

A HANDBOOK FOR EXPATRIATES



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BY DOLE-PEZA
TECHNICAL WORKING
GROUP REGION 7



A HANDBOOK FOR EXPATRIATES

**DOLE-PEZA TECHNICAL
WORKING GROUP REGION 7**

CEBU CITY 2010

THIS HANDBOOK IS NOT FOR SALE

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TABLE OF CONTENTS

PRELIMINARY PAGES

Message of Secretary Roque	5
Message of Director General De Lima	6
Message of Director Cayanong	7
Message of Honorable Bantug	8
Message of Adm Pinagayao	9

MAIN CONTENTS

FREQUENTLY ASKED QUESTIONS ON AEP	10
MINIMUM WAGE	15
HOLIDAY PAY	20
PREMIUM PAY	25
SPECIAL DAYS	27
OVERTIME PAY	28
NIGHT-SHIFT DIFFERENTIAL	29
SERVICE CHARGE	30
SERVICE INCENTIVE LEAVE	31
MATERNITY LEAVE	33
PATERNITY LEAVE	34
PARENTAL LEAVE FOR SOLO PARENTS	36
LEAVE FOR VICTIMS OF VIOLENCE AGAINST WOMEN AND CHILDREN	38
THIRTEENTH-MONTH PAY	40
SEPARATION PAY	44
RETIREMENT PAY	46

MAIN CONTENTS

EMPLOYEES COMPENSATION PROGRAM	48
PHILHEALTH BENEFITS	51
SOCIAL SECURITY BENEFITS	53
RIGHT TO SECURITY OF TENURE	56
THE JOB AS PROPERTY RIGHT	66
LOSS OF CONFIDENCE	67
DUE PROCESS	67
 APPENDIX	
AEP FLOWCHART	14
NCMB FUNCTIONS	68
POEA INPUTS	70
D.O. 68-04 (KASH PROGRAM)	74
REGIONAL PESO DIRECTORY	81
DOLE-PEZA / RCC – 7 DIRECTORY	94

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MESSAGE

The publication of the "Handbook for Expatriates" underscores the vigorous efforts of the Department of Labor and Employment (DOLE) Regional Coordinating Council and all its partners to guide expatriates on labor and employment laws and standards prevailing in the Philippines. This undertaking certainly would ensure smooth and favorable stay and employment of expatriates in the country. This handbook is a readily available reference guide that employed expatriates can always refer to in connection with their rights and responsibilities vis-à-vis Philippine labor laws and standards.

Expatriates are usually employed as CEOs and managers in the country's economic zones and other industrial areas. With this handbook, they will definitely become more well-informed on the rights and benefits due the Filipino workers as provided for by law. This prevents workers dissatisfaction and plant-level upheaval, thereby, ensuring harmony between labor and management and plant level efficiency and productivity.

Indeed, this handbook concretizes the DOLEs endeavor to promote industrial peace and workers' productivity in foreign-owned and foreign operated firms in the country. I, thus, commend the men and women of the DOLE Regional Coordinating Council in Region 7 for coming out with the handbook. The handbook will be helpful not only in your region but also in other regions where there are employed expatriates.

My congratulations to DOLE 7—RCC and PEZA Technical Working Group for this endeavor.

Mabuhay Kayo!


MARIANITO D. ROQUE
Secretary



MESSAGE
(A Handbook for Expatriates)

An equitable and productive industrial workplace is the ideal scenario in any business operation, where employers and employees understand and respect each others' rights and responsibilities. When workplace policies and ethics are clear and effectively implemented, there is mutual harmony in achieving the targets and goals. This in turn brings about Best Practices and a business that brims with success.

Such an ideal scenario can only be possible when information and communication flow freely among the stakeholders, especially for our foreign investors and employers who need to be familiarized with Philippine Laws.

This is where an informative material such as the Handbook for Expatriates comes in handy and helpful, like a welcoming handshake that assures a good start. Even as industrial relations may constantly bring about challenges, knowing the basic rights and remedies is a big first step towards overcoming, if not precluding, the challenges.

Congratulations to the DOLE-PEZA Technical Working Group and the DOLE Regional Coordinating Council for their efforts to enlighten our foreign stakeholders at the economic zones on a most important aspect of doing business in the Philippines.


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Republic of the Philippines
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MESSAGE

The Handbook for Expatriates is a project that showcases the humble initiatives of the DOLE-PEZA Technical Working Group and the members of DOLE-Regional Coordinating Council. I gratefully acknowledge and give due credit to the group for its strong and deep partnership in gathering relevant inputs to provide assistance to foreign nationals wanting to do business or get employed in the Philippines.

