employer-employee relations in the formal sector.

In the case of Book One (employment promotion) and Book Two (manpower development), there are no problems on the applicability of the Code to informal sector workers as the Code seeks the full employment and development of all workers. Sometimes, manpower development programmes are packaged specifically for some depressed urban or rural areas, where informal sector employment is common. The only problem is the readiness of workers for higher level training to be employable at the higher ladder of the labour market, at home and overseas. Technical-vocational trainees are generally required to have at least some rudimentary knowledge of the three R's (reading, writing and arithmetic) as this is a basic prerequisite for a worker's trainability, e.g. technician courses for machine handling and operations would require some numerical know-how and manual dexterity. On the other hand, many workers in the informal sector have limited access to basic elementary and secondary education. Hence, the packaging of educational-vocational programmes in the informal sector areas must necessarily address as well the issue of raising the basic literacy of the workers.

Book One deals with employment facilitation for local and overseas employment, while Book Two aims at the development of manpower through programmes such as apprenticeship and learnership.

In the case of Books Three and Four (the labour standard books), Article 82 states that the labour standards laws are applicable to "employees in all establishments and undertakings whether for profit or not, but not to government employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, and workers who are paid by results".

This provision does not make any distinction between formal and informal sector employees. But in general, "establishments and undertakings" recognized by law are those

registered with the local government units, Securities and Exchange Commission and the Bureau of Internal Revenue.

Also, a clear-cut employer-employee relationship in such establishments and undertakings has to be established for employees to enjoy labour standards. There is no formal exclusion of informal sector employees per se and there are no specific laws excluding them from the coverage of any labour standard. Of course, workers in unregistered enterprises may test the law but the practical consequence of this would either be the formal registration of the establishment or its closure for failure to register.

On the other hand, the above provision explicitly excludes from coverage "field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, and workers who are paid by results". This portion of the provision tends to exclude informal sector workers such as unpaid family workers. It is well known that many informal sector micro-enterprises are family businesses run by family members themselves. Also excluded are domestic helpers, although there is another provision for househelpers (see discussion below), field personnel and those paid by results. Section 2-f of Rule I for Book Three defines non-agricultural field personnel as those who "perform their duties away from the principal or branch office or place of business of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty." This definition can cover both sales representatives of big corporations, who can be classified as formal sector employees, and informal sector workers like street hawkers and ambulant peddlers. Finally, workers paid by results are excluded, although Section 8 of Rule VII for Book Three provides some guidelines on the manner of payment for such workers. Workers paid by results are generally those paid on piece work or task basis. Again, some informal sector workers earn by doing jobs at home and getting paid by piece or by task. But work by results can be both formal, e.g. through formal commissioning of work by a corporate entity, and informal, e.g. through verbal agreements between a person needing some work done and a skilled worker such as an electrician or plumber who is willing to do the work.

There are special provisions on special groups of workers -- women, minors, househelpers and industrial homeworkers -- and there are specialized DOLE offices (BRW and BWYW) attending to specific needs of disadvantaged women, young workers and landless rural workers. Child labour is expressly prohibited under the law, except when work is done under the responsibility of parents or a guardian and when this does not interfere with a child's schooling. This only means that employment of children in family enterprises can continue. However, there are no specific provisions on the rights of child workers.

There are rights extended to househelpers but in many cases, these are not observed or complied with by "employers" because of the "informality" of the relationship. DOLE also hardly does any monitoring or inspection in this area. However, the government, in recent years, has openly campaigned for the enrolment of househelpers under the social security system.

In the case of the homeworkers, the Department of Labor issued in 1992 Department Order No. 5 providing guidelines on the employment of homeworkers,

specifically in relation to payment of homework and conditions of payment. The Order provides for the payment by the employer to the homeworker or subcontractor/contractor for the "work performed less corresponding homeworkers' share of SSS [Social Security System], MEDICARE and ECC premium contributions". It added that the Department, on its initiative or petition of any of the parties, determine the "standard output rates or piece rates" through time and motion studies, etc. On the other hand, homework may not be paid if it is rejected due to the fault of the homeworker. Also, the employer is allowed to require the homeworker to "redo the work which has been improperly executed".

