



# DECENT WORK CHECK **PHILIPPINES** 2023

Iftikhar Ahmad

## WageIndicator Foundation - [www.wageindicator.org](http://www.wageindicator.org)

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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## Bibliographical information

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# INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

In 2023, the team aims to include at least 15 more countries, thus taking the number of countries with a Decent Work Check to 125!

*The text in this document was last updated in May 2023. For the most recent and updated text on Employment & Labour Legislation in Philippines in English, please refer to: <https://mywage.org/philippines/>*

# MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Labour Code (Presidential decree No. 442 of 1974)
2. Amended Rules of Procedure on Minimum Wage Fixing 2007
3. Omnibus Rules to Implement the Labour Code Rule IX of Book Three
4. Rules Implementing Republic Act No. 6727
5. Rules and Amended Rules on Exemptions from Prescribed Wage Increases
6. Special Protection of Children against Child Abuse, Exploitation and Discrimination Act
7. Department Advisory No. 22009 Guidelines on the Adoption of Flexible Work Arrangements Part III, point 1
8. Proclamation No 269 of 2017
9. Constitution of the Philippines
10. Civil Code of the Philippines 1949
11. DOLE D.O. 147-15
12. Philippine AIDS Prevention and Control Act of 1998 (No. 8504)
13. Republic Act No. 7277, 1992
14. Solo Parents' Welfare Act 2000 (Republic Act No. 8972)
15. Paternity Leave Act of 1996 (Republic Act No. 8187)
16. Social Security Law (R.A. No. 1161), as amended
17. Expanded Breastfeeding Promotion Act of 2009 (Republic Act No. 10028)
18. Occupational Safety and Health Standards 1989
19. Department Order No. 57-04, issued by the Department for Labour and Employment
20. Workmen Compensation Act 1925
21. Republic Act No. 8282, 1997
22. Women in Developing and Nation Building Act 1991 (Republic Act No 7192)
23. Republic Act No. 7610 of 1992
24. Republic Act No. 9231 of 2003
25. Republic Act No. 9208 (2003) as amended by the Act No. 10364 (2012)
26. Republic Act No. 11210
27. Republic Act No. 10911

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# 01/13 WORK & WAGES

## **ILO Conventions**

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

**Philippines has ratified the Convention 95 only.**

### ***Summary of Provisions under ILO Conventions***

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

## Regulations on work and wages:

- Labour Code (Presidential decree No. 442 of 1974)
- Amended Rules of Procedure on Minimum Wage Fixing 2007
- Omnibus Rules to Implement the Labour Code Rule IX of Book Three
- Rules Implementing Republic Act No. 6727
- Rules and Amended Rules on Exemptions from Prescribed Wage Increases

## Minimum Wage

Minimum wage rates are set at a regional level by Regional Tripartite Wages and Productivity Boards. Each Regional Board is composed of the Regional Director of the Department of Labour and Employment as chairman, the Regional Directors of the National Economic and Development Authority and the Department of Trade and Industry as vice chairmen and 2 members each from workers' and employers' organizations. The employee and employer representatives are appointed by the President of the Philippines, upon the recommendation of the Secretary, Ministry of Labour and Employment, made on the basis of the list of nominees submitted by the workers' and employers' associations respectively.

Whenever conditions in the region so warrant, the Regional Board investigates and studies all pertinent facts and, based on prescribed standards and criteria, proceed to determine whether a Wage Order should be issued. Any such Wage Order takes effect after 15 days from its complete publication in at least one newspaper of general circulation in the region. In the performance of its wage determining functions, the Regional Board

can conduct public hearings/consultations, giving notices to employees' and employers' groups, provincial, city and municipal officials and other interested parties. A National Wages and Productivity Commission is charged with prescribing rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial, or industry levels and reviewing regional wage levels set by the Regional Tripartite Wages and Productivity Boards to determine if these are in accordance with prescribed guidelines and national development plans. The National Wage and Productivity Commission is not empowered to overturn Wage Orders issued by the Regional Boards directly. However, the Commission may make a wage recommendation in relation to a specified industry or branch thereof where it considers that a substantial number of employees in that industry or branch of industry are receiving wages which, although in compliance with the minimum wage provided by law, are less than sufficient to maintain them in health, efficiency and general wellbeing (taking into account the peculiar circumstances of the industry and its geographical location). Such a wage recommendation may be either rejected or approved by the Secretary of Labour and Employment and, if approved, a Wage Order shall be issued by the Secretary subject to the approval of the President of the Philippines.

The regional minimum wages to be established by the Regional Board are to be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general wellbeing of the employees within the framework of the national economic and social development program. In determining the minimum



wage rates, the Regional Board considers, among other relevant factors, the needs of workers and their families, the cost of living and any changes or increases therein, the prevailing wage levels, the equitable distribution of income and wealth along the imperatives of economic and social development, the effect on employment generation, the capacity of employers to pay, the wage adjustment vis-à-vis the consumer price index and the need to induce industries to invest in the countryside and improvements in standards of living.

The Regional Boards may set different minimum wage levels for different industries within the relevant region if the Regional Board considers that conditions make such differentiation proper and necessary to effectuate the intention of the Labour Code. A review of current Wage Orders indicates that different rates are usually set for different sectors, largely divided into non-agricultural sectors, agricultural sectors and retail and service sectors.

Each of the 16 regions in the Philippines has its own Regional Tripartite Wages and Productivity Board which sets minimum wage rates for their respective region. The Regional Boards may set different minimum wage levels for different provinces or localities within the relevant region if the Regional Board considers that conditions make such differentiation proper and necessary to effectuate the intention of the Labour Code.

Apprentices, learners and disabled workers cannot be paid no less than 75% of the applicable minimum wage.

The Regional Tripartite Wages and Productivity Boards may determine and

adjust, from time to time, the minimum wage rates (every 3 years) with a view to improving them.

Lastly, the minimum wage rates set under Chapter V of Title II of Book Three of the Labour Code, as amended by the Wage Rationalization Act (the generally applicable minimum wage rates), apply to all workers and employees in the private sector regardless of their position, designation or status, and irrespective of the method by which their wages are paid, except

- a) Household or domestic helpers, including family drivers and workers in the personal service of another;
- b) Workers and employees in retail/service establishments regularly employing not more than 10 workers, when exempted from compliance with the Act for a period fixed by the Commission/Boards;
- c) Workers and employees in exempted Barangay Micro Business Enterprises; and
- d) Government sector employees.

Source: §61, 75, 80, 98,99, 120, 121, 122, 123, 124, and 143 of the Labour Code, as amended; Amended Rules of Procedure on Minimum Wage Fixing 2007; Omnibus Rules to Implement the Labour Code Rule IX of Book Three; Rules Implementing Republic Act No. 6727; Rules and Amended Rules on Exemptions from Prescribed Wage Increases

## Regular Pay

The term 'wage' means 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 oral 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 Labour and Employment, of boarding, lodging, or other facilities customarily furnished by the employer to the employee. 'Fair and reasonable value' does not include any profit to the employer, or to any person affiliated with the employer.

Wages must be paid at least once a month and can also be paid at least once every two weeks or twice a month at intervals not exceeding sixteen days. If on account of force majeure or circumstances beyond the employer's control, payment of wages on or within the time prescribed cannot be made, the employer must pay the wages immediately after such force majeure or circumstances have ceased. The payment of wages of employees engaged to perform a task which cannot be completed in two weeks in the absence of a collective bargaining agreement or arbitration award, must be paid at intervals not exceeding sixteen days, in proportion to the amount of work completed and final settlement upon completion of the work. As a general rule, wages are required to be paid at or near the workplace. Payment in a place other than the workplace is permissible only under certain circumstances. Wages may be paid through banks within one-kilometre radius to entities with 25 or more employees, upon written permission of the majority of the employees.

Lastly, the law prohibits interference in the disposal of wages, unauthorized wage deductions, withholding of wages without the worker's consent, deductions to ensure employment, and retaliation against workers through the reduction of or refusal

to pay wages. However, the employer may deduct from the employee's wages when: (a) the deductions are authorized by law, including deductions for insurance premiums advanced by the employer on behalf of the employee as well as union dues where the right to check-off has been recognized by the employer or authorized in writing by the employee himself; or (b) the deductions are authorized by the employee in writing for payment to a third person, provided that the employer does not directly or indirectly receive any pecuniary benefit from the transaction.

Employers in the private sector are required to pay a 13<sup>th</sup> month pay to their rank and file employees on or before December 24 of every year. All the rank and file employees of the private sector are entitled to 13<sup>th</sup> month pay regardless of their position, designation, employment status or wage payment method provided that they have worked for at least one month during the calendar year.

While the Decree requires that the payment can't be made later than 24<sup>th</sup> of December, a labour advisory, issued by the Department of Labour, suggests that employers may give 50% of the 13<sup>th</sup> month pay before the opening of the regular school year and the remaining 50% on or before 24 December every year. The amount of 13<sup>th</sup> month pay cannot be less than the one-twelfth of the total basic salary earned by a worker during the year. The due amount is however calculated in view of the monthly absences from work. Employers are required to report compliance to this by 15<sup>th</sup> January each year.

Source: §97, 103, 104 and 113 of the Labour Code, as amended; Presidential Decree No 851 of 1976

# 02/13 COMPENSATION

## **ILO Conventions**

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

**Philippines has not ratified any of the above-mentioned Conventions.**

### ***Summary of Provisions under ILO Conventions***

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter time (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

## Regulations on compensation:

- Labour Code (Presidential decree No. 442 of 1974)
- Special Protection of Children against Child Abuse, Exploitation and Discrimination Act
- Department Advisory No. 22009 Guidelines on the Adoption of Flexible Work Arrangements Part III, point 1

## Overtime Compensation

Hours of worked include 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 permitted to work. Rest periods of short duration during working hours are regarded as hours worked.

The normal hours of work of any employee cannot exceed eight (8) hours a day. However, health personnel in cities and municipalities with a population of at least one million, or in hospitals and clinics with a bed capacity of at least one hundred may be required to work additional hours where exigencies of the service require. Further, the daily hours' limit in the Labour Code does not apply to government employees, managerial employees, field personnel, employer's family members, domestic helpers, and personal service providers.

A child below 15 years cannot work for more than 4 hours a day, while adolescents (15 and 18 years) cannot work for more than 8 hours a day. The working hours for kasambahay (domestic helpers) are 10 hours a day, exclusive of one-hour breaks for each regular meal of the day. However, kasambahay under the age of 18 years are not allowed to work more than 8 hours a

day, 5 days a week, exclusive of 1-hour breaks for each regular meal of the day.

The Department of Labour and Employment has published advisory guidelines on the adoption of flexible work arrangements which includes compressed workweeks among a range of flexible arrangements which employers may consider implementing in times of economic difficulty or national emergency. These guidelines define a compressed workweek as being one where the normal workweek is reduced to less than 6 days but the weekly working hours (48 hours) remain unchanged. The maximum working hours on such days cannot exceed 12 hours per day.

The Labour Code provides that work may be performed beyond 8 hours a day provided that the employee is paid for the overtime work as prescribed. It further provides that any employee may be required by the employer to perform overtime work in any of the following cases: in the case of national emergency or force majeure; urgent work in order to avoid serious loss or damage to the employer; work necessary to prevent loss or damage to perishable goods; and where the completion or continuation of the work is necessary to prevent serious obstruction or prejudice to the business or operations of the employer.

The Law does not provide a limit on overtime work. Moreover, under time work on a day cannot be offset by overtime work on another day.

Overtime pay rates are covered under the Labour Code. COLA is not included in overtime calculation.

- a) The overtime rate is 125% of the normal hourly wage rate if overtime

work is performed on an ordinary working day (100 (assumed normal hourly wage)\*125%);

- b) The overtime rate is 169% of the normal hourly wage rate if the overtime work is performed on a special day or scheduled rest day (100 (assumed normal hourly wage)\*130%\*130%);
- c) The overtime rate is 195% of the normal hourly wage rate if the overtime work is performed on a special day which falls on a scheduled rest day (100 (assumed normal hourly wage)\*130%\*150%);
- d) The overtime rate is 260% of the normal hourly wage rate if the overtime work is performed on a regular holiday (100 (assumed normal hourly wage)\*130%\*200%);
- e) The overtime rate is 338% of the normal hourly wage rate if overtime work is performed on a regular holiday which falls on a scheduled rest day (100 (assumed normal hourly wage)\*130%\*260%);

Source: §82, 83, 84, 87, 88 and 89 of the Labour Code, as amended; §12A of the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act; Department Advisory No. 22009 Guidelines on the Adoption of Flexible Work Arrangements Part III, point 1

## Night Work Compensation

Night work is regulated under the Labour Code which provides for a night shift differential. Women and young persons are prohibited from night work. As far as the rate of night work is concerned, night shift employees must be paid a differential of at least 10% of the regular wage for each hour

of work performed between 10:00 p.m. and 6:00 a.m.

Source: §86 of the Labour Code, as amended

## Compensatory Holidays / Rest Days

No statutory provisions in law could be identified that stipulate whether the employees are to be given compensatory rest days for working on public holidays or weekly rest days.

## Weekend/Public Holiday Work Compensation

An employer may only require an employee to work on a rest day against his will:

- a. In case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety;
- b. In cases of urgent work to be performed on the machinery, equipment, or installation, to avoid serious loss which the employer would otherwise suffer;
- c. In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;
- d. To prevent loss or damage to perishable goods;
- e. Where the nature of the work requires continuous operations and the stoppage of work may result in irreparable injury or loss to the employer; and
- f. When the work is necessary to avail of favourable weather or environmental

conditions where performance or quality of work is dependent thereon.

In any other circumstance, the employee must volunteer to work on his scheduled rest days and provide written expression of his desire to work on scheduled rest days. Where an employee is made or permitted to work on his scheduled rest day or a special day, he is paid an additional compensation of at least 30% of his regular wage (130% of the normal wage rate). If a worker works on a regular holiday, he is paid an additional compensation of at least 100% of his regular wage (200% of the normal wage rate). If work is performed on a rest day which is also a special day, worker is paid 150% of the normal wage rate. If work is performed on a rest day which is also regular holiday, worker is paid 260% of the normal wage rate.

Source: §91-94 of the Labour Code, as amended

# 03/13 ANNUAL LEAVE & HOLIDAYS

## **ILO Conventions**

Convention 132 (1970) on Holidays with Pay Convention  
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.  
In addition, for several industries, different Conventions apply.

**Philippines has not ratified the above-mentioned Conventions.**

### ***Summary of Provisions under ILO Conventions***

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

## Regulations on annual leave and holidays:

- Labour Code (Presidential decree No. 442 of 1974)
- Proclamation No 269 of 2017

### Paid Vacation

Annual leave is regulated under the Labour Code. An employee must have completed at least one year of service to qualify for annual leave, which amounts to 5 days per year. It is referred to as service incentive leave and is fully paid. However, this entitlement does not apply to:

1. Employees who have an equivalent entitlement under another source;
2. Employees of establishments regularly employing less than 10 employees;
3. Government employees;
4. Managerial employees;
5. Field personnel;
6. Members of the family of the employer who are dependent on him for support;
7. Domestic helpers;
8. Persons in the personal service of another; and
9. establishments exempted from granting this benefit by the Secretary of Labour and Employment after considering the viability or financial condition of such establishment.

No date of payment is stipulated by the Labour Code, and neither any provisions regulating the scheduling or splitting of annual leave are found within the law. However, the annual leave can be converted to its money equivalent if not used or exhausted at the end of the year. As a general rule, an employer can regulate the

schedule of the service incentive leave of its employees.

Source: §82 & 95 of the Labour Code, as amended

### Pay on Public Holidays

The Provisions relating to the Public Holidays of the Philippines are contained within annual proclamations that state the dates for holidays and special non-working days, such as Proclamation No. 269 of 2017. The following days are regularly classified as public holidays yearly in the Philippines:

#### Regular Holidays:

New Year's Day  
Maundy Thursday  
Good Friday  
Araw ng Kagitingan  
Labour Day  
Independence Day  
National Heroes Day  
Bonifacio Day  
Christmas Day  
Rizal Day  
Eidul Fitr (Feast at the end of Month of Ramadan)  
Eidul Adha (Feast of the Sacrifice)

#### Special (Non-working) Days:

Chinese New Year  
EDSA People Power Revolution Anniversary  
Black Saturday  
Ninoy Aquino Day  
All Saints Day  
Last Day of the Year

The general elections day is also considered regular holiday. Workers are entitled to their regular wages during regular holidays. The observance of Eidul Fitr and Eidul Adha is determined in accordance with the Islamic calendar (Hijra) or the lunar



calendar, or upon Islamic astronomical calculations, whichever is possible or convenient. The dates are conveyed to the Office of the President by the National Commission on Muslim Filipinos.

Source: §94 of the Labour Code, as amended; Proclamation No 269 of 2017

Labour Code requires the employer to give his employees at least 60-minute time-off for their regular meals. Daily rest period is not clearly defined within the Labour Code.

Source: §82 & 91 of the Labour Code, as amended

## Weekly Rest Days

Workers are entitled to at least 24 consecutive hours of rest after 6 consecutive days of work.

1. Employees who have an equivalent entitlement under another source;
2. Employees of establishments regularly employing less than 10 employees;
3. Government employees;
4. Managerial employees;
5. Field personnel;
6. Members of the family of the employer who are dependent on him for support;
7. Domestic helpers;
8. Persons in the personal service of another; and
9. establishments exempted from granting this benefit by the Secretary of Labour and Employment after considering the viability or financial condition of such establishment.

Employer may determine and schedule the weekly rest day of his employees subject to collective bargaining agreement and to such rules and regulations as the Secretary of Labour and Employment may provide. However, employer must respect the preference of employees as to their weekly rest day when such preference is based on religious grounds.

# 04/13 EMPLOYMENT SECURITY

## ILO Conventions

Convention 158 (1982) on employment termination

**Philippines has not ratified the Convention 158.**

### *Summary of Provisions under ILO Convention*

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

## Regulations on employment security:

- Constitution of the Philippines
- Labour Code (Presidential decree No. 442 of 1974)
- Civil Code of the Philippines 1949
- DOLE D.O. 147-15
- Philippine AIDS Prevention and Control Act of 1998 (No. 8504)
- Republic Act No. 7277, 1992

## Written Employment Particulars

The Labour Code provides for the following categories of employment:

- Regular:** an employment where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer.
- Project:** where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee;
- Seasonal:** where the work or services to be performed is seasonal in nature and the employment is for the duration of the season; and
- Casual:** where the employment is not covered by the above-mentioned types, provided that an employee who has rendered at least one year of service, whether continuous or not, shall be considered regular with respect to the activity in which he or she is employed and his or her employment shall continue while the activity exists.
- Probationary** a contract which cannot exceed more than six months, after which the employer must either be regarded as permanent by their workplace, or be fired.

Civil Code recognizes another category of employment, i.e., “term employment” or “fixed term employment”. Under the Civil Code, obligations with a fixed term take effect at once, but terminate on ending of the term. The decisive determinant in 'term employment' should not be the activities that the employee is called upon to perform, but the certain days agreed upon by the parties for the commencement and termination of the employment relationship. Stipulations in employment contracts providing for 'term employment' or 'fixed period employment' are valid when the period has been agreed upon knowingly and voluntarily by the parties, without force, duress or improper pressure exerted on the employee, and when such stipulations were not designed to circumvent the laws on security of tenure.

For a contract to be regular, it must be written. The law does not contain any provisions that require the employer to provide the employee with the letter of appointment or written particulars with details about employment

Source: §295 & 296 of the Labour Code, as amended; §1193 of the Civil Code of the Philippines 1949

## Fixed Term Contracts

Under the Civil Code, fixed-period or term employee is one whose employment is only for a particular duration which has already been conveyed to the employee at the time of his engagement. As explained above, a fixed term contract must fulfil the following criteria: (a) The term employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure on the employee and is not done in circumstances impairing

worker's consent; or (b) the parties dealt with each other on more or less equal terms.

There are no clear provisions on the lengths of single fixed term contracts, the maximum renewals allowed and the maximum length of fixed term contracts including renewals.

Source: §1193 of the Civil Code of the Philippines 1949

## Probation Period

The legal provision on the Probation is contained within the Labour Code. Probationary employment cannot exceed six (6) months from the date of commencement of employment, unless it is covered by an apprenticeship agreement stipulating a longer period.

Labour Code further stipulates that the purpose of the probationary period is for the employee "to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement."

The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known to him at the time of his engagement. An employee who is allowed to work after completion of probationary period is considered a regular employee.

Labour Code does not require different probationary periods for different job types.

Source: §295 of the Labour Code, as amended

## Notice Requirement

Under the Labour Code, employers are required to give a written contract termination notice explaining the causes for termination of employment. Labour Code further requires the employer to give worker an ample opportunity to be heard and to defend himself with the assistance of a representative.

In the Philippines, the employee has "the right to security of tenure". This means that an employee can only be dismissed for a just cause or an authorized cause and after the observance of the procedure laid down by the law.

Just causes are blameworthy acts on the part of the employee such as serious misconduct, wilful disobedience, gross and habitual neglect of duties, fraud or wilful breach of trust, commission of a crime and other analogous causes.

Authorized causes are of two types: economic reasons and disease. Economic reasons cover "installation of labour saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking, while disease cover situations where an "employee has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees and a competent public health authority has certified that the disease is incurable within a period of six months even with proper medical treatment.

All other reasons for terminating the employment of the employee are unlawful and include but are not limited to dismissal based on sexual discrimination; dismissal after the contravention of a stipulation in the labour contract that a woman cannot to marry during her employment; where the employer dismisses a woman employee on account of her pregnancy; where the employer engages in practice deemed as unfair labour practices (dismissal based on trade union activity); the dismissal of employees who have contracted AIDS or who are disabled.

There is no notice period prior to a dismissal for a just cause. The employer is only required to give a 30-day notice to the employee in the event of termination for business reasons or disease related reasons. Authorized dismissals also require a 30-day notice to the Department of Labour and Employment (DOLE).

Workers can also terminate an employment contract by serving a 30-day notice. A worker is allowed to terminate employment relationship without serving any notice in the following cases:

- i. Serious insult by the employer or his representative on the honour and person of the employee;
- ii. Inhuman and unbearable treatment accorded the employee by the employer or his representative;
- iii. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and
- iv. Other causes analogous to any of the foregoing.

Lastly, the law does not provide for compensation in lieu of notice.

Source: §13 of the Constitution of the Philippines; §135-137, 279, 297-300 of the Labour Code, as amended; DOLE D.O. 147-15; §35 of the Philippine AIDS Prevention and Control Act of 1998 (No. 8504); §32 of the Republic Act No. 7277, 1992

## Severance Pay

Where the employment has been terminated for a just cause, no severance pay is awarded to the employee. However, where the employee is dismissed for an authorized cause (economic reasons or disease), the worker is granted severance pay.

Workers are entitled to receive a separation pay of at least half month for every year of service. A fraction of at least 6 months is considered one year. The above referred separation pay is due if the contract was terminated on the following grounds:

- a) Retrenchment, i.e., reduction of personnel to prevent losses;
- b) Closure or cessation of operations of an establishment (not due serious losses or financial reverses);
- c) Where an employee is suffering from a disease not curable within 6 months and his continued employment is prejudicial to his or his co-workers' health

In any of the above cases, separation pay cannot be less than one-month pay.

Workers are entitled to receive a separation pay equivalent to one month pay for every year of service. A fraction of at least 6 months is considered one year. The above referred separation pay is due if the contract was terminated on the following grounds:

- a) Installation of labour-saving devices by the employer;
- b) Redundancy, where the position of employee is found to be excessive or unnecessary in the operation of the enterprise;
- c) Where reinstatement (as ordered by the competent authority) of worker to a former position is not possible due to closure or cessation of enterprise operations or obsolescence of worker's position or lack of any other equivalent position to which worker can be assigned

Source: §298 and 299 of the Labour Code, as amended; DOLE D.O. 147-15

# 05/13 FAMILY RESPONSIBILITIES

## **ILO Conventions**

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation 165: Workers with Family Responsibilities (1981)

**Philippines has not ratified the Convention 156.**

### ***Summary of Provisions under ILO Convention***

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.



## Regulations on family responsibilities:

- Solo Parents' Welfare Act 2000 (Republic Act No. 8972)
- Paternity Leave Act of 1996 (Republic Act No. 8187)

## Paternity Leave

The legal provision on paternity leave is contained within the Paternity Leave Act of 1996.

Every married male employee in the private and public sectors is entitled to a paternity leave of seven (7) days with full pay for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting. The male employee applying for paternity leave has to notify his employer of the pregnancy of his legitimate spouse and the expected date of such delivery. Delivery includes childbirth or any miscarriage.

If the employer is found violating the provisions of this Act, they will be subjected to a punishment by a fine not exceeding Twenty-five thousand pesos (P25, 000) or imprisonment of not less than thirty (30) days but not more than six (6) months.

Source: §2, 3 and 5 of the Paternity Leave Act of 1996 (Republic Act No. 8187)

## Parental Leave

The parental leave, as defined for the purposes of this section (extra leave for parents after completion of maternity leave) is not provided under the Philippines Labour Code.

Under the Solo Parents' Welfare Act, a different kind of parental leave is provided to single parents. The right to parental leave applies only any individual who falls under any of the following categories:

- i. A woman who gives birth as a result of rape and other crimes against chastity even without a final conviction of the offender, provided that the mother keeps and raises the child;
- ii. Parent left single or alone with the responsibility of parenthood due to death of spouse;
- iii. Parent left single or alone with the responsibility of parenthood while the spouse is detained or is serving sentence for a criminal conviction for at least one (1) year;
- iv. Parent left single or alone with the responsibility of parenthood due to physical and/or mental incapacity of spouse as certified by a public medical practitioner;
- v. Parent left single or alone with the responsibility of parenthood due to legal separation or de facto separation from spouse for at least one (1) year, as long as he/she is entrusted with the custody of the children;
- vi. Parent left single or alone with the responsibility of parenthood due to declaration of nullity or annulment of marriage as decreed by a court or by a church as long as he/she is entrusted with the custody of the children;
- vii. Parent left single or alone with the responsibility of parenthood due to abandonment of spouse for at least one (1) year;
- viii. Unmarried mother/father who has preferred to keep and rear her/his child/children instead of having others care for them or give them up to a welfare institution;

- ix. Any other person who solely provides parental care and support to a child or children;
- x. Any family member who assumes the responsibility of head of family as a result of the death, abandonment, disappearance or prolonged absence of the parents or solo parent.

Parents must have rendered at least one year's service to qualify for the parental leave entitlement and are entitled to parental leave of not more than 7 days each year.

Source: §3 & 8 of the Solo Parents' Welfare Act 2000 (Republic Act No. 8972)

## **Flexible Work Option for Parents / Work-Life Balance**

Provisions on this front have been largely left to negotiations between the employer and the employee, as telecommuting and similar modes of work have gained currency in the Philippines; however, by law, telecommuters and other workers with alternative working arrangements are to be treated equally to workers with traditional work options, including with regard to parental rights.

Source: Telecommuting Act (Republic Act No. 11165)

# 06/13 MATERNITY & WORK

## **ILO Conventions**

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

**Philippines has not ratified the Conventions 103 and 183.**

### ***Summary of Provisions under ILO Convention***

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

## Regulations on maternity and work:

- Labour Code (Presidential decree No. 442 of 1974)
- Social Security Law (R.A. No. 1161), as amended
- Expanded Breastfeeding Promotion Act of 2009 (Republic Act No. 10028)
- 105-Day Expanded Maternity Leave Law (Republic Act No.11210)

## Free Medical Care

Medical benefits for workers are regulated by Philippine Health Insurance Corporation which collects contributions for the medical care program and oversees the provision of benefits. Medical care is however provided by accredited providers. Both the parties contribute 1.25% (total 2.50%) of the insured worker's salary bracket, according to 25 salary brackets.

The employed persons must have at least three months of contributions in the six months before hospitalization. Self-employed persons and voluntarily insured persons must have at least three months of contributions in the six months before hospitalization if no surgical procedure is involved; nine months in the 12 months before hospitalization if a surgical procedure is involved. Contribution conditions are waived for registered retirees and pensioners, certain categories of people with low or no income, and overseas workers.

Accredited health care providers offer inpatient and outpatient services that are paid directly by the health fund according to a fixed schedule. There is also cost sharing for general and specialist care, hospital care, laboratory and X-ray fees, surgery, and medicine. Inpatient treatment

is limited to 45 days a year. Inpatient treatment abroad is reimbursed according to an established fee schedule for claims submitted within 180 days of discharge.

Information on pregnancy related benefits could not be located in the legal sources.

Source: ISSA Country Profile for the Philippines 2016;  
<https://www.philhealth.gov.ph/>

## No Harmful Work

In general, there are no provisions within the law which are specifically focusing on the protection of pregnant women during work. However, the law does provide for the protection of women from dangerous and hazardous work. Articles 130 and 131 of the Labour Code used to prohibit night work for women however these were repealed in 2011.

In addition, the Secretary of Labour and Employment can establish standards that ensure the safety and health of women employees. In appropriate cases, he can, by regulations, require any employer to:

- a. Provide seats proper for women and permit them to use such seats when they are free from work and during working hours, provided they can perform their duties in this position without detriment to efficiency;
- b. To establish separate toilet rooms and lavatories for men and women and provide at least a dressing room for women;
- c. To establish a nursery in a workplace for the benefit of the women employees therein;
- d. To determine appropriate minimum age and other standards for retirement or termination in special

occupations such as those of flight attendants and the like.

Lastly, it is worth mentioning that the law provides no limitation on overtime and work on rest days particular to pregnant, breastfeeding or other women workers and neither does it provide for any time off for medical examinations.

Source: §130 of the Labour Code, as amended

## Maternity Leave

The entitlement to maternity leave under the Labour Code and Social Security Law applies to all female employees, whether married or unmarried. A female worker must be a member of social security system and is employed at the time of her delivery or miscarriage; has given the require notice to the social security system through her employer; and has paid at least three months; contributions to the social security system within the 12-month period immediately preceding the date of contingency (child birth or miscarriage).

Every pregnant worker in the private sector, whether married or unmarried, is entitled to a maternity leave benefit of 60 days in the case of normal delivery or miscarriage and 78 days in case of caesarean child birth.

The exceptions include government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labour in appropriate regulations.

In accordance with the Republic Act 11210, female workers can avail 105 days of maternity leave. The law provides for an extra 30-day unpaid maternity leave. There is a provision for additional 15 days of maternity leave if a worker qualifies as solo parent, as defined under the Solo Parents Welfare Act 2000. There is a provision for 60-day maternity leave in case of any miscarriage or emergency termination of pregnancy. Worker is also entitled to have Social Security System maternity benefits including health care for pregnancy related situation. Maternity leave can be availed as combination of pre-natal and post-natal as long as it does not exceed 105 days or 60 days in case of miscarriage or emergency termination of pregnancy. Employers who fail or refuse to comply are punishable by fine of PhP 20,000 to PhP 200,000 and imprisonment of 6 years to 12 years, or both.

Source: §131 of the Labour Code, as amended; §14-A of the Social Security Law (R.A. No. 1161), as amended; [http://www.senate.gov.ph/press\\_release/2017/0306\\_pangilinan1.asp](http://www.senate.gov.ph/press_release/2017/0306_pangilinan1.asp); Republic Act No. 11210

## Income

The monetary benefits for maternity leave are regulated under Social Security Law. In order to qualify for maternity benefits under the Social Security Law, a woman must:

- (a) Have made at least 3 monthly contributions in the 12-month period immediately preceding the semester of confinement or miscarriage;
- (b) give notice to her employer of her pregnancy and the expected date of confinement, which must then be forwarded by the employer to the Social Security System

- (c) Be expecting one of her first 4 deliveries or miscarriages.

The entitlement to maternity leave pay under the Social Security Law is for 60 days, or 78 days in the event of caesarean delivery.

Source: §131 of the Labour Code, as amended; §14 and 18 of the Social Security Law (R.A. No. 1161), as amended; [https://www.sss.gov.ph/sss/DownloadContent?fileName=2016\\_SSS\\_Guidebook\\_Maternity.pdf](https://www.sss.gov.ph/sss/DownloadContent?fileName=2016_SSS_Guidebook_Maternity.pdf)

## Protection from Dismissals

Under the law, it is unlawful for any employer:

- (a) To discharge any woman employed by him for the purpose of preventing such woman from enjoying the maternity leave, facilities and other benefits provided under the Labour Code;
- (b) To discharge such woman employee on account of her pregnancy, or while on leave or in confinement due to her pregnancy;
- (c) To discharge or refuse the admission of such woman upon returning to her work for fear that she may be pregnant;

Source: §135 of the Labour Code, as amended

## Right to Return to Same Position

There is no provision guaranteeing the right to return to work beyond the prohibition on employers discharging a female employee in anticipation of, during or upon her return from maternity leave. Thus, it can be

implied only from section 135 of the Labour Code.

## Breastfeeding

No provisions on breastfeeding in the workplace could be found within the Labour Code, however the Secretary of Labour can in appropriate cases and by regulations, require any employer to establish a nursery in a workplace for the benefit of the women employees therein.

Breastfeeding breaks are provided under the Expanded Breastfeeding Promotion Act 2009 which is promulgated to support, protect and encourage breastfeeding women workers. The law requires workplaces to implement certain regulations.

All public and private sector workplaces are required to establish a lactation station for nursing mothers. The lactation stations must be adequately provided with these facilities: lavatory for hand-washing, refrigeration/cooling facilities for storing breastmilk, electrical outlets for breast pumps, comfortable seats and a table. The lactation station cannot be located in the toilet. Establishments are required to prevent promotion, marketing or sale of infant formula milk within these lactation stations.

Breastfeeding workers are entitled to breastfeeding breaks referred to as Lactation periods. The breaks include the time it takes to get to and from their workplace to the company's lactation station. These are considered part of the working hours and thus paid. The Department of Labour and Employment (DOLE) may approve some adjustments; however, the lactation period cannot be

less than 40 minutes for every 8-hour working period.

Source: §130 of the Labour Code, as amended; §11-12 of the Expanded Breastfeeding Promotion Act of 2009 (Republic Act No. 10028)



# 07/13 HEALTH & SAFETY

## **ILO Conventions**

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

**Philippines has not ratified the Convention 81 and 155.**

### ***Summary of Provisions under ILO Conventions***

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

## Regulations on health and safety:

- Labour Code (Presidential decree No. 442 of 1974)
- Occupational Safety and Health Standards 1989
- Occupational Safety and Health Standards Act (Republic Act No. 11058, 2017)
- Department Order No. 57-04, issued by the Department for Labour and Employment
- Labour Advisory No. 04, issued by the Department of Labour and Employment

## Employer Cares

The legal provisions on OSH in the Philippines come from the Occupational Safety and Health Standards 1989 and the later Occupational Safety and Health Standards Act 2017.

Every employer covered by the provisions of these Standards must furnish his workers a place of employment which is free from hazardous conditions that are causing or are likely to cause death, illness or physical harm to his workers. General requirements for employers mainly are to:

- a) Provide workplace free from hazardous conditions;
- b) Give complete work safety instructions for workers;
- c) Comply with the requirements of OSH System;
- d) Use only approved devices and equipment.

The employer must ensure the ongoing surveillance of the working environment through, an occupational health service, the health programme and other approaches. Specific health surveillance is

required when workers are exposed to substances such as natural fertilizer, lead, mercury, hydrogen sulfide, sulfur dioxide, nitro glycol and other similar substances. In addition, all workplaces must have an OSH-approved safety programme, as well as a committee and an officer to enforce and manage the programme, with the DOLE enforcing training on basic OSH for safety officers and workers alike.

The following rights are enshrined in law for employees for which employers are responsible:

- The right to know about hazards in the work place
- The right to refuse unsafe work
- The right to report accidents
- The right to Personal Protective Equipment

Periodic annual medical examinations must be conducted by the employer in order to follow-up previous findings, to allow early detection of occupational and non-occupational diseases, and determine the effect of exposure of employees to health hazards.

Every employer is required to maintain in his workplace a quantity of medicines, medical supplies, equipment and medical faculties for the use of the workers employed in the establishment/undertaking. The employer should also provide worker with medical and dental services which vary with the size of the industries. The rules require from the employer to provide full-time or part time first aiders, nurses, health physician, dentists to employees, and usually their time in the workplace will be determined by the number of the employees engaged in an enterprise.

Lastly, the employer must organize and maintain an occupational health program to achieve the following objective:

- (1) Assess the worker's physical, emotional and psychological assets as well as his liabilities in order to facilitate his proper placement and ensure the suitability of individuals according to their physical capacities, mental abilities and emotional make-up in work which they can perform with an acceptable degree of efficiency without endangering their own health and safety and that of their co-workers;
- (2) Protect employees against health hazards in their working environment in order to prevent occupational as well as non-occupational diseases;
- (3) Provision for first-aid, emergency services and treatment depending on the nature of the industry;
- (4) Assure adequate medical care of ill and injured workers;
- (5) Encourage personal health maintenance and physical fitness and proper nutrition practices;
- (6) Provide guidance, information and services for family planning programs.

In the face of the COVID-19 pandemic, the Department of Labour and Employment also implemented guidelines to protect workers from COVID-19 infection, with precautions including:

- Providing information on the transmission, symptoms and treatment of COVID-19
- Sanitation of all surfaces in the working area and proper food preparation
- Avoiding direct exposure to objects, animals or people carrying or suspected to be carrying COVID-19
- Encouragement of healthy and clean lifestyle practices

Source: Rule 1005, 1077, 1955, 1961, 1963, 1966 and 1967 of the Occupational Safety and Health Standards 1989, Labour Advisory No. 04, issued by the Department of Labour and Employment, Occupational Safety and Health Standards Act (Republic Act No. 11058, 2017)

## Free Protection

Employers must, at their own expense, furnish workers with protective equipment for the eyes, face, hands and feet, protective shields and barriers whenever necessary by reason of the nature of hazards. The employer is responsible for the adequacy and proper maintenance of personal protective equipment used in his workplace. There are detailed rules on what type of equipment is to be provided by the employer for the protection of different parts of the employee's body. The equipment generally includes goggles, glasses, respirators, hardhats, caps gloves, safety belts and shoes respectively. During the pandemic, the provision of free PPE was extended to face masks, shoe covers, face shields and other aids to prevent the further spread of COVID-19.

Source: Rule 1080-1087 of the Occupational Safety and Health Standards 1989, Occupational Safety and Health Standards Act (Republic Act No. 11058, 2017), Bayanihan to Recover as One Act (Republic Act No. 11494, 2020)

## Training

The employer is required to take steps for the training of a sufficient number of employees in first-aid treatment. Furthermore, workers should be trained on procedures to control the removal of hazardous substances, eliminate pollution,

and to evacuate from the affected area in an orderly manner. In buildings where the population is of a changing character, the fire exit training of the regular employees shall include the proper procedure to direct other occupants to safety." Apart from this, the Bureau of Working Conditions is also required to conduct training programs in order to teach employees about first aid treatment.

Source: Rule 1030, 1093, 1948 and 1961 of the Occupational Safety and Health Standards 1989, Occupational Safety and Health Standards Act (Republic Act No. 11058, 2017)

## Labour Inspection System

The Bureau of Working Conditions (BWC) within the Department of Labour and Employment (DOLE) is responsible for the formulation of policies and laws relating to working conditions and the working environment, with the aim of ensuring compliance with labour standards.

The Bureau of Working Conditions is the focal point of the Philippines labour inspection system and is responsible for the formulation of policies and laws relating to working conditions and the working environment, but it does not undertake actual inspection visits to workplaces to check on compliance. Inspectors located in 16 regional offices throughout the country undertake such visits.

The Labour Code establishes that DOLE shall be solely responsible for the administration and enforcement of occupational safety and health laws, regulations and standards in all establishments and workplaces wherever they may be located. However, chartered

cities may be allowed to conduct industrial safety inspections of establishments within their respective jurisdictions where they have adequate facilities and competent personnel as determined by DOLE and subject to national standards established by the latter.

Labour inspectors are empowered to visit any place where work is undertaken, including those in the informal economy, for safety and health inspection. Labour inspectors are responsible for overseeing general labour standards including wages and hours of work, other welfare and social security benefits and general safety and health, which refer to the work environment such as lighting, ventilation and other conditions. They also include compliance with the Anti-Sexual Harassment Law and policies and programmes for HIV/AIDS prevention and drug-free workplaces.

Source: §128 of the Labour Code, as amended; Department Order No. 57-04, issued by the Department for Labour and Employment

# 08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

## **ILO Conventions**

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

**Philippines has not ratified the Convention 102, 121 and 130.**

### ***Summary of Provisions under ILO Conventions***

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

## Regulations on sick leave & Employment Injury Benefits:

- Labour Code (Presidential decree No. 442 of 1974)
- Workmen Compensation Act 1925
- Republic Act No. 8282 (1997)
- Department Order No. 147-15 of 2015
- Magna Carta of Public Health Workers (No. 7305)
- Bayanihan to Heal as One Act (No. 11469)
- Bayanihan to Recover as One Act (No. 11494)

## Income/Paid Sick Leave

No provisions could be found within the law which mandate for paid leave in case of sickness. However, employers and the employee are free to agree upon the grant of sick leaves through voluntary employer policy or collective bargaining agreements.

An employee who has paid at least three-monthly social security in the twelve-month period immediately preceding the semester (6-month period) of sickness or injury and is confined therefore for more than three days (three-day waiting period) in a hospital or elsewhere is paid by employer a daily sickness benefit equivalent to 90% of his or her average daily salary credit for each day of compensable confinement. However, such allowances will begin only after all sick leaves of absence with full pay to the credit of the employee have been exhausted. The Social Security System reimburses the employer 100% of the daily sickness benefits, provided that the said system receives satisfactory proof of such payment and the legality thereof, and the employer has notified the System of the confinement

within five calendar days after receipt of the notification from the employee.

The benefit is paid for up to 120 days in a calendar year and the payment period may not exceed 240 days for the same illness. Daily covered earnings are the sum of the six highest months of covered earnings in the 12 months before the six-month period (January–June, April–September, July–December, or October–March) in which the incapacity began divided by 180.

Source: §14 of the Republic Act No. 8282 (1997)

## Free Medical Care

Medical benefits for workers are regulated by Philippine Health Insurance Corporation (PhilHealth) which collects contributions for the medical care program and oversees the provision of benefits. Medical care is however provided by accredited providers. Both the parties contribute 1.25% (total 2.50%) of the insured worker's salary bracket, according to 25 salary brackets.

The employed persons must have at least three months of contributions in the six months before hospitalization. Self-employed persons and voluntarily insured persons must have at least three months of contributions in the six months before hospitalization if no surgical procedure is involved; nine months in the 12 months before hospitalization if a surgical procedure is involved. Contribution conditions are waived for registered retirees and pensioners, certain categories of people with low or no income, and overseas workers. However, under the Bayanihan to Heal as One Act, occupational injuries and COVID-related expenses were completely covered by PhilHealth until the



end of the state of emergency, with testing and treatment of COVID-19 patients extended under the Bayanihan to Recover as One Act until that act's expiry.

Accredited health care providers offer inpatient and outpatient services that are paid directly by the health fund according to a fixed schedule. There is also cost sharing for general and specialist care, hospital care, laboratory and X-ray fees, surgery, and medicine. Inpatient treatment is limited to 45 days a year. Inpatient treatment abroad is reimbursed according to an established fee schedule for claims submitted within 180 days of discharge.

Source: ISSA Country Profile for the Philippines 2016; <https://www.philhealth.gov.ph>; Republic Act No. 6111 of 1969; Bayanihan to Heal as One Act, Bayanihan to Recover as One Act

## Job Security

Under the Labour Code, an employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees and that it has been certified by a competent authority that the disease is incurable within a period of six (6) months even with proper medical treatment. Thus, employment of a worker is secure during illness for 6 months.

Source: §299 of the Labour Code, as amended; Department Order No. 147-15 of 2015

## Disability/Work Injury Benefit

The legal provisions on the work injuries and relevant benefits come from the Labour Code of the Philippines and the Act on Workmen's Compensations of 1925.

The work injury benefits extend to Private-sector employees and domestic workers; public-sector employees, including military personnel and fire-fighters. The scheme is funded in the following manner. The Employer must provide: 30 pesos with monthly earnings of at least 14,750 pesos and 10 pesos with monthly earnings below 14,750 pesos. The maximum monthly earnings used to calculate contributions are 15,000 pesos. The Employees' Compensation Commission periodically adjusts the maximum monthly earnings used to calculate contributions. Any deficit in the funding will be covered by the government.

The temporary injury benefits paid are 90% of the insured worker's average daily covered earnings from the first day of disability for a work-related injury or illness for up to 120 days. This may be extended up to 240 days if further treatment is required. Daily covered earnings are the sum of the six highest months of covered earnings during the last 12 months before the six-month period (January–June, April–September, July–December, or October–March) in which the incapacity began divided by 180. The minimum daily benefit is 10 pesos. The maximum daily benefit is 200 pesos. The benefit is suspended if the beneficiary does not provide a doctor's monthly medical report.

As far as permanent disability benefits are concerned, a monthly pension which is 115% of the old age pension.



A Dependent's supplement is also given in case of permanent total disability, which is 10% of the insured worker's disability pension or 250 pesos, whichever is greater, for each of the insured worker's five youngest unmarried and unemployed children younger than age 21 (no age limit for disabled).

A Supplementary pension for permanent total and partial disability is also paid. The insured must have an assessed degree of disability of at least 20%. The degree of disability is assessed annually by a Social Security System. The pension is suspended if the beneficiary is gainfully employed (in the case of a total disability), fails to undergo an annual physical examination, does not provide a doctor's quarterly medical report, or is fully rehabilitated.

There is also provision for medical benefits, which include medical, surgical, and hospital services; rehabilitation; appliances; and skills and entrepreneurial training.

Lastly, survivors are also given pension: 100% of the permanent total disability pension the deceased received or was entitled to receive is paid.

A dependent's supplement of 10% of the permanent total disability pension the deceased received or was entitled to receive is paid for each of the insured person's five youngest unmarried, unemployed children under 21 years (no age limit for disabled). The pension is shared between the spouse and dependent, unmarried children under 21 years (no age limit for disabled) earning less than 300 pesos a month. If there is no eligible spouse or dependent child, the monthly pension (excluding dependent supplements) is paid to dependent parents for up to 60 months,

minus the number of months the pension was paid to the deceased before his or her death. Public and private health workers who contracted severe COVID-19 infection received compensation of 100,000 pesos, while the families of those who died as a result of contracting COVID-19 were compensated with 1 million pesos.

Source: ISSA Country Profile for the Philippines 2016; Workmen Compensation Act 1925; §197-199 of the Labour Code, as amended, Bayanihan Heal as One Act

# 09/13 SOCIAL SECURITY

## **ILO Conventions**

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

**Philippines has not ratified the above-mentioned Conventions.**

### ***Summary of Provisions under ILO Conventions***

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

## Regulations on social security:

- Republic Act No. 8282, 1997
- Republic Act No. 11199, 2018

## Pension Rights

Social security legislation provides for old age benefits. A person is entitled to old age benefits at the age of 60 years with at least 120 months of contributions before the six-month period in which pension is paid. The age limit is set as 55 years for miners who worked underground for at least 5 years who are involuntarily unemployed or have ceased employment. The retirement benefits can be delayed to the age of 65 years if workers are still employed. Workers have the option to retire at 60 (optional retirement) or 65 (technical retirement).

Retirement benefits are available in the form of monthly pension or lump-sum amount also referred to as old-age grant. While monthly pension is a lifetime cash benefit payable to a retired person on a monthly basis, the old age grant is one-time payment and is equal to the total contributions paid by the member and employer plus any interest on that amount.

The monthly pension is the highest of:

- a)  $300 + (20\% \times \text{AMSC}^*) + (2\% \times \text{AMSC}) \times (\text{CYS}^{**} - 10)$ ; or
- b)  $40\% \times \text{AMSC}$ ; or
- c) The minimum pension of P1,200, if with at least 10 CYS; or P2,400, if with at least 20 CYS, whichever is applicable.

AMSC is Average Monthly Salary Credit while CYS is the Credited Years of Service. Retired persons are also eligible for a 13th Month Pension payable every December

Source: ISSA Country Profile for the Philippines 2016; §12 and 12-B of the Republic Act No. 8282, 1997

## Dependents' / Survivors' Benefit

In order for the survivors to receive the deceased's pension, the deceased must have at least 36 months of contributions before the six-month period (January–June, April–September, July–December, or October–March) in which the death occurred. Eligible survivors include the surviving spouse and up to five dependent, unmarried, and unemployed children under 21 years (no age limit for disabled). The spouse's benefit ceases on remarriage and the amount is split among the eligible surviving children.

A dependents supplement is also paid for each of the five youngest unmarried and unemployed children conceived on or before the date of death.

100% of the old-age or disability pension the deceased received or was entitled to receive is paid. The minimum pension is 1,000 pesos if the deceased had less than 10 credited years of service; 1,200 pesos with at least 10 but less than 20 credited years; 2,400 pesos with at least 20 credited years. There is no maximum survivor pension.

The Dependent's supplement is 10% of the monthly old-age or disability pension the deceased received or was entitled to receive or 250 pesos, whichever is greater.

If there is no surviving spouse or dependent child and if the insured person died within 60 months of first receiving a pension, a lump sum of the remaining balance of 60 months of pension is paid to dependent parents, or if there are no dependent

parents, to the person named by the deceased. The said benefits are paid 13 times a year.

Source: ISSA Country Profile for the Philippines 2016; §12-A and 13 of the Republic Act No. 8282, 1997

## Unemployment Benefits

Until 2018, there were no explicit unemployment benefits in Philippine law; while provisions were made earlier in 1954, these were subsequently removed in later amendments. However, as of 2018 and the passing of Republic Act 11199, or the Social Security Act, unemployed private employees were entitled to unemployment insurance and benefits under the Social Security System in the form of monthly cash payments equal to 50% of the average salary, provided that they were under 60 years of age and had paid at least 36 months of contributions, and that they were not already entitled to other, higher-paying benefits.

Furthermore, during the pandemic, unemployed workers were entitled to payments of up to eight thousand pesos if this would not result in them being denied the aforementioned benefits.

Source: §14 of the Social Security Act 2018 (Republic Act No. 11199, 2018), §4-C1 of the Bayanihan to Recover as One Act (Republic Act No. 11494, 2020)

## Invalidity Benefit

In order to receive disability pension, the concerned person must be assessed with a permanent total or partial disability of at least 20% with at least 36 months of contributions before the six-month period

(January–June, April–September, July–December, or October–March) in which the disability began.

A Social Security System doctor assesses the degree of disability annually. The pension is suspended if the disability pensioner recovers, resumes employment (in the case of a total disability), or fails to report for the annual physical examination.

Invalidity pension is calculated in the same manner as old age pension. There is no maximum disability pension.

For persons suffering from Partial disability: A percentage of the full pension is paid according to the assessed degree of disability. A lump sum is paid if the insured had less than 12 months of contributions. The payments are made 13 times a year.

Source: ISSA Country Profile for the Philippines 2016; §13-A of the Republic Act No. 8282, 1997

# 10/13 FAIR TREATMENT

## **ILO Conventions**

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

**Philippines has ratified the Conventions 100 and 111.**

### ***Summary of Provisions under ILO Conventions***

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

## Regulations on fair treatment:

- Labour Code (Presidential decree No. 442 of 1974)
- Republic Act 7277, 1992
- Women in Developing and Nation Building Act 1991 (Republic Act No 7192)
- Bayanihan to Recover as One Act (Republic Act No. 11494 of 2020)

## Equal Pay

The legal provision on equal pay is contained within the labour code, which states that it is unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex. Discriminating behaviour includes “Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and favouring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes”

In the event an employer fails to comply with these requirements of the law, they will be subject to a fine ranging between 1,000-10,000 Pesos or an imprisonment term ranging between three months and three years or both.

Source: §133 and 303 of the Labour Code, as amended

## Sexual Harassment

The provisions on sexual harassment are contained within the Republic Act 7877 of 1995, under which the state while valuing the dignity of every individual, enhancing the development of its human resources, guaranteeing full respect for human rights, and upholding the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education has declared all forms of sexual harassment in the employment, education or training environment as unlawful.

Sexual harassment is committed by an employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favour from the other. In employment environment, sexual harassment is committed when: (1) The sexual favour is made as a condition in the hiring or in the employment, reemployment or continued employment of said individual, or in granting said individual favourable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favour resulting in limiting, segregating or classifying the employee which in a way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect the said employee; (2) The above acts would impair the employee's rights or privileges under existing labour laws; or (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

The law imposes a duty on the employer to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. The employer must (a) formulate appropriate rules and regulations in consultation with the jointly approved by the employees, through their duly designated representatives, prescribing the procedure for the investigation or sexual harassment cases and the administrative sanctions.

Any employer or employee who violates these provisions can be penalized, upon conviction, by imprisonment term ranging between one to six months, or a fine ranging between 10,000-20,000, or both such fine and imprisonment at the discretion of the court.

Source: §2-5 & 7 of the Republic Act No. 7877 of 1995

## Non-Discrimination

The legal provisions on discrimination are present within the Labour Code which states that the State must afford protection to labour, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. Labour Code prohibits discrimination on the ground of sex (including marriage and pregnancy) as well as trade union membership.

The Labour Code also makes it unlawful for an employer to discriminate (including refusal to pay wages, reduce the wages or benefits or discharge in any manner) against any employee who has filed any complaint concerning wages or has

testified or about to testify in such complaint; discriminate against any person in respect to terms and conditions of employment on account of his/her age; discriminate against employees in the exercise of their right to self-organization; (iv) to discriminate with regard to wages, hours of work, and other terms and conditions of employment to encourage or discourage membership in any labour organization; and (v) to discriminate against an employee for having given or being about to give testimony under the Labour Code.

Women in Developing and Nation Building Act 1991 also gives women equal work opportunities with men.

In accordance with Republic Act 7277, no disabled persons may be denied access to opportunities for suitable employment. A qualified disabled employee is subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as a qualified able-bodied person. The law fixes five percent (5%) quota for persons with disabilities.

The Anti-Age Discrimination in Employment Act of 2016 prohibits an employer from the following:

- i. Print or publish, or cause to be printed or published, in any form of media, including the internet, any notice of advertisement relating to employment suggesting preferences, limitations, specifications, and discrimination based on age;
- ii. Require the declaration of age or birth date during the application process;
- (3) Decline any employment application because of the individual's age;
- (4) Discriminate against an individual in terms of



compensation, terms and conditions or privileges of employment on account of such individual's age; (5) Deny any employee's or worker's promotion or opportunity for training because of age; (6) Forcibly lay off an employee or worker because of old age; or (7) Impose early retirement on the basis of such employee's or worker's age.

If an employer does not comply with the Anti-Age Discrimination in Employment Act of 2016, he might be punished with a fine ranging from P50,000 to P500,000 or imprisonment ranging from 3 months to 2 years or both.

In addition, COVID-19 survivors, healthcare workers, returning OFW workers, service workers and the indigent were protected from discrimination, with a fine of P100,000 and imprisonment of up to 6 months for perpetrators.

Source: §3, 118, 132-135, 138, 257, 259, of the Labour Code, as amended; Republic Act 7277, 1992; §8 of Republic Act 10911; Women in Developing and Nation Building Act 1991 (Republic Act No 7192), §8 of the Bayanihan to Recover as One Act (Republic Act No. 11494 of 2020)

## **Equal Treatment of Women at Work**

As mentioned above, the law guarantees the right of women to equal treatment in the workplace in respect of wages and by protection of women from all sorts of sexual harassment. There are no express provisions contained within the law which prohibit women from participating in any occupation, except those which are regarded as dangerous for their well-being.

# 11/13 MINORS & YOUTH

## **ILO Conventions**

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

**Philippines has ratified the Conventions 138 and 182.**

### ***Summary of Provisions under ILO Conventions***

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

## Regulations on minors and youth:

- Labour Code (Presidential decree No. 442 of 1974)
- Republic Act No. 7610 of 1992
- Republic Act No. 9231 of 2003

## Minimum Age for Employment

The Republic Act no.7610 of 1992, Act No. 9231 of 2003 and the Labour Code contains the provisions on the minimum age for employment. Children are defined as persons below eighteen (18) years of age or those over this age limit but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

No child below 15 can work, unless he/she is working under the sole responsibility of parents or guardian and the work does not interfere with his or her schooling or where a child's employment or participation in public entertainment or information through cinema, theatre, radio, television or other forms of media is essential.

However, this can only be done when the employment contract is concluded by the child's parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labour and Employment. Furthermore, the employer must ensure protection, health, safety, morals and normal development of the child; they must institute measures to prevent the child's exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; And must formulate and implement, subject to the approval and supervision of competent

authorities, a continuing program for training and skills acquisition of the child. Lastly, the employer must also first secure before engaging such child, a work permit from the Department of Labour and Employment.

The law imposes a punishment of imprisonment of six (6) months and one day to six years or a fine of fifty thousand to three hundred thousand pesos or both for any employer who uses a child in violation of the provisions on the minimum age of children. Furthermore, parents and legal guardians found to be in violation of these rules can also be fined 10,000-100,000 pesos or be required to render community service for 30 days to one year, or both.

Children between fifteen (15) and eighteen (18) years of age may be employed for such number of hours and such periods of the day as determined by the Secretary of Labour and Employment in appropriate regulations.

Source: §137 of the Labour Code, as amended; §3, 12, and 16 of the Republic Act No. 7610 of 1992; §2, 3, and 6 of the Republic Act No. 9231 of 2003

## Minimum Age for Hazardous Work

Labour Code prohibits the employment of a person below eighteen (18) years of age in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labour and Employment. The activities which can be regarded as hazardous have been specified in section 3 of the Republic Act 9231 of 2003 which introduces Section 12-D (4) in the Republic Act 7610 of 1992. This section clearly lays down an exhaustive list of activities that can be classified as hazardous, and generally

includes all forms of slavery, prostitution, work performed underground, underwater or dangerous heights, use of dangerous machinery, exposure to physical danger and work involving manufacture of explosives.

No child below fifteen (15) years of age is allowed to work between 8pm and 6am. No child between fifteen (15) and eighteen (18) years of age can work between 10pm and 6am. Furthermore, a child below 15 years of age cannot work more than 4 hours a day, while a child in-between 15 and 18 years cannot work for more than 8 hours a day. On a weekly basis, this amounts to 20 hours a week for children under 15 and 40 hours for children in-between 15 and 18.

Any person employing children in hazardous work that is in contravention of the law is subject to a fine of one hundred thousand to one million pesos or imprisonment of 12-20 years, or both.

Department of Labour and Employment has also issued Guidelines in Assessing and Determining Hazardous Work in the Employment of Persons Below 18 Years of Age which has detailed provisions on hazardous work/activities prohibited for children under 18.

Source: §137 of the Labour Code, as amended; §3, 12, and 16 of the Republic Act No. 7610 of 1992; §2, 3, and 6 of the Republic Act No. 9231 of 2003

# 12/13 FORCED LABOUR

## **ILO Conventions**

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

**Philippines has ratified both Conventions 29 & 105.**

### ***Summary of Provisions under ILO Conventions***

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

## Regulations on forced labour:

- Labour Code (Presidential decree No. 442 of 1974)
- Republic Act No. 9208 (2003) as amended by the Act No. 10364 (2012)

## Prohibition on Forced and Compulsory Labour

There are no provisions on the prohibition on forced labour in the Constitution or the Labour Code. Instead the relevant provisions are contained within the Republic Act No. 9208 passed in 2003, (amended by the Republic Act No. 10364 of 2012). The said Act defines forced labour as “the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception including any work or service extracted from any person under the menace of penalty” and prohibits the use, adoption, recruitment and transfer of persons for the purpose of forced labour and slavery. In addition, the Act also criminalises any attempt to use persons for the purposes of forced labour and has also introduced liability for accomplices involved.

For persons who are found to be performing the act of using, adopting, recruiting and transfer of persons for the purposes of forced labour and slavery, the law imposes a penalty of imprisonment of twenty years and a fine of one million to two million pesos.

The punishment for person involved in the attempt of any such act or those who are found to be an accomplice is 15 years imprisonment and a fine of five hundred thousand to one million pesos.

Source: §3, 4, and 10 of the Republic Act No. 9208 (2003) as amended by the Act No. 10364 (2012)

## Freedom to Change Jobs and Right to Quit

An employee may terminate without just cause the employee-employer relationship by serving a written notice at least one (1) month in advance. Employee can be held liable for damages if no such notice was served. The employer upon whom no such notice was served may hold the employee liable for damages. An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:

1. Serious insult by the employer or his representative on the honour and person of the employee;
2. Inhuman and unbearable treatment accorded the employee by the employer or his representative;
3. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and
4. Other causes analogous to any of the foregoing.

Source: §300 of the Labour Code, as amended

## Inhuman Working Conditions

The normal hours of work of any employee cannot exceed eight (8) hours a day. There is no clear provision in the Labour Code specifying the maximum hours of work inclusive of overtime.

Source: §82, 83, 84, 87, 88 and 89 of the Labour Code, as amended

# 13/13 TRADE UNION

## **ILO Conventions**

Freedom of association and protection of the right to organize: Convention 87 (1948)  
Right to Organize and Collective Bargaining: Convention 98 (1949)

**Philippines has ratified both Conventions 87 & 98.**

### ***Summary of Provisions under ILO Conventions***

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.



## Regulations on trade unions:

- Labour Code (Presidential decree No. 442 of 1974)
- Constitution of the Republic of the Philippines

## Freedom to Join and Form a Union

Under the Constitution, the right of all workers to self-organization is guaranteed. Furthermore, the right of the people, including those employed in the public and private sectors, to form union, association, or societies for purposes not contrary to law will not be restrained.

The Labour Code recognizes the idea of a trade union, which is regarded as a labour organization and means: “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”. It also stipulates that the state as a matter of policy must promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development; foster the free and voluntary organization of a strong and united labour movement and promote the enlightenment of workers concerning their rights and obligations as union members and as employees.

Lastly, all persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions, whether operating for profit or not, have the right to self-organization and to form, join, or assist labour organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant

workers, self-employed people, rural workers and those without any definite employers may form labour organizations for their mutual aid and protection.

Source: Section 8 of the Article III and Section 3 of the Article XIII of the Constitution of the Republic of the Philippines 1987; §218, 219, 253-257 of the Labour Code, as amended

## Freedom of Collective Bargaining

The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements if requested by either party.

The Constitution guarantees the right of all workers to conduct collective bargaining and negotiations.

Under the Labour Code, a legitimate labour organization has the following rights with respect to collective bargaining:

- a. To act as the representative of its members for the purpose of collective bargaining;
- b. To be certified as the exclusive representative of all the employees in an appropriate bargaining unit for purposes of collective bargaining;

In addition, persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions, whether operating for profit or not, shall

have the right to self-organization and to form, join, or assist labour organizations of their own choosing for purposes of collective bargaining.

When a party desires to negotiate an agreement, it must serve a written notice upon the other party with a statement of its proposals. The other party must reply within 10 calendar days from receipt of such notice. If the dispute is not settled, the relevant government department intervenes upon request of either or both parties or at its own initiative and immediately calls the parties to conciliation meetings.

In the absence of an agreement or other voluntary arrangement providing for a more expeditious manner of collective bargaining, the employer and the employee representatives must bargain collectively in accordance with the provisions of the Labour Code. When there is a collective bargaining agreement, the duty to bargain collectively also includes an understanding that neither party is to terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. Any Collective Bargaining Agreement that the parties may enter is valid for a term of five (5) years. All other provisions of the Collective Bargaining Agreement can be renegotiated not later than three (3) years after its execution. Lastly, there are no legal provisions on the issues that are to be discussed when engaging in collective bargaining.

It is considered an unfair labour practice on the part of employer to violate the duty to bargain collectively or violate an existing collective bargaining agreement.

Source: §3 of the Article XIII of the Constitution of the Republic of the Philippines 1987; §251, 259-272 of the Labour Code, as amended

## Right to Strike

The Constitution guarantees the rights of all workers to perform peaceful concerted activities, including the right to strike in accordance with law.

According the Labour Code, "Strike" means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labour dispute".

Workers have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labour organizations to strike and picket, consistent with the national interest, is recognized and respected. However, no labour union may strike on grounds involving inter-union and intra-union disputes.

In case of bargaining deadlocks, the duly certified or recognized bargaining agent has to file a notice of strike with the Ministry at least 30 days before the intended date. In cases of unfair labour practice, the period of notice is 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike can be filed by any legitimate labour organization on behalf of its members. The Ministry must exert all efforts at mediation and conciliation to affect a voluntary settlement between the aggrieved parties. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labour union may start strike.

A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. The union must furnish to the Ministry the results of the voting at least seven days before the intended strike.

If a labour dispute causes or is likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labour and Employment can assume jurisdiction over the dispute and decide it or refer it for compulsory arbitration. Such assumption or certification will automatically end the intended or impending strike. If strike is already in progress, all striking employees will immediately return-to-work and the employer will immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike. The Secretary of Labour and Employment can seek the assistance of law enforcement agencies to ensure compliance with this provision. In labour disputes adversely affecting the continued operation of hospitals, clinics or medical institutions, the striking union must provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services will be unhampered and unrestricted, so as to ensure the proper and adequate protection of the life and health of its patients. The contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labour and Employment, under pain of immediate disciplinary action, including dismissal or loss of employment status, and even criminal prosecution against either or both of the parties. The President of the Philippines can determine the industries

that, in his opinion, are indispensable to the national interest, and are subject to intervention at any time and assumption of jurisdiction over any such labour dispute in order to settle or terminate the same.

The parties can opt to submit their dispute to voluntary arbitration, which will be then taken up by the relevant government authority, whose decision will be final.

Any strike declared in violation of the provisions of the Labour Code (without first having filed the required notice or without the necessary strike vote obtained and reported to the Ministry) is considered illegal. Furthermore, when the Secretary of Labour and Employment takes cognizance in the resolution of a dispute, no strikes can be declared thereafter.

No person can stop a peaceful strike by force, violence, coercion, threats or intimidation and no person involved in a peaceful strike can commit any act of violence, coercion or intimidation, obstruct or block the workplace and any public thoroughfares.

In an effort to settle a strike, the Department of Labour and Employment can conduct a referendum by secret ballot on the improved offer of the employer on or before the 30th day of the strike. When at least a majority of the union members vote to accept the improved offer, the striking workers must immediately return to work and the employer has to readmit them upon the signing of the agreement. Lastly, except on grounds of national security and public peace or in case of commission of a crime, no union members or union organizers can be arrested or detained for union activities without previous consultations with the Secretary of Labour.

Source: §3 of the Article XIII of the Constitution of the Republic of the Philippines 1987; §278-281 of the Labour Code, as amended

# QUESTIONNAIRE

## DECENTWORKCHECK.ORG

Check

DecentWorkCheck Philippines is a product of  
WageIndicator.org



National Regulation exists



National Regulation does not exist

## 01/13 Work &amp; Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

## 02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

## 03/13 Annual Leave &amp; Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

## 04/13 Employment Security





10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 06/13 Maternity &amp; Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy<br><i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child   |  | <input type="checkbox"/> | <input type="checkbox"/> |





## 07/13 Health & Safety

- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |









## 08/13 Sick Leave & Employment Injury Benefits

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |    | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury                                       |   | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease     |  | <input type="checkbox"/> | <input type="checkbox"/> |

## 09/13 Social Security













- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |

## 10/13 Fair Treatment



- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination                                     |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Sex/Gender   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Race   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Colour   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Religion   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Political Opinion  |  | <input type="checkbox"/> | <input type="checkbox"/> |

\* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.






	Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
	Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
	Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
	Age		<input type="checkbox"/>	<input type="checkbox"/>
	Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
	Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
	Language		<input type="checkbox"/>	<input type="checkbox"/>
	Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
	Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
	Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
	Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40	I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





## 11/13 Minors & Youth

41.	In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42.	In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

## 12/13 Forced Labour

43.	I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44.	My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45.	My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

## 13/13 Trade Union Rights

46.	I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47.	I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48.	My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49.	I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

## Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Philippines scored 42 times "YES" on 49 questions related to International Labour Standards

### If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

### If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

### If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.