It is interesting to note that this the first of its kind being introduced and envisioned to sustain a hospitable investment climate thereby creating more job opportunities here in the region. The Handbook is a testament citing answers to frequently asked questions on pressing labor and employment concerns. I am positive that this spin off will help keep investments coming and staying, as we deliver the same commitment to employment generation and workers' protection and welfare.

Congratulations on the successful launching of this Handbook.


ENGR. ELIAS A. CAYANONG, CESO IV
Regional Director



MESSAGE

The HANDBOOK FOR EXPATRIATES is indeed a very commendable and innovative project. It will provide its intended users – the expatriates – concise but relevant and reliable information about the concepts, ideas, systems and processes on labor laws, procedures and employment standards in the Philippines. As it is innovative, it will be a step in the right direction at making and keeping working expatriates well-informed. It will serve as a handy reference/guide to any question, information, policy and perhaps problems that may arise from time to time involving the expatriates.

This handbook will become an indispensable tool or instrument for every expatriate who wants to get better and succeed in whatever mission or endeavor he or she wants to do in our country. It will help transcend to a higher level the present labor-management relationship prevailing in the region especially in foreign-operated establishments.

Finally, for the dedicated and selfless contributions to the cause of industrial peace, we are truly grateful to the men and women of the DOLE-PEZA Technical Working Group of Region VII and their partners for a job well done in coming out with this distinctive and practical handbook.

CONGRATULATIONS! Your efforts will certainly go a long, long way!

VIOLETA ORTIZ-BANTUG
Presiding Commissioner
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PEZA

MACTAN ECONOMIC
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MESSAGE

Congratulations to the DOLE-PEZA Technical Working Group for Central Visayas for the launching of the Handbook for Expatriates.

Indeed, a very laudable endeavor as this is in consonance with globalization. As we open our doors to foreign investors, we continuously reach out and improve our services to create a more harmonious business environment.

With the stiff competition with our Asean neighbors where infrastructure may be more superior, our greatest edge is actually our people. The quality of our workforce is unquestionable, known world-wide for the sincerity, dedication and good workmanship.

This Handbook will establish a better understanding of labor concerns further bridging the gap between foreign expatriates and Filipino workers. Enhancing this relationship is one big boost to our efforts of attracting foreign investments as this equates to improved productivity, therefore, satisfied investors. Living up to our hospitable trait, this Handbook will make our foreign investors feel "at home" in conducting their business by making available all important labor concerns. This project proves our determination to be their partner in achieving success.

May this pioneering project be emulated by other provinces and regions!

SANSALUNA A. PINAGAYAO
Zone Administrator

FREQUENTLY ASKED QUESTIONS ON ALIEN EMPLOYMENT PERMIT (AEP)

What is an Alien Employment Permit (AEP)?

An Alien Employment Permit is a document issued by the Secretary of Labor and Employment through the DOLE Regional Director, who has jurisdiction over the intended place of work of the foreign national, authorizing the foreign national to work in the Philippines.

Who are required to secure an Alien Employment Permit (AEP)?

All foreign nationals who intend to engage in gainful employment in the Philippines shall apply for Alien Employment Permit (AEP).

Who are exempted to secure an Alien Employment Permit (AEP)?

- All members of the diplomatic service and foreign officials accredited by and with reciprocity arrangement with the Philippine government;
- Officials and staff of international organizations of which the Philippine government is a member, and their legitimate spouses desiring to work in the Philippines;
- Foreign nationals elected as members of the Governing Board who do not occupy any other position, but have only voting rights in the corporation;
- All foreign national granted exemption by law;
- Owners and representatives of foreign principals whose companies are accredited by the Philippine Overseas Employment Administration (POEA) who come to the Philippines for a limited period and solely for the purpose of interviewing Filipino applicants for employment abroad.
- Foreign nationals who come to the Philippines to teach, present and/or conduct research studies in universities and colleges as visiting, exchange or adjunct professors under formal agreements between the universities or colleges in the Philippines

