

Chapter 15

LABOR STANDARDS



COVERAGE

CHAPTER 15

LABOR STANDARDS

COVERAGE Book III of the Labor Code on Labor Standards shall apply to employees in all establishments and undertakings whether for profit or not, but not to the following:

1. Government employees;
2. Managerial employees;
3. Officers of the managerial staff;
4. Field personnel;
5. Persons in the personal service of another;
6. Domestic helpers;
7. Workers who are paid by results;
8. Members of the family of the employer who are dependent on him for support;

As used herein, "managerial employees" refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

^{- offsite work}
"Field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

NIGHT SHIFT DIFFERENTIAL AND OVERTIME PAY

Labor Standard

The RFBT Reviewer

NORMAL HOURS OF WORK: should not exceed 8 hours

Hours worked: Hours worked shall include

1. All time during which an employee is required to be on duty or to be at a prescribed workplace; and
2. All time during which an employee is suffered or permitted to work

Rest periods of short duration during working hours shall be counted as hours worked.

Meal Periods Subject to such regulations as the Secretary of Labor may prescribe, it shall be the duty of every employer to give his employees not less than sixty (60) minutes time-off for their regular meals.

1 hr

Health Personnel:

1. In locality has a population of at least 1M or in a hospital or clinic with a bed capacity of at least 100; regular hours of work is 8 hours a day for 5 days in a week; urgent need/demand
2. Exception: when there are exigencies, the health personnel may be required to work for 6 days or 48 hours in a week, in which case they are entitled to additional compensation of 30% of their regular wage on the 6th day.

NIGHTSHIFT DIFFERENTIAL refers to the additional compensation of not less than ten percent (10%) of an employee's regular wage for every hour of work done between 10:00 PM and 6:00 AM, whether or not such period is part of the worker's regular shift.

OVERTIME PAY: refers to the additional compensation for work performed beyond 8 hours and shall be compensated with additional:

1. 25% when work is rendered on the regular working day of the employee or
2. 30% when work is rendered on one's rest day or holiday

Basic employee's regular wage for work performed beyond eight (8) hours within the worker's 24-hour workday.

For purposes of computing overtime and other additional remuneration as required by this Chapter, the "regular wage" of an employee shall include the cash wage only, without deduction on account of facilities provided by the employer

Work Day vs. Calendar Day: "Work day" refers to the twenty four (24) hour period commencing from the time an employee regularly starts to work. For example, if an employee reports at 8:00 a.m., his work day commences from 8:00 a.m. and ends at 7:59 a.m. the following day. On the other hand, calendar day refers to the twenty four (24) hour period commencing at 12 a.m. and ending at 11:59 pm the following day.

The above distinction is necessary for purposes of overtime. Work in excess of the 8 hour shift must be within the same WORK day to be considered overtime.

Compressed Work Week may be authorized when it is the employees themselves who proposed the compressed workweek and if the following criteria are present:

1. It is voluntary on the part of the worker;
2. There will be no diminution of the weekly or monthly take-home pay and fringe benefits of the employees;
3. The value of the benefits that will accrue to the employees under the proposed schedule is more than or at least commensurate with the one-hour OT pay that is due them during weekdays based on the employee's quantification;
4. The one-hour OT pay will become due and payable if they are made or permitted to work on a day not scheduled for work on the compressed workweek;
5. The work does not involve strenuous physical exertion and employees must have adequate rest periods;
6. The arrangement is of temporary duration.

Undertime not offset by overtime: Undertime work on any particular day shall not be offset by overtime work on any other day. Permission given to the

employee to go on leave on some other day of the week shall not exempt the employer from paying the additional compensation required in this Chapter.

If such offsetting is allowed, it will be unfair for the employee because overtime represents only his regular hourly rate of pay while the overtime hours reflect not only his hourly rate but as well as the corresponding overtime pay. To offset two items that are not of equal value would result in the undue deprivation of the employee's overtime pay.

