

CONTACT INFORMATION



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Jurisdiction Information

Preliminary Considerations:

Labor related laws in the Philippines have Constitutional Foundation. The present (1987) Constitution in Section 3 (Labor), Article XIII (Social Justice and Human Rights) thereof provides:

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

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

‘The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the

right of enterprises to reasonable returns on investments, and to expansion and growth.”

This Constitutional mandate was given life by Article 3 and Article 211 of the Labor Code of the Philippines which respectively provide:

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

“Art. 211. Declaration of Policy. -

- A. It is the policy of the State: (a) To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes;
- (b) To promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development;
- (c) To foster the free and voluntary organization of a strong and united labor movement;
- (d) To promote the enlightenment of employees concerning their rights and obligations as union members and as employees;
- (e) To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes;
- (f) To ensure a stable but dynamic and just industrial peace; and
- (g) To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.

While the provisions of the Labor Code are extensive and all embracing in the sense that any and all situations involving the employment relationship appeared to be fully covered, it is, however, an indisputable fact that the ever increasing complexity of modern business and innovation in the workplace render such provisions quite inadequate. Thus, constant changes are introduced in its provisions, not only through new legislation but more significantly, through novel interpretation and construction thereof made by the Supreme Court in appropriate cases.

In this regard, the declaration of the Supreme Court in the case of Philippines Today, Inc. vs. National Labor Relations Commission (NLRC), 267 SCRA 202 is worth citing, thus:

“Court and quasi-judicial bodies, in the exercise of their functions and in making decisions, must not be too dogmatic as to restrict themselves to literal interpretation of words, phrases and sentences. A complete and wholistic view must be taken in order to render a just and equitable judgment....

In deciding cases, this Court does not matter matter-of-factly apply and interpret laws in a vacuum. General principles do not decide specific cases. Rather, laws are interpreted always in the context of the peculiar factual situation of each case. Each case has its own flesh and blood and cannot be decided simply on the basis of isolated clinical classroom principles. The circumstances of time,

place, event, person, and particularly attendant circumstances and actions before, during and after the operative fact should all be taken in their totality so that justice can be rationally and fairly dispensed. [at pp. 215, 228]

Specific Issues:

With regard to the specific issues enumerated in the questionnaire, please be advised of the following:

1. Do you have a plant closing law in your jurisdiction and if so, what does it require?

Article 283 of the Labor Code governs plant closure in the Philippines. It provides:

Art. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.”

The requisites for the valid invocation of this statutory ground, as established by jurisprudence, are as follows:

1. the decision to close or cease operations should be made in good faith;
2. the purpose should not be to circumvent the provisions regarding the employees' security of tenure or right to self organization;
3. there is no other option available to the employer except to close or cease operations;
4. the notice requirement is complied with, whether or not the closure or cessation of operations is due to serious business losses or financial reverses; and
5. separation pay under the law (when not due to serious business losses) or company policy or Collective Bargaining Agreement (CBA) or similar contract, must be paid to the affected employees (Catatista vs. NLRC, GR No. 102422, Aug. 3, 1995; Armed Forces of the Philippines Mutual Benefit Association vs. Armed Forces Mutual Benefit Association, Inc. Employees Union, 97 SCRA 723).

There are also jurisprudence to the effect that closure of outlets or branches, not necessarily the entire business operations (Danas International Intercontinental Inc. vs. Daguman, GR No. 154368, April 15, 2005) or the relocation or transfer of business to another site (Coca Cola Bottler's [Philippines] Inc. vs. NLRC, 194 SCRA 592) falls within the coverage of the aforesaid Article 283 of the Labor Code.

2) Are there special rules on releases/waivers in your jurisdiction?

Releases and Waivers are generally recognize as valid and binding under the Philippine Civil Code. Thus, Article 6 of the Civil Code provides:

“Article 6. Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.”

While quitclaims executed by employees are generally frowned upon as being contrary to public policy and are ineffective to bar claims for the full measure of their legal rights, there are, however, legitimate waivers that represent a voluntary and reasonable settlement of laborers' claims.

The Supreme Court had clarified the standards of determining the validity of quitclaim or waiver in the case of Periquet vs. NLRC, 186 SCRA 724. In said case, the Court held that “not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be dismissed simply because of a change of mind. It is only

- 1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or
- 2) where the terms of the settlement are unconscionable on their face, that the law will step in to annul the questionable transaction

But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration of the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.”

3. What are the equal employment opportunity/non discrimination categories in your jurisdiction?

The provisions of the Labor Code guaranteeing equal employment opportunity and non-discrimination are expressed in the following provisions thereof, namely:

“Article 3. Declaration of Basic policy. - The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between worker and

employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.”

“Art. 135. Discrimination prohibited. - It shall be unlawful for an employers to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.

The following are acts of discrimination:

- (a) 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
- (b) Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.

Criminal liability for the willful commission of any unlawful act as provided in this article or any violation of the rules and regulations issued pursuant to Section 2 hereof shall be penalized as provided in Article 288 and 289 of this Code: Provided, that the institution of any criminal action under this provision shall not bar the aggrieved employee from filing an entirely separate and distinct action for money claims, which may include claims for damages and other affirmative reliefs. The actions hereby authorized shall proceed independently of each other.”

“Art. 140. Prohibition against child discrimination – No employer shall discriminate against any person in respect to terms and conditions of employment on account of his age.”

“Art. 248. Unfair labor practices of employers. ... (e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization...”

4. What are the minimum wage and overtime rules (and exemptions) under your jurisdiction?

All employers are required by the Labor Code to pay their employees the legal minimum wage rate prescribed by law or wage orders for regular or normal 8-hour work per day¹. Work

¹ The rate of minimum wage varies by region, by industry, province or locality as may be deemed necessary by the Regional Tripartite Wages and Productivity Board.

beyond the normal eight (8) hours work is subject to payment of overtime compensation. Overtime compensation varies depending on the day the overtime work was rendered.²

Excluded from the coverage of the law on overtime are the following:

- a) government employees
- b) managerial employees if they meet all of the following conditions, namely:
 - 1) their primary duty consists in the management of the establishment in which they are employed or of a department or subdivision thereof;
 - 2) they customarily and regularly direct the work of two or more employees therein; and
 - 3) they have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotions or any other change of status of other employees are given particular weight (Section 2 (b), Rule I, Book III of the Labor Code Implementing Rules)
- c) domestic servants and persons in the personal service of another (Art. 82, Labor Code)
- d) workers paid by results; (id.)
- e) non-agricultural field personnel; (id)
- f) members of the family of the employer (id.)

5. Is there employment at will, or some other rule, in your jurisdiction. What are the exceptions?

6. What are the legal obligations upon terminating an employee in your jurisdiction?

Employment at will is not allowed in the Philippines.

Article 279 of the Labor Code expressly provides that:

“In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause³ or when authorized by this Title⁴. An employee who is

² Article 87. Overtime work. - Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, an additional compensation equivalent to his regular wage plus at least twenty-five (25%) per cent thereof. Work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus at least thirty percent hereof.

³ Article 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.

unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Cessation or termination of employment initiated by the employee is also regulated under Article 285 of the Labor Code which provides:

“Article 285. Termination by employee. - (a) An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages:

(b) 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 honor 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.

7. Are there any family and/or medical leave laws in your jurisdiction, and if so, what do they require:

Except for a service incentive leave of five (5) days after one (1) year of continuous service (Art. 95, Labor Code), the Labor Code does not provide for paid vacation leave or paid sick leave. Paid vacation or sick leave are normally extended to the employees by virtue of company practice, company policy or by contractual arrangements such as Collective Bargaining Agreement or by the contract of employment itself.

⁴ Art. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.”

Paternity leave of seven (7) working days with full pay to all married male employees to allow the latter to assist his wife who has given birth, suffers a miscarriage or an (unintentional) abortion is provided pursuant to Republic Act No. 8187, otherwise known as the Paternity Act of 1996.

Maternity leave with pay equivalent to 60 days for normal delivery or 78 days in case of caesarian delivery is also provided to female employees by Article 133 of the Labor Code, as amended by the Social Security Law (Republic Act 1161, as amended).

8. Please list any miscellaneous, interesting or oddball laws in your jurisdiction, and state under what circumstances they pertain.

In employment termination cases, the applicable labor laws do not follow the rule of presumption of innocence. For instance, if an employee sues his employer for having dismissed him from work, the burden of proof lies on the employer who must prove with substantial evidence that the dismissal was valid and done in accordance with law. In case the employer fails, the employee is ordered reinstated with backwages and in certain cases even with award of damages and attorneys fees.

Additionally, the order of reinstatement is executory even if the employer appeals the decision to a higher body. The employer, however, is given the option to choose whether to physically reinstate the employee or merely to reinstate him in the payroll. If the employer opts for the latter, he is obliged to regularly pay the employee's salary even without working. The employer cannot recover from the employee all the monies he has paid to the latter during the pendency of the appeal even if the employer's appeal is subsequently upheld and a decision that the dismissal was valid and legal is rendered by the appellate body or by the Court.

9. Does your jurisdiction have a law requiring employers to give employees access to, or a copy of, their personnel records?

There is no existing Philippine law at present which requires employers to give their employees access to, or a copy of their personnel records. Employers generally recognize employees' right to access or copy their own personnel file. However, the employer cannot allow access to an employee's personnel record by another employee except by virtue of a court order, or by express written consent of the employee himself whose personnel records are sought to be accessed, or when access to such record is to be done in the ordinary course of business by authorized human resources personnel.

10. Does your jurisdiction outlaw or restrict drug tests, alcohol tests, genetic tests or any other kind of testing?

Philippine laws particularly the Dangerous Drugs Act encourage rather than restrict or outlaw drug test in the work establishment. In the same token, alcohol tests under specific employer rules and regulations are generally recognize subject to certain limits such as the employee's right to privacy, right against unreasonable search and seizure or right to due process.

11. Does your jurisdiction have any special rules on the payment of sales commission?

There is no specific law in the Philippines which mandates or governs the payment of sales commission. Payment of sales commission is usually by virtue of contractual arrangement between the employer and the employee and is subject to the general laws and principles of obligations and contract under the Civil Code.

12. What are the basic rules on enforcing non-competes and related agreements in your jurisdiction?

As in the case of payment of sales commission, non-compete and similar agreements are subject to and governed by the general laws on obligations and contracts under the Civil Code.

Being a contractual stipulation or agreement, non-compete clauses must be consistent with public policy in order to be valid and enforceable. A general non-compete clause is a contractual stipulation or covenant whereby the employee agrees, upon termination or departure from employment, not to work for a competitor or not to work in a similar position in a geographical area where they would have the opportunity to take away the former employer's goodwill. The need for such clauses has been recognized and explained in the case of *Ollendorf vs. Abrahamson*, 38 Phil. 585:

“A business enterprise may and often does depend for its success upon the owner's relations with other dealers, his skill in establishing favorable connections, his methods of buying and selling – a multitude of details, none vital if considered alone, but which in the aggregate constitute of the sum total of the advantages which are the result of the experience or individual aptitude and ability of the man or men by whom the business has been built up. Failure or success may depend upon the possession of these intangible but all-important assets, and it is natural that their possessor should seek to keep them from falling into the hands of his competitors. It is with this object in view that such restrictions as that now under consideration are written into contracts of employment. Their purpose is the protection of the employer, and if they do not go beyond what is reasonably necessary to effectuate this purpose they should be upheld.”

The specific requirements for non-compete clauses, such that they shall not violate public policy, have been established through decisions of the Supreme Court. According to jurisprudence, a non-compete clause is a valid and enforceable contractual stipulation when it is reasonable. To be considered reasonable, the clause must be:

- (a) reasonably necessary for the protection of the interests of the parties;
- (b) limited as to time and place (*Del Castillo vs. Richmond*, 45 Phil. 679 [1924]); and
- (c) limited as to trade/business (*Ferrazini vs. Gsell*, 34 Phil. 697 [1916])