

Labor Code - Atty. Duka (Pt. 2)

☀ Tags	Done
📅 Date	@October 24, 2023

Workers Not Covered by the Labor Code (Art. 6)

- Government employees (Art. 291)
 - Government employees must be covered by the Civil Service Law
 - If Government-owned and controlled corporation (GOCC) without original charter = Labor Code
 - GOCC with original charter = Civil Service Law
- Employees of international organizations
 - they might be immune from suit
 - only those granted immunity under the treaty
- Employees of Local Water Districts
 - they are quasi-GOCCs
 - created by P.D. 198
 - Civil Service covered
- Corporate Officers
 - three types:
 - President
 - Secretary
 - Treasurer of the corporation
 - they are still entitled to the benefits according to the Magna Carta for Women
 - Vice President
 - is not considered as a corporate officer

- they must have a designation in their corporation constitution and by-laws that they are considered corporate officers

License and Authority

- License is a document issued by the Secretary of the Department authorizing a natural or juridical person or entity to operate a private recruitment or manning agency

Recruitment Agency

- refers to a natural or juridical person duly licensed by the Secretary of the Department to engage in recruitment and placement of land-based OFWs

Manning Agency

- for the recruitment of seafarers

Illegal Recruitment

- initiation of recruitment and placement activities without a license
- Economic Sabotage
 - when it is syndicated or in large-scale
 - Syndicated
 - three or more persons conspiring or confederating with one another
 - Large-scale
 - committed against three or more persons recruited individually or as a group
- Simple illegal recruitment = imprisonment 12 years and 1 day to 20 years
- Economic Sabotage = life imprisonment
 - fine of P2M to P5M
 - the maximum penalty shall be imposed if the person illegally recruited is less than 18 years of age or committed by a non-licensee or non-holder of authority

Employment Permit of Non-resident Aliens

- aliens are not supposed to be working in the Philippines
- exception:
 - if there are no Filipinos that are competent, able, and willing at the time of application to perform the services for which the alien is desired
- **Application for Employment Permit**
 - Curriculum vitae
 - employment contract
 - designation by the employer of at least two understudies for every alien worker for transfer of technology

Apprentice vs Learner

- **Apprentice**
 - Apprenticeable occupation
 - 3 to 6 months of training
 - deductibility of training cost
 - compensation of not less than 75% of the minimum wage
 - possibility of no compensation
 - requirement for their graduation or board examination provided by the curriculum
 - no commitment to hire the apprentice
- **Learner**
 - semi-skilled, non-apprenticeable occupation
 - learnership not to exceed 3 months
 - no experienced workers available
 - compensation of not less than 75% of the minimum wage

- commitment to hire the learner
- if dismissed illegally - treated as regular employee (Art. 75)

Field Personnel

- non-agricultural employee who performs their task away from the employee's premises and whose actual hours of work in the field cannot be determined with reasonable certainty

No work, No pay Policy

- fair day's wage for a fair day's labor
- if there is no work performed by the employee, there can be no wage

Overtime Work and Pay

- work rendered after normal 8 hours of work is called overtime work
- overtime work
 - additional compensation for work performed beyond 8 hours
- depends on what kind of pay the overtime work is performed
 - ordinary day = 25% additional on an hourly rate
 - holiday, rest day, or special holiday = 30% additional to hourly rate

Premium Pay

- additional compensation required by law for work performed within 8 hours on non-working days, such as rest days and special days (Art. 91; Art. 93)
- at least 30% premium pay
- Special holiday and rest day = 50% premium pay on the first 8 hours

Art. 88 - Undertime Not Offset by Overtime

- Undertime work on any particular day shall not be offset by overtime on any other day
- agreement by parties cannot be superceded by the expressed provisions of the Labor Code

Art. 91 - Right to weekly rest day

- After six consecutive days of work, an employee is entitled to 24 consecutive hours of rest
- when working on a rest day, there is a compensation of at least 30%
- when working on a holiday that falls on the employee's rest day, there is a compensation of at least 50%

Special Holidays (RA 9492)

- Nationwide Special Holidays
- All Saints Day - Nov. 1
- Last Day of the Year - Dec. 31
- Ninoy Aquino Day - Monday nearest August 21
- Immaculate Concepcion Day - December 8
- **Presidential Proclamation**
 - Chinese New Year
 - EDSA Day - February 25
 - Black Saturday
 - All Souls Day - November 2
 - December 24

Right to Holiday pay

- Special holiday
 - 30% or 50% if falling on a rest day
- Regular holiday

- no work = gets paid 100%
- if worked = gets paid 200%
- two regular holidays falling on the same day
 - at least 200% even if unworked
 - 300% if employee is required to work
- holiday falls on rest day of the employee
 - if unworked = 100%
 - if worked = 230% (+ premium pay for rest day)
- Holidays
 - New Year's Day - January 1
 - Maundy Thursday to Good Friday
 - Araw ng Kagitingan - April 9
 - Labor Day - May 1
 - Independence Day - June 12
 - National Heroes Day - Last Sunday of August
 - Eidul Fitr
 - Eidul Adha
 - Bonifacio Day
 - Christmas Day
 - Rizal Day
 - the day designated by law for holding a general election

Service Charges

- establishments like hotels and restaurants that collect service charges shall completely and equally distribute these charges among the covered employees except managerial employees

- when service charge is discontinued, the share of the employee shall be integrated into the salary - paid by EMPLOYER

Supplements

- extra remuneration or special privileges or benefits given to or received by the laborers
- shall not be deducted from the wage of the workers

Facilities

- items of expense necessary for the laborer's and family's existence and subsistence so that by express provision of the law they form part of the wage and when furnished by the employer are deductible

Company Practice

- no diminution of benefits
- no specific rule specifying number of years that a company practice must be exercised in order to constitute voluntary company practice

Job Contracting

- **Job contractor**
 - has the ff. compliance:
 - carries a distinct and independent business
 - has substantial capital or investment
 - agreement between principal and contractor assures contractual employee's entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, and social welfare benefits
- **Independent Contractor**
 - they offer their services

- **Labor-Only Contractor**

- prohibited
- no law or any policy penalizing them
- does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others
- workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer
- General Rule:
 - the presumption is that a contractor is presumed to be a labor-only contractor, unless they overcome the burden of proving that it has capital (not less than P5M), investment, tools, etc.

Wage Distortion

- situation in which increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wages between and among groups of employees
- RWB issuing a wage order increases the wage of minimum wage earners ONLY not across the board

Visitorial and Enforcement Power

- access to employer's records and premises at any time of the day or night whenever work is being undertaken
- right to copy, to question any employee and investigate anything necessary to determine violations

Recovery of wages, simple money claims, and other benefits

- Jurisdiction of Regional Director
 - claim must arise from employer-employee relationship

- the claimant is no longer employed and not seeking reinstatement
- aggregate amount does not exceed P5,000

Protection for Women

- VAWC law is constitutional
- all businesses shall provide 'sitting breaks' for both male and female workers; women are not obliged to wear high heels

Sexual Harassment

- prohibits all forms of sexual harassment in the workplace, education, or training environment
- workplace
 - committed when sexual favor is made as a condition for employment, promotion, continued employment, and other privileges
- abuse of power or authority
 - not necessary that there was an offer for sex for there to be a sexual harassment case
 - superior's underpinnings which offends the victim or creates a hostile environment would suffice
 - essence or sexual harassment is not the violation of the victim's sexuality, but the abuse of power by the offender
- three-fold liability:
 - criminal
 - civil
 - administrative
- even men can be victims of sexual harassment
- Safe Spaces Act
 - employers have the duty to institute programs or policies that will prevent, deter, or punish the performance of acts of gender-based sexual harassment in the workplace

- if they do not do that, employers are held liable
 - fine = P5,000 to P15,000

Solo Parent Welfare Act (R.A. 11861)

- parental leave of not more than seven working days every year
- granted to any solo parent employee who has rendered at least 1 year of service
- can be continuous or periodic

Maternity Leave Benefits

- granted 105 days with full pay
- may be extended for 30 days, but no pay
- regardless if married or not
- if solo parent = 120 days paid leave
 - extended for 30 days, but without pay
- this is unlimited
- Miscarriage
 - 60 days paid leave
- any female worker entitled to maternity leave benefits may allocate up to 7 days of said benefit to the child's father whether or not the same is married to the female worker
 - written notice to employers of the female caregiver and alternate caregiver
 - if the female worker dies or is permanently incapacitated, maternity leave benefits shall accrue to the father of the child or qualified caregiver
- Penalties
 - 6 to 12 years imprisonment
 - fine of 60l to 120k pesos

Paternity Leave

- 7 days leave for each delivery for the first 4 deliveries
- continues to earn compensation
- if paternity leave is not availed, it is not convertible to cash
- must be cohabiting with his legal wife

Magna Carta of Women

- dismissal for pregnancy out of wedlock is prohibited and is not a form of immorality or disgraceful conduct
- dismissal of pregnant women is prohibited
- women having surgery for gynecological disorders
 - having rendered service of at least 6 months for the past year
 - entitled to 2 months leave with full pay
 - both private and public sector
- there must be equal rights - elimination of discrimination