Emergency overtime work: Any employee may be required by the employer to perform overtime work in any of the following cases:

- When the country is at war or when any other national or local emergency has been declared by the National Assembly or the Chief Executive;
- When it is necessary to prevent loss of life or property or in case of imminent danger to public safety due to an actual or impending emergency in the locality caused by serious accidents, fire, flood, typhoon, earthquake, epidemic, or other disaster or calamity;
- When there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to the employer or some other cause of similar nature;
- When the work is necessary to prevent loss or damage to perishable goods; and
- Where the completion or continuation of the work started before the eighth hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer.

Any employee required to render emergency overtime work shall be paid the additional compensation required.

WEEKLY REST PERIODS AND HOLIDAY/REST DAY PAY

COVERAGE This rule shall apply to all employees, except:

- Those of the government and any of the political subdivision, including government-owned and controlled corporation; GACC
- Those of retail and service establishments regularly employing less than ten (10) workers;

- Domestic helpers and persons in the personal service of another;
- Managerial employees as defined in Book Three of the Code;
- Field personnel and other employees whose time and performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.

RIGHT TO WEEKLY REST DAY: It shall be the duty of every employer, whether operating for profit or not, to provide each of his employees a rest period of not less than twenty-four (24) consecutive hours after every six (6) consecutive normal work days.

The employer shall 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 Labor and Employment may provide. However, the employer shall respect the preference of employees as to their weekly rest day when such preference is based on religious grounds.

When employer may require work on a rest day: The employer may require his employees to work on any day:

- 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;
- In cases of urgent work to be performed on the machinery, equipment, or installation, to avoid serious loss which the employer would otherwise suffer;
- In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;
- To prevent loss or damage to perishable goods;
- Where the nature of the work requires continuous operations and the stoppage of work may result in irreparable injury or loss to the employer; and
- Under other circumstances analogous or similar to the foregoing as determined by the Secretary of Labor and Employment.

Compensation for rest day, Sunday or holiday work:

1. Where an employee is made or permitted to work on his scheduled rest day, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage.

An employee shall be entitled to such additional compensation for work performed on Sunday only when it is his established rest day.

2. When the nature of the work of the employee is such that he has no regular workdays and no regular rest days can be scheduled, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage for work performed on Sundays and holidays.
3. Work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee.

Where such holiday work falls on the employee's scheduled rest day, he shall be entitled to an additional compensation of at least fifty percent (50%) of his regular wage.

4. Where the collective bargaining agreement or other applicable employment contract stipulates the payment of a higher premium pay than that prescribed above, the employer shall pay such higher rate.

Monthly-Paid Employees Not Entitled To Additional Pay If Holiday Falls On A Sunday: There is no provision of law requiring any employer to make such adjustments in the monthly salary rate set by him to take account of legal holidays falling on Sundays in a given year, or, contrary to the legal provisions bearing on the point, otherwise to reckon a year at more than 365 days.

What the law requires of employers opting to pay by the month is to assure that "the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve," and to pay that salary "for all days in the month whether worked or not," and irrespective of the number of working days therein. (Wellington Investment and Manufacturing Corp. vs. Tajano, G.R. No. 114698 July 3, 1995)

HOLIDAY PAY

RIGHT TO HOLIDAY PAY: Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;

The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate; and

As used in herein, "holiday" includes:

1. New Year's Day - January 1
2. Maundy Thursday / Holy Thursday Apr. 2, 2024
3. Good Friday Apr. 3, 2024
4. Araw ng Kagitingan - April 9 Day of Valor
5. Labor Day - May 1
6. Eid'l Fitr - varies per year Nov. 20, 2024
7. Independence Day - June 12
8. Eid'l Adha - varies per year May 27, 2024
9. National Heroes Day - last Monday of August
10. Bonifacio Day - November 30
11. Christmas Day - December 25
12. Rizal Day - December 30
13. The day designated by law for holding a general election.

Situations When The Employee Is Not Entitled To Holiday Pay:

1. If he was absent without pay on the day prior a regular holiday.
2. If he was absent without pay on the day prior to successive regular holidays like Maundy Thursday and Good Friday.
3. If he was absent without pay on the day prior to his rest day or a special holiday that is followed by a regular holiday.
4. If he was absent without leave on the day prior to successive regular holidays but he worked on the first holiday, he is only entitled to holiday pay for the following day.