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PESO INABANGA Inabanga, Bohol ★ Jose Jono C. Jumamoy -N ☎ Gilbert L. Cenabre ☎ fax 512-9088 / 512-9890 / MSWD # 512-9204 ✉ None	PESO JAGNA Jagna, Bohol ★ Hon. Exuperio C. Lloren ☎ Nestor G.Arban ☎ 531-0088 / Cell # 09052680859 ✉ None
PESO LILA Lila, Bohol ★ Hon. Telesforo L. Balagosa ☎ Emma S. Cahiles ☎ fax 536-5012 / 536-5188 ✉ None	PESO LOAY Loay, Bohol ★ Hon. Rosemarie L.Imboy –N ☎ Linda P. Yana ☎ fax 538-9081 / 538-9082 / Cell # 09203547387 ✉ None
PESO LOBOC Loboc, Bohol ★ Hon. Leon A. Calipusan ☎ Dioscora Sumampong ☎ fax 537-9488 / 537-9090 / Cell # 09069705606 ✉ None	PESO LOON Loon, Bohol ★ Hon. Lloyd Peter M. Lopez –N ☎ Sylvio L. Caresosa ☎ fax 505-9131 / 505-9130 loc 122 ✉ lgu-loon@bohol.online.com.ph

and foreign universities or colleges; or between the Philippine government and foreign government; provided that the exemption is on reciprocal basis; and

- Resident foreign nationals (with permanent Alien Certificate of Registration (ACR) and Immigrant Certificate of Residence (ICR)).

Where shall an application for AEP be filed?

Applications shall be filed with the Regional Office of the Department of Labor and Employment having jurisdiction over the intended place of work. In the case of foreign nationals to be assigned in related companies, they may file their application with any of the Regional Offices having jurisdiction over the applicant's intended place of work.

What are the requirements in the filing of application for AEP?

A. Documentary Requirements:

- Duly accomplished Application Form (notarized);
- Photocopy of Passport, with visa or Certificate of Recognition for refugees;
- Contract of Employment/Appointment or Board Secretary's Certificate of Election;
- Photocopy of Mayor's Permit to operate business/PEZA Registration for Economic Zone Locators;
- Photographs 2 (1x1) and 2 (2x2);
- Current AEP (if for renewal); and,
- Endorsement from PEZA for economic zone locator

For photocopied documents, original must be presented for authentication/ validation. Only application with complete documentary requirements shall be received and acted upon by the Regional Director.

B. Fees

Upon filing of application, the applicant shall pay a fee of Eight Thousand Pesos (P8,000.00) for each application for AEP with a validity of one (1) year. In case a period of employment is more

than one year, an additional Three Thousand Pesos (P3,000.00) shall be charged for every additional year of validity or a fraction thereof. In case of renewal, the applicant shall pay a fee of Three Thousand Pesos (P3,000.00) for each year of validity or a fraction thereof.

C. Publication

Publication is required for all AEP application.

When shall the application for renewal of AEP be filed?

An application for renewal of AEP shall be filed on or before its expiration. Application of foreign nationals with expired AEPs shall be considered new application.

In case of corporate officers, whose election or appointment takes place on or before expiration of AEP, the application shall be filed not later than ten (10) working days after election or appointment and before expiration of the AEP.

In case of election or appointment that will take place after the expiration of the AEP, the application for renewal shall be filed on or before the expiration of the AEP, and shall be renewed for one (1) year. In case the foreign national is not re-elected or re-appointed, the AEP shall be automatically revoked.

What is the period of validity of an AEP?

The AEP shall be valid for a period of one (1) year, unless the employment contract, consultancy services, or other modes of employment, provide otherwise. Said AEP is valid for the position/s and company for which it was issued.

What are the bases of suspension of AEP?






The AEP maybe suspended by the issuing Regional Office, based on any of the following grounds, and after due process:

- a. The continued stay of the foreign national may result in damage to the interest of the industry or the country;

REGIONAL FEDERATION OF PESO MANAGER Region VII—Cebu Province

PESO BACLAYON Bacayon, Bohol ★ Hon. Alvin J. Uy -N ☎ Nicetas B. Gales 540-9449 / 540-9280 fax / Cell # 09169045417 ✉ nice_gales@yahoo.com	PESO BALILIHAN Balilihan, Bohol ★ Hon. Victoria M. Chatto -N ☎ Christopher P. Racho 416-1164 / Cell # 09104416202 ✉ None
PESO BATUAN Batuan, Bohol ★ Hon. Gregoria D. Pepito - N ☎ Edgar P. Tecson Fax 533-9000 / 533-9101 / Cell # 09088858102 ✉ None	PESO BIEN-UNIDO Bien-Unido, Bohol ★ Hon. Niño Rey S. Boniel - N ☎ Lumila E. del Rosario 517-7536 / 517 2288 / 517-2391 / 517-7505(RHU) / Cell # 09067740107 ✉ None
PESO BILAR Bilar, Bohol ★ Hon. Fanuel O. Cadelina ☎ Reynaldo J. Tabel 535-9077 / 535-9076 / 535-9144 fax / Cell # 09174081458 ✉ None	PESO/BOHOL EMP. & PLACE-MENT OFFICE Provincial Capitