

# Labor Law Discussion Video

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## Labor Standards vs Labor Relations

- Labor Standards
  - refer to Philippine laws that provide minimum requirements regarding work conditions, work hours, wages, benefits, and other employment conditions that are being implemented by management
- Labor Relations
  - goal is to strike the proper balance between protection of workers rights vs. the exercise of management prerogatives by the employer in accordance with law and to achieve industrial peace
  - industrial peace allows the company to be more productive and for workers to earn their living

## State Protection of Labor

### Section 3

- afford full protection to labor, local and overseas
  - organized and unorganized, and promote full employment and equality of employment opportunities for all
- guarantee the rights of all workers
  - self-organization, collective bargaining and negotiations, and peaceful concerted activities
  - includes right to strike in accordance with law
- security of tenure
  - humane conditions of work, and a living wage

- cannot be arbitrarily fired by managers or employers
- participation in policy and decision-making processes affecting their rights and benefits
- promotion the principle of shared responsibility between workers and employers
  - foster industrial peace
- rights of labor (workers) to its just fruits of production and right of enterprises (employers) to reasonable returns on investments

## Labor Code

- state shall afford protection to labor
- all doubts in implementation and interpretation of the Law, it will be resolved in favor of labor or employees

## Statutory Benefits of Workers

- Things to Consider
  - an employer-employee relationship between parties. If none, benefits are not applicable
    - Four-fold test to ascertain existence of such relationship
      - selection and engagement of the employee (power to hire)
      - payment of wages
      - power of dismissal
      - power to control the employee's conduct (control test) ⇒ most important
  - number of workers employed
    - 1-5
    - 1-9
    - 10 or more
  - nature of the employment
    - Agricultural

- Retail/Service

## Minimum Wage

- the lowest amount of wage that an employer should pay an employee
- the law provides a minimum, not the maximum
  - employer and employee can negotiate a higher pay
- **Exemptions:**
  - distressed establishments
    - currently incurring a net loss in their income
  - new business enterprises
    - includes barangay micro enterprise (BMBE)
  - retail/service establishments employing not more than 10 workers
  - establishments adversely affected by natural calamities

## No Work, No Pay Policy

- a fair day's wage for a fair day's labor
- in the case of a strike,
  - it is deemed a voluntary and deliberate cessation of work on the part of the workers. this means that even if there is a strike, the workers will not get paid if they do not work for the days of the strike
- in the case of a lockout
  - non-rendering of service was involuntary (not fault of the employee), then there can be no work, no pay policy
- *bottom line*: the principle is only applied if cessation of work is voluntary

## Overtime, Holiday, Premium, Night Shift Differential Pay

- **Overtime Work**

- work may be performed beyond eight hours a day
- additional compensation equivalent to wage plus 25%
- if working on a holiday or rest day, additional compensation of rate for the first 8 hours plus 30%
- overtime is not presumed
  - the rendition of overtime must be proven before they can be entitled to overtime pay

- **Rest day, Sunday, or Holiday Work**

- if working on a rest day, additional compensation of at least 30% of regular wage (wage + 30%)
- additional compensation is given to work performed on a Sunday, provided that it is their established rest day.
- if working on a special holiday, they will be paid additional 30% of wage
  - if holiday falls on a rest day, additional compensation will be 50%
- if regular holiday
  - if not working, paid regular daily wage
  - if working, additional 100%
  - holidays mandated by law

- **Night Shift Differential**

- not less than 10% of regular wage for each hour of work
- between 10 PM to 6 AM

## Salary Differential

- difference between the minimum wage rate and the actual wage paid
- should be paid by the employer (burden of proof) if money claims are based on salary differential, service incentive leave, holiday pay, and 13th month pay

- burden of proof is on the employee if money claims are based on overtime and premium for holidays and rest days

### **13th Month Pay and Bonus**

- 1/12 of the basic salary of an employee within a calendar year
  - annual salary divided by 12
- employers shall pay employees receiving a basic salary of not more than P1,000 a month
- paid not later than December 24 every year
- companies can no longer remove benefits that have been ripened into management practice
  - principle that no benefit and supplement can be diminished
  - ex. companies that give 14th month pay can no longer remove this when it has become a management practice

### **Service Leave, Maternity Leave, Magna Carta for Women**

- **Service Incentive Leave**
  - every employee who rendered at least 1 year of service shall be entitled to yearly SIL of five days with pay
  - if the company already has benefits like sick leave and vacation leave, this will take the place of the service incentive leave
- **Special Leave Benefits for Women**
  - surgery caused by gynecological disorders
    - woman employee rendered continuous aggregate service of at 6 to 12 months
    - 2 months with full pay

### **Paternity, Solo Parent, VAWC Leave**

- **Flexible Work Schedule**
  - flexible working schedule for solo parents

- **Parental Leave (Solo Parent)**
  - not more than 7 working days every year is granted to any solo parent employee who rendered at least 1 year of service
- **Paternity Leave**
  - every married male employee
  - 7 days with full pay
  - first 4 deliveries of the legitimate spouse with whom he is cohabiting
- **VAWC Victims**
  - paid leave of absence up to 10 days in addition to other paid leaves under the Labor Code
  - any employer who prejudices the right of the worker shall be penalized
  - the court can clear a protection order which can extend the number of days past 10 days

### Expanded Maternity Leave

- 105 days paid leave for live birth
- 7 days are transferrable to the father
  - regardless if not legitimate father
  - the mother will decide transferability
- additional 15 days for solo parents = 120 days
- can avail additional 30 days leave, but without pay
- for miscarriages, emergency termination of pregnancy = 60 days paid leave

### Retirement Pay

- retirement age = 60 to 65
  - compulsory retirement age = 65
  - must have served at least five years in the establishment

- retirement pay = 1/2 month salary for every year of service
  - 6 months considered as one whole year
  - ex. working for 20 years and 10 months is equal to 21 years of service
    - if salary is 50k a month, 50% of that is multiplied to years of service
    - $25k \times 21 = 525,000$  retirement pay

## Separation Pay

- employer terminating employment due to:
  - installation of labor-saving devices
  - redundancy
  - retrenchment to prevent losses
  - closing or cessation of operations
- written notice must be given to the worker and DOLE at least 1 month before the intended date
- in case of installation of labor-saving devices or redundancy
  - separation pay = 1 month pay for every year of service
  - if less than one year of service = 1 month pay
- in case of retrenchment and closures
  - separation pay = 1/2 month pay for every year of service
  - if less than one year of service = 1 month pay

## Business Closure

- employers are not compelled to pay separation pay is when they close their establishments due to serious business losses or financial reverses
- this means that the business must have operated at a loss for a period of time and employer's objective perception that the business' financial standing is unlikely to improve in the future

- burden of proof is on the employer
  - evidence financial statements covering a sufficient period of time

## **SSS, Pagibig, and PhilHealth**

- **SSS Act**
  - for one to have a source of income upon retirement, there must be contributions while working
  - SSS will be the one collecting payments and investing these to make it grow
  - in order to have pension
  - government-mandated deductions in the salary
- **Home Development Mutual Fund Law**
  - main goal of PAG-IBIG is for one to be able their own house through a membership in an integrated, nationwide savings system
  - contributions for housing
- **PhilHealth**
  - make essential goods, health, and other social services available to all the people at affordable cost and to provide free medical care to paupers
  - comprehensive healthcare services to all Filipinos through a socialized health insurance program
  - higher salary = higher contributions
  - contributions for healthcare