REGULAR VS. SPECIAL HOLIDAY

REGULAR HOLIDAY	SPECIAL HOLIDAY
Compensable even if unworked	Not compensable if unworked

Generally limited to the 10 enumerated in the Labor Code plus the two Muslim holidays	Not exclusive since a law or ordinance may provide for other special holidays
Observed throughout the country	There may be special holidays which are observed only in one locality
Rate is twice if worked	Rate is 130%

FACULTY MEMBERS:

1. **Regular holiday - no pay:** Regular holidays specified as such by law are known to both school and faculty members as no class days; certainly the latter do not expect payment for said unworked days, and this was clearly in their minds when they entered into the teaching contracts.
2. **Special holiday -** the faculty member, although forced to take a rest, does not earn what he should earn on that day. Be it noted that when a special public holiday is declared, the faculty member paid by the hour is deprived of expected income, and it does not matter that the school calendar is extended in view of the days or hours lost, for their income that could be earned from other sources is lost during the extended days. Similarly, when classes are called off or shortened on account of typhoons, floods, rallies, and the like, these faculty members must likewise be paid, whether or not extensions are ordered. (Jose Rizal College vs. NLRC, GR No. L-65482 Dec. 1, 1987)

only paid members by they are still paid or suspensions public holidays

LEAVES

RIGHT TO SERVICE INCENTIVE LEAVE: Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of 5 days with pay.

Exclusion: This above shall not apply to:

1. Those who are already enjoying the benefit herein provided,
2. Those enjoying vacation leave with pay of at least five days and
3. Those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor and Employment after considering the viability or financial condition of such establishment.

The RFBT Reviewer

Also the following under DOLE Implementing Rules:

- a) Those of the government and any of its political subdivisions, including government-owned and controlled corporations;
- b) Domestic helpers and persons in the personal service of another;
- c) Managerial employees as defined in Book Three of this Code;
- d) Field personnel and other employees whose performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof;
- e) Those who are already enjoying the benefit herein provided;
- f) Those enjoying vacation leave with pay of at least five days; and
- g) Those employed in establishments regularly employing less than ten employees.

At Least One Year of Service: means for not less than 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contract is less than 12 months, in which case said period shall be considered as one year. (Sec. 3, Book III, Rule V)

Part-Time Workers Also Entitled: Part-time workers are entitled to the full benefit of the yearly five (5) days Service Incentive Leave. The reason is that the law speaks of at least one (1) year of service without any distinction for entitlement to said benefit.

SERVICE INCENTIVE LEAVE VS. VL & SL

SERVICE INCENTIVE LEAVE	VACATION LEAVE/SICK LEAVE
Mandatory labor standard	Voluntary; it may result from employer's discretionary policy or CBA
intended to alleviate the economic condition of the workers for it acts as replacement for regular income that would not be earned during such instance	intended to afford a laborer a chance to get a much needed rest to replenish his worn out energies and acquire new vitality to enable him to meet him to efficiently perform his duties

SERVICE INCENTIVE LEAVE	VACATION LEAVE/SICK LEAVE
May not be waived	and not merely to give him additional salary
Commutable to cash	May be impliedly waived through acquiescence ^{tacit acceptance} _{concept implied by a party's actions / silence}
	Can be made not commutable to cash

Labor Standards

The RFBT Reviewer

PATERNITY LEAVE: every married male employee in the private and public sectors shall be entitled to a paternity leave of seven (7) days with full pay for the first four (4) deliveries (including miscarriages) of the legitimate spouse with whom he is cohabiting. The male employee applying for paternity leave shall notify his employer of the pregnancy of his legitimate spouse and the expected date of such delivery. (Sec. 2, RA No. 8187 [Solo Parent's Act])

Conditions for entitlement:

- a. He is employed at the time of delivery of his child;
- b. He has notified his employer of the pregnancy of his wife and her expected date of delivery (notification does not apply to miscarriages or abortion); and
- c. His wife has given birth, suffers a miscarriage or an abortion. (Sec. 3)

Availment: The paternity benefits set forth herein may be enjoyed by the qualified employee before, during or after the delivery by his wife, provided, not later than sixty (60) days after the date of said delivery. (Sec. 5)

Benefits, coverage and non-convertibility: seven (7) working days paternity leave with pay, consisting of basic salary, all allowances and other monetary benefits. (Sec. 6) If the same is not availed of, the same is not convertible to cash. (Sec. 7)

SOLO PARENT LEAVE: In addition to leave privileges under existing laws, parental leave of not more than seven (7) working days every year shall be granted to any solo parent employee who has rendered service of at least one (1) year, which shall not be cumulative. (RA No. 8972)

VAWC VICTIMS' LEAVE: At any time during the application of any protection order, investigation, prosecution and/or trial of the criminal case,

a victim of VAWC who is employed shall be entitled to a paid leave of up to ten (10) days in addition to other paid leaves.

The availment of the ten day-leave shall be at the option of the woman employee, which shall cover the days that she has to attend to medical and legal concerns. Leaves not availed of are noncumulative and not convertible to cash. (Sec. 42, RA No. 9262, [VAWC])

SPECIAL LEAVE BENEFITS FOR WOMEN: A woman employee having rendered continuous aggregate employment service of at least six (6) months for the last twelve (12) months shall be entitled to a special leave benefit of two (2) months with full pay based on her gross monthly compensation following surgery caused by gynecological disorders. (Sec 18, RA No. 9170 [Magna Carta for Women])

Note, however, that under RA No. 11210, a female worker who is a member of the SSS is entitled to the following leave incentives:

1. 105 days with full pay
2. If qualified as a "solo parent", with an additional 15 days
3. At the option of the female worker, she may avail of an additional 30 days, without pay
4. In case of miscarriage or emergency termination of pregnancy - 60 days leave with pay.

WAGES AND 13TH MONTH PAY

"Wage" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee. "Fair and reasonable value" shall not include any profit to the employer, or to any person affiliated with the employer.

FAIR DAY'S WAGE FOR A FAIR DAY'S LABOR: The concept simply means that if there is no work performed by the employee, there can be no wage or pay unless the laborer was able, willing, and ready to work but was prevented by management or was illegally locked out, suspended, or dismissed.

FACILITIES: are items of expense necessary for the laborer's and his family's existence and subsistence. It is part of the wage and is deductible from it.

SUPPLEMENTS: constitute extra remuneration or special privileges or benefits given to or received by the laborers over and above their ordinary earnings wages. It is independent of the wage and is not deductible from it.

NON-DIMINUTION OF BENEFITS: The rule provides that benefits being given to employees cannot be taken back or reduced unilaterally by the employer because the benefit has become part of the employment contract, written or unwritten.

The rule is applicable if it is shown that the grant of the benefit is based on an express policy, or has ripened into practice over a long period of time, and the practice is consistent and deliberate, and it is not due to an error in the construction/application of a doubtful or difficult question of law.

But even in cases of error, it should be shown that the correction is being done soon after the discovery of the error.

BONUS: A bonus is a supplement or employment benefit given under certain conditions, such as success of the business or greater production or output.

As a rule, it is an amount granted voluntarily to an employee for his industry and loyalty which contributed to the success and realization of profits of the employer's business.

From a legal point of view, it is not a demandable and enforceable obligation unless it was promised to be given without any conditions imposed for its payment in which case it is deemed part of the wage.

13th MONTH PAY: refers to the additional income based on wage required by P.D. 851 which is equivalent to 1/12 of the total basic salary earned by an employee within a calendar year.

Payment: anytime not later than Dec. 24.

Entitlement: All rank-and-file employees regardless of their designation or employment status and irrespective of the method by which their wages are paid, are entitled to this benefit, provided, that they have worked for at least one (1) month during the calendar year.

Form: It may be in the form of Christmas bonus, midyear bonus, profit sharing payments; and other cash bonuses amounting to not less than 1/12 of the employees' basic salary.

Not valid substitutes: Free rice, electricity cash, stock dividends, Cost Of Living Allowances.