The homeworkers are the concern of the Bureau of Rural Workers, a small bureau set up in the mid-70s to administer the Sugar Amelioration Fund (SAF) for the sugar workers and to address the needs of the rural workers in "a limbo" -- the landless rural workers. The landless are those who have no direct land tenurial rights and who, therefore, cannot be extended assistance or protection by the Department of Agrarian Reform (DAR) and the Department of Agriculture (DA). On the other hand, they have no regular employee status and, therefore, DOLE has difficulty attending to them. To a certain extent, the Bureau of Women and Young Workers (BWYW) is also oriented to workers in "a limbo" -- child workers, disadvantaged women workers, etc.

In general, the various labour standards laws -- hours of work, weekly rest periods, holiday pay, service incentive leave, and wages -- seek to assure workers humane conditions of work. The labour standard laws spell out certain rights granted to "employees" and mandate the "employers" of said employees to recognize these rights. *The existence of an employer-employee relation is, therefore, a prerequisite for the application of these laws.* Hence, labour standards laws are enjoyed mainly by formal sector workers.

As earlier pointed out, the wage laws are in general very controversial and that the most debated labours standard law is the minimum wage law. The minimum wage law is supplemented by the 13th-month pay.

Book Four contains protective clauses related to health, safety and social security of workers. Again, these various provisions are generally applicable to formal sector establishments which the law mandates to observe minimum health and safety standards, e.g. hiring of medical staff given a certain number of employees in the establishment and rates of employer's contributions to the State Insurance Fund. For more details on the various labour standard provisions of the Code, see Annex 1.

The application of Book Five (labour relations) and Six (termination) to informal sector workers is similar to Books Three and Four. Clear-cut employer-employee relations are needed to be established before employees can enjoy the rights of unionism, collective bargaining, concerted activity, etc.

However, the law (Article 212) defines a labour organization as "any union or association of employees which exists in whole or in part for the purpose of collective bargaining *or of dealing with employers concerning terms and conditions of employment*" (underscoring provided). For purposes of collective bargaining, it is obvious that distinct employer-employee relations in the formal sense are established. In fact, in many disputes

surrounding representation preparatory to collective bargaining, this is one of the issues that is immediately taken up.

But forming a labour organization for purposes outside collective bargaining is not prohibited nor discouraged. Thus, *informal sector workers can organize themselves into a union for purposes other than collective bargaining*. One type of union that can be established is a craft organization, which is organized along trade or guild lines, meaning workers plying similar trade or trades or having similar skills, e.g. carpenters, plumbers, electricians, can organize a union and deal with prospective employers concerning terms related to the hiring of their services. Ironically, the beginning of the Philippine labour movement started precisely with the formation of guilds or *gremios* of various artisan groups (printers, carpenters, etc.) during the last three decades of Spanish rule.[4]

Another form of labour organization is the peasant union, which may or may not be registered with the Securities and Exchange Commission. Peasant unions in the Philippines are generally engaged in pressure-group activities and advocacy of welfare projects for their members, or in defense of their common interests. The BRW has been encouraging the registration of rural workers organizations, including organizations of homeworkers, landless rural workers, etc., in DOLE regional offices, usually free of charge.

Still another form of labour organization is the cooperative of workers, which can be registered with the Cooperative Development Authority.

In short, there can be as many forms of labour organizations of informal sector workers depending on the need and purpose. The law does not prohibit or discourage them from organizing. But unlike labour organizations registered for purposes of collective bargaining, there are very little guidelines on the formation of unions outside of collective bargaining. Of course, *informal sector workers may also organize for purposes of collective bargaining. But this is on the assumption that they can establish the existence of employer-employee relations in the establishment, whose informality/formality (e.g. registration under the law) may be raised in the process*.

It should be noted that the term "dealing with the employer" under Article 212(g) is a generic term, which contemplates interaction between employer and employees on a host of work issues and conditions outside the normal scope and process of the more formal collective bargaining process.[5] In connection with this, there is a vague provision of the Code (Article 277-g), which says that "In establishments where no legitimate labour organization exists, labour-management committees may be formed voluntarily by workers and employers for the purpose of promoting industrial peace." There are no clear guidelines on how this provision can be operationalized. However, this provision can also be used by workers in informal sector establishments with a relatively large concentration of workers, e.g. 10-20 sewers in a home-based garments shop.

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[4] Ildefonso T. Runes, "Towards a Militant Trade Unionism", *Philippine Journal of Industrial Relations* (V)1-2, Quezon City: UP-IIR, 1983, pp. 66-68.

[5] C. A. Azucena, *The Labor Code with Comments and Cases*, Vol.II, National Book Store, 1993, pp. 98-99.

As to Book Six, it classifies employees in terms of security of tenure: *regular* if employment is necessary or desirable for business; *casual* if necessity of services is limited to specific occasions characterized by intermittence and discontinuity; *permanent* if it is regular employment for indefinite period; *probationary* employment prior to regularization but only up to six months; *seasonal* if it is regularly recurring; *project* if employment is fixed for a specificproject or undertaking. In general, the classification of workers in terms of different tenurial status is useful to large establishments which seek to avoid payment of higher wages and benefits due to regular workers, or those which are meticulous in selecting would-be regular and permanent workers. In contrast, informal sector employment is characterized by informality in hiring, in "freeness" in terms of entry and exit, and in the absence of clear-cut or written job contracts.

The regularization of a job depends on the reasonable or logical connection of the job to the usual business or trade of the employer, e.g. bank teller in relation to a bank business. Another test is if the worker has performed the job for over six months or for at least a year, if the job is intermittent. The latter test is crucial as the usual complaint in the labour circles is that unscrupulous employers keep their workers perpetually casual by firing them before the mandatory six-month period for regularization. There is also the usual complaint that job placement agencies deploy and rotate casual workers in various establishments for five months per establishment.

Although casual workers may be connected with formal sector establishments, their status as casual workers make them in a way informal sector workers as they are denied various legal rights enjoyed by regular workers such as unionism, collective bargaining, job security, etc.

5. Application of Labour Laws to Formal and Informal Sector Workers: Control Test and Enforcement Issues

Based on the foregoing discussion on applicability of the Code to the informal sector, the control test and enforcement issues need to be clarified further.

1. ***Control tests on employer-employee relations.*** To repeat, basic in the application of labour standards and labour relations laws is the presence of an employer-employee relationship. Informal sector employees can demand the application of such laws as long as they can show proof of the existence of employer-employee relations.

In Philippine labour jurisprudence, the following are the control elements determining the existence of employer-employee relations: a) the selection and engagement of the employee; b) the payment of wages; c) the power of dismissal; and d) the control over the employee with respect to the means and methods by which the work is to be done or accomplished. If it can be established that an employer exercises these powers, then there is employer-employee relations. Among these powers, the most important is the issue of control over the work process.

Based on the above control tests, both the Supreme Court and the NLRC have ruled in various cases that employer-employee relations exist in the following informal sector cases: a) "boundary" system (drivers get as compensation anything above a fixed return or boundary from a day of driving) between jeepney drivers and operators; b) piece-rate workers such as those in the tailoring shops; and c) "percentage" crew workers (workers earn a certain percentage of the day's catch) in fishing boats.[6]

2. ***Enforcement of labour standards.*** As pointed out, there is a well-developed body of laws and rules on labour standards. This is further expanded by the various legal opinions on numerous labour standard cases issued by the Supreme Court and arbitration bodies during the last five decades or so.

But despite the existence of these laws and jurisprudence, violations of labour standards are rampant. Some of the standards are observed more in the breach.

Statistics from the Department of Labor indicate that 51 per cent of the establishments (31,773) inspected in 1992 were found violating general labour standards; in 1993, the percentage was up to 60 per cent (37,485 establishments inspected). It should be noted that there are between 350,000-400,000 registered establishments in the Philippines.

An earlier study on the minimum wage law in 1986 by former Labor Secretary Nieves Confesor shows that one out of three establishments inspected by DOLE violated the wage laws.[7]

Non-compliance with the wage and other labour standards laws are higher in the regions outside of Metro Manila and in the non-unionized establishments. It should be pointed out that reported violations are actually on the conservative side. This is so because DOLE has limited resources to back up the deployment of labour inspectors in various parts of the country. And it does not follow that reports made by labour inspectors are reliable. There were times when the government had to suspend labour inspection due to reports of corruption.

Also, it is almost impossible to monitor labour standards compliance in establishments with relatively informal or semi-formal employer-employee relations such as in the case of job contracting arrangements where work is seasonal or "invisible" to the government agencies. In the case of domestic services and terms of employment of child labour, there is hardly any formal monitoring, much less policing, being done.

3. ***Enforcement and informal sector workers.*** All regional offices of DOLE conduct labour standard inspection to check on employers' compliance with labour standards, from minimum wage law compliance to provision of health and safety facilities. There are two types of inspection: routine and complaint inspection. Routine is a regular work of the

[6]C. A. Azucena, *The Labor Code with Comments and Cases*, Vol. I, National Book Store, 1993, III-6.

[7]Nieves R. Confesor, *Minimum Wages,* DOLE, 1986

regional office. Complaint inspection is conducted based on any complaint or petition filed by a worker, union, government agency, media or any interested party.

In 1994, the DOLE office in the National Capital Region inspected 35,835 establishments in 1994 (total number inspected for the Philippines was 74,966). For 1995, the target for NCR is 35,900 establishments. Most of the inspection conducted falls under the category of routine inspection. Most of the inspection is also done on establishments with five or more workers.

Establishments with less than five workers are usually given "technical advice" by the DOLE inspectorate and are given one year to comply with labour standards. In conducting their inspection, DOLE inspectors generally go to establishments with clear employer-employee relations. If these relations are not established, they can still conduct inspection if there are complaints or petitions filed with DOLE.

According to DOLE inspectors,[8] establishments that are often encountered as having no employer-employee relations are backyard repair shops, food processing at home (hot *pandesal* making, baking, and catering) and those asked to do work on a *pakiao* basis, e.g. carpentry work, and plumbing. These are often unregistered activities.

6. Efforts to Extend Protection to Informal Sector Workers

Past and present efforts to extend the coverage of labour laws to the informal sector workers are generally focused on the welfare aspects. For instance, SSS has made it quite explicit that all workers, regardless of job status (employed, self-employed, etc.) can become SSS members.

On protection, the thrust is towards the "formalization" of the establishments where the informal sector workers are working so that the said establishments can be forced to recognize the workers' rights, e.g. unregistered factories violating laws on wages, can be reported to the authority.

Because of the proliferation of subcontracting in the 1970s and 1980s, predominantly in the garments industry, there are also efforts by DOLE, with the assistance of ILO, to extend protection to homeworkers, specifically the application of Books Three and Four. DOLE has issued policy orders favoring homeworkers on this. The problem is the practical operationalization of such rights as it is easy for subcontractors to cut off economic ties with homeworkers who refuse to accept their terms.

This policy dilemma is best illustrated by what happened to the Kalakalan 20 controversy.

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[8]Interview with Melquiades Ordena, Chief, Labor Standards Enforcement Division, DOLE-NCR, May 25, 1995.

The Kalakalan 20 controversy

In 1989, the relationship between the "formalization" or registration of informal sector establishments and the rights due to informal sector workers under the Constitution and the Labor Code became quite clear when the controversy over Kalakalan 20 was highlighted by the media for several months. As originally proposed by Congressman Oscar Orbos (now Governor of Pangasinan), the proposed Kalakalan 20 was meant to "formalize" small businesses employing fewer than 20 workers each by granting them tax and "labour" incentives, including exemption from the application of the minimum wage and other labour standards. Senator Ernesto Herrera and various labour organizations strongly criticized the proposed bill and branded it as anti-labour and exploitative. This forced Congressman Orbos and other supporters of the proposed bill to retreat and remove the controversial provision exempting Kalakalan 20 establishments from the application of the minimum wage and other labour standards. However, the end result was an ineffective Kalakalan 20 law, which has not attracted the interest of informal sector establishments, whose main business advantage lies precisely in remaining "informal".

According to a PIDS study, the Kalakalan 20 law now dubbed as the Magna Carta for Countryside and Barangay Business Enterprises (CBBE) of 1989 or RA 6810 was bound to fail. Under the law, CBBE enterprises are exempted from national and local taxes, license and building permit, and other business taxes except real property and capital gains taxes, import duties and other taxes on imported articles. These incentives are good for five years. However, there are very few CBBE-registered enterprises because of the following: vague guidelines drafted by the Department of Trade and Industry on whether CBBEs are exempted from the minimum wage law; no advantages for underground enterprises who after all have not been paying taxes; and awareness that benefits will be withdrawn after five years.[9]

For all intents and purposes, the CBBE law is a dead letter law, and no official wants to discuss it in public.

7. Conclusion: Some Policy and Unionization Issues

From the foregoing presentation, it is clear that while the Constitution speaks of the general applicability of labour laws and labour rights to all workers, informal sector workers enjoy such rights only if they seek to be part of the formal sector. In such a case, they have to establish the existence of clear employer-employee relations and be ready to force the informal sector establishments to become formal by being registered. While there are no enabling laws operationalizing the application of labour standards and labour relations laws on the informal sector workers, there are also no laws forbidding informal sector workers from seeking the application of such laws. One has to test the laws.

The problem is that such a process of formalization can also lead to the end of informal sector activity. Technically, there are no legal obstacles for informal sector

[9]Mario B. Lamberte et al., *Decentralization and Prospects for Regional Growth,* Manila: Philippine Institute for Development Studies, 1993, pp. 34-35.

workers to demand formalization. The problem lies more in the economic realm as the viability of an informal sector activity may be due precisely to its informality and the absence of formal taxation and the like. The dilemma over the Kalakalan 20 law, which sought to formalize informal sector activities involving 20 or fewer workers, and its present status as an ineffective law illustrate this point. As to the initiatives of DOLE to come up with rules extending formal sector protection to homeworkers, there are no cases and studies which show that such initiatives are workable.

Thus, policymakers have to decide whether they can really push the application of essentially formal sector laws on the informal sector of the economy.

Of course, there are no legal obstacles to coming up with welfare programmes for the informal sector workers. The provisions of the Labor Code on employment facilitation and manpower development can, in fact, be expanded in terms of application to informal sector workers.

As to unionization, informal sector workers need not be organized along the traditional trade union lines for purposes of collective bargaining. The law allows them to organize alternative unions or organizations for purposes of dealing with various aspects of their employment or work, be they self-employed or not. For instance, they can organize cooperatives to push certain livelihood projects, or they can form craft unions to enhance skills and strengthen bargaining with potential employers, or set up peasant-type associations engaged in pressure-group advocacy work, or a combination of any of these.

In fact, it is doubtful, given the nature of informal sector employment and the problems facing workers, that traditional trade unions are an effective way of organizing them. If collective bargaining hardly ever works in formal sector firms with fewer than 20 or 30 workers, how can it be expected to be effective in the case of informal sector enterprises with fewer than ten workers? In the case of self-employed informal sector workers, the situation is even more markedly different and their demands can be way off the traditional union demands, e.g. credit access instead of wage hikes, market access instead of job security.

In conclusion, there are a number of policy options with regard to the application of labour laws to the informal sector. Given below are some of them:

1. ***Labour laws and programmes on manpower development and employment facilitation.*** Policymakers may require implementors of such laws and programmes to place greater attention on the particular needs of informal sector workers in various parts of the country, taking into consideration their educational background and the emerging skills requirements in the various regions.

2. ***Labour laws and programmes on welfare and labour standards.*** Whenever feasible and practicable, welfare programmes can be extended to informal sector workers such as the current programme to cover informal sector workers under the social security system of the government. The application of traditional labour standards depends on the readiness of the informal sector workers to assert such rights via unionization and legal

actions, which eventually leads to the issue of whether or not to formalize certain informal sector activities.

3. ***Labour laws and programmes on unionization, collective bargaining and dispute settlement.*** There are several options here:

a. Informal sector workers may organize unions for purposes of collective bargaining and avail of legal facilities for dispute settlement, e.g. arbitration and the like. This can be done by casual workers in relatively big establishments which are not registered by the owners to evade tax and social responsibility. Casual workers deployed in big enterprises by the so-called manpower placement agencies on a five-month rotation basis may also unionize. The Code allows workers to organize unions on the first day of their employment. But the practical problem to address is how to ensure their job security while they are in the process of organizing, registering unions, etc. As to informal sector workers in micro-enterprises with ten or fewer workers, it is doubtful if unionization for collective bargaining purposes is a feasible option.

b. Informal sector workers may organize unions or organizations for purposes other than collective bargaining within an individual enterprise. Here, the main assistance that the government can extend to the workers can be twofold: one, setting up a system of registering such unions or organizations, and two, extending educational and institutional support to make such unions or organizations viable. For instance, informal sector workers possessing similar but marketable skills, e.g. carpentry, may organize themselves into a craft union, set standards for their members and work out a programme for dealing with prospective contractors of their services. But where will they register the craft union and how will they go about the basics of setting up a craft union?

c. Informal sector workers, self-employed or not, may organize themselves into cooperatives or mutual-aid bodies. They can register the cooperatives with both the Bureau of Rural Workers of DOLE and the Cooperative Development Authority. Mutual-aid associations that are non-profit and non-stock may also be registered with the Securities and Exchange Commission.

d. Informal sector workers may organize themselves into a pressure-group association similar to a peasant union or a federation of trade unions. Like in the craft unions, the government may set up a system of registering such associations either through DOLE or through the Presidential Commission for the Urban Poor.

Whatever organizational choices the informal sector workers make, the government should come up with appropriate enabling laws and programmes to assist these workers.

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Annex

Further Amplification of Laws on Labour Standards in the Philippines*

The major features of the important labour standard laws are as follows:

1. Hours of work

Under the law on hours of work, the workers have the following rights:

a. Right to rest, i.e., right not to work overtime except in cases of emergency overtime work;

b. Right to an additional compensation for overtime work;

c. Right to a meal period; and

d. Right to a night shift differential.

The normal hours of work of any employee shall not exceed eight hours a day. Work performed beyond eight hours a day is overtime work.

Work may be performed beyond eight hours a day provided that the employee is paid for the overtime work, an additional compensation equivalent to his/her regular wage plus at least 25 per cent thereof. Work performed beyond eight hours on a holiday or rest day shall be paid for with an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus at least 30 per cent thereof.

An employee may not be required by the employer to perform overtime work, except in emergency overtime work or 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. Overtime work may also be required when the work is necessary to prevent loss or damage to perishable goods; and where the completion or continuation of the work before the eighth hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer.

Hours worked include (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. Waiting time spent by an employee is considered working

* Based on: Froilan M. Bacungan, *Labor and Social Legislation,* Quezon City: Flavdeem Law Publishing, 1990; Manuel M. Manansala, *Labor Standards*, National Book Store, 1992; and Rene E. Ofreneo, "Labor Standards and Philippine Economic Development", paper read at the Conference on Labor Standards and Economic Development, Chung-Hua Institution for Economic Research, Taiwan, August 19-20, 1994.

time if waiting is an integral part of his/her work or the employee is required or engaged by the employer to wait.

Rest periods of short duration during working hours are included in the hours worked. Hence, rest periods or coffee breaks running from five to 20 minutes are considered as working time.

It is the duty of every employer to give his/her employees not less than 60 minutes time-off for their regular meals.

Every employee shall be paid a night shift differential of not less than 10 per cent of regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning.

2. Weekly rest periods

In general, employees are entitled to a weekly rest day, which means the right not to be required to work on a rest day except in certain emergency cases and the right to an additional compensation for work on a rest day.

It is the duty of every employer, whether operating for profit or not, to provide each of his/her employees a rest period of not less than 24 consecutive hours after every six consecutive normal work days.

The employer determines and schedules the weekly rest day of his/her employees subject to collective bargaining agreement and to such rules and regulations as the Secretary of Labor may provide.

Where the rest period is not granted to all employees simultaneously and collectively, the employer shall make known to the employees their respective schedules of weekly rest through written notices posted conspicuously in the workplace at least one week before they become effective.

Where an employee is made or permitted to work on his/her scheduled rest day, he/she shall be paid an additional compensation of at least 30 per cent of his/her regular wage. An employee is entitled to such additional compensation for work performed on Sunday only when it is his/her established rest day.

Work performed on any special holiday is to be additionally compensated with at least 30 per cent of the regular wage of the employee. Where such holiday work falls on the employee's scheduled rest day, he/she is entitled to an additional compensation of at least 50 per cent of his/her regular wage.

3. Holiday pay

Workers have the right to holiday pay and to an additional compensation for work on a regular holiday.

The employer may require an employee to work on any holiday but such employee must be paid a compensation equivalent to twice his/her regular rate.

The following are the holidays observed in the Philippines:

a. ***Regular holidays***

New Year's Day	-	January 1
Maundy Thursday	-	Movable date
Good Friday	-	Movable date
Araw ng Kagitingan (Bataan and Corregidor Day)	-	April 9
Labor Day	-	May 1
Independence Day	-	June 12
National Heroes Day	-	Last Sunday of August
Bonifacio Day	-	November 30
Christmas Day	-	December 25
Rizal Day	-	December 30

b. ***Nationwide Special Days***

All Saints Days	-	November 1
Last Day of the Year	-	December 31

Private school teachers, including faculty members of colleges and universities, may not be paid for the regular holidays during semester vacations. They are, however, paid for the regular holidays during Christmas vacation.

Where a covered employee is paid by results or output, such as payment on piece work, his/her holiday pay shall not be less than his/her average daily earnings for the last seven 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.

Seasonal workers may not be paid the required holiday pay during off-season when they are not at work.

Where a regular holiday falls on a Sunday, the following day shall be considered a special holiday for purposes of the Labor Code, unless said day is also a regular holiday.

4. Service incentive leaves

Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

This provision does not apply to those who are already enjoying the benefit, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing fewer than ten employees or in establishments

exempted from granting this benefit by the Secretary of Labor after considering the viability or financial condition of such establishment.

The term "at least one year service" means service within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contract, are less than 12 months, in which case the said period shall be considered as one year.

The service incentive leave is commutable to its money equivalent if not used or exhausted at the end of the year.

5. Wages

There are a number of codal provisions on wages. In addition to a statutory minimum wage and a 13th-month pay, a worker has the right to the payment of fair and reasonable wage rates when the payment is by results. There are also codal provisions ensuring that workers fully receive the wages they are entitled to.

The minimum wage law was enacted in 1951 and has undergone numerous revisions throughout the last four decades. Today, minimum wage is fixed through the Regional Tripartite Wage Board set up in each of the 14 regions of the country.

As defined by law, "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.

Under the Labor Code, all workers paid by results, including those who are paid on piece-work basis, shall receive not less than the applicable statutory minimum wage per eight hours work a day, or a proportion thereof for working less than eight hours. The wage rates of workers who are paid by results are established by the Department of Labor and Employment through: time and motion studies; individual/collective bargaining agreement between the employer and workers as approved by the Secretary; and consultation with representatives of employers and workers organizations in a tripartite conference called by the Secretary.

Learners, apprentices and handicapped workers shall be entitled to not less than 75 per cent of the applicable adjusted minimum wage.

The law also defines the mechanics in the payment of wages as an added protection to the workers. These include provisions on the payment of wages in legal tender at certain regular intervals and at or near the place of undertaking; direct payment of wages; the right of workers to have first preference as regard unpaid wages in case of

bankruptcy; the right to dispose of wages without any limitation or interference from the employer; and the right of a worker against any unlawful or unauthorized deduction from his/her wage.

In general, wage issues are very controversial. Aside from the minimum wage (see discussion in the latter part of the paper), the two most controversial issues are the computation of the 13th-month pay and the role of labour-only contractors.

Payment and computation of the 13th-month pay. All employers are required to pay all their employees, regardless of the nature of their employment, a 13th-month pay not later than December 24 of every year. Thirteenth-month pay shall mean 1/12 of the basic salary of an employee within a calendar year. Employees who are paid on piece-work basis are by law entitled to the 13th-month pay.

Employees who are paid a fixed or guaranteed wage plus commission are also entitled to the mandated 13th-month pay, based on their total earnings during the calendar year, i.e., on both their fixed or guaranteed wage and commission.

Government employees working part time in a private enterprise, including private educational institutions, as well as employees working in two or more private firms, whether on full or part-time basis, are entitled to the required 13th-month pay from all their private employers regardless of their total earnings from each or all their employers.

Private school teachers, including faculty members of universities and colleges, are entitled to the required 13th-month pay, regardless of the number of months they teach or are paid within a year, if they have rendered service for at least one month within a year. An employee who has resigned or whose services were terminated at any time before the time for payment of the 13th-month pay is entitled to this monetary benefit in proportion to the length of time he/she worked during the year, reckoned from the time he/she started working during the calendar year up to the time of his/her resignation or termination from the service. Thus, if the employee worked only from January up to September, his/her proportionate 13th-month pay should be the equivalent of 1/12 of the total basic salary he/she earned during that period.

The payment of the 13th-month pay may be demanded by the employee upon the cessation of employer-employee relationship. This is consistent with the principle of equity that as the employer can require the employee to clear himself/herself of all liabilities and property accountability, so can the employee demand the payment of all benefits due him/her upon the termination of the relationship.

The minimum 13th-month pay required by the law is not less than 1/12 of the basic salary of an employee within a calendar year.

Subcontracting vis-a-vis labour-only contracting. The Labor Code provides that whenever a subcontractor fails to pay the wages of employees, the employer or contractor shall be jointly and severally liable with his/her subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he/she is liable to employees directly employed by him/her.

The Labor Code also distinguishes between job contracting and labour-only contracting. The latter is expressly prohibited by the law. There is "labour-only" contracting 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 persons are performing activities which are directly related to the principal business of such employer. 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.

6. Working conditions for special groups of employees

The law recognizes certain groups of employees who need special types of protection. These are: women, minors, househelpers, and industrial homeworkers.

a. Employment of women

The 1987 Constitution mandates that "The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal function, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation".

In line with the above constitutional mandate, the Labor Code provides for the following: night work prohibition on working women; facilities for working women; family planning services; and prohibition of discrimination against working women.

The Labor Code expressly provides that no woman, regardless of age, shall be employed or permitted or suffered to work, with or without compensation in:

(i) any industrial undertaking or branch thereof between ten o'clock at night and six o'clock in the morning of the following day; or

(ii) any commercial or non-industrial undertaking or branch thereof, other than agricultural, between midnight and six o'clock in the morning of the following day; or

(iii) any agricultural undertaking at night time unless she is given a period of rest of not less than nine consecutive hours.

There are exceptions to the above provisions such as: (a) in cases of urgent work to be performed on machineries, equipment or installation, to avoid serious loss which the employer would otherwise suffer; (b) where the work is necessary to prevent serious loss of perishable goods; where the woman employee holds a responsible position of managerial or technical nature, or where the woman employee has been engaged to provide health and welfare service; (d) where the nature of the work requires the manual skill and dexterity of women workers and the same cannot be performed with equal efficiency by male workers; and (e) where the women employees are immediate members of the family operating the establishment or undertaking.

The law also expressly prohibits any act of an employer with respect to terms and conditions of employment on account of one's sex. Equal remuneration shall be paid to both men and women for work of equal value. It shall be unlawful for an employer to require as a condition of employment or for continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

b. Employment of minors

The law protects minors who are employed by providing for a minimum employable age and prohibiting child discrimination. Thus, no child below 15 years of age shall be employed, except when he/she works directly under the sole responsibility of parents or a guardian, and his/her employment does not in any way interfere with schooling.

The law does not allow the employment of a person below 18 years of age in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labor.

Under the amendatory law Republic Act No. 7010, the conditional employment of minors 15 years old and below is allowed. To provide protection to the minor, an employer is required to secure a permit from the Department of Labor and Employment.

c. Employment of househelpers

"Househelpers" are those engaged in the "domestic or household service."

Under the Labor Code, the househelpers have the right to: a contract of domestic service that shall not last for more then two years; a minimum wage (determined from time to time by law); an opportunity for education; a just and humane treatment; free board, lodging and medical attendance; an indemnity for unjust termination of services; and an employment certification.

No househelper shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage or salary rate lower than that provided for agricultural or non-agricultural workers as prescribed by law.

If the househelper is under the age of 18 years, the employer shall give him or her an opportunity for at least elementary education. The cost of such education shall be part of the househelper's compensation, unless there is a stipulation to the contrary.

The employer shall treat the househelper in a just and humane manner. In no case shall physical violence be used upon the househelper. The employer shall furnish the househelper free of charge suitable and sanitary living quarters as well as adequate food and medical attendance.

If the period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the

householper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for 15 days by way of indemnity.

If the householper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding 15 days. If the duration of the household service is not determined either in stipulation or by the nature of the service, the employer or the householper may give notice to put an end to the relationship five days before the intended termination of the service.

d. Employment of industrial homeworkers

As defined by law, the "employer" of homeworkers includes any person, natural or artificial, who for his/her account or benefit, or on behalf of any person residing outside the country, directly or indirectly or through any employee, agent, contractor, subcontractor of any other person: (1) delivers, or causes to be delivered, any goods, articles or materials to be processed or fabricated in or about a home and thereafter to be returned or to be disposed of or distributed in accordance with his/her directions; or (2) sells any goods, articles or materials for the purpose of having the same processed or fabricated in or about a home and then rebuys them after such processing or fabrication, either himself/herself or through some other person.

The employment of industrial homeworkers and field personnel is regulated by the government through guidelines issued by the Secretary of Labor to ensure the general welfare and protection of homeworkers and field personnel and the industries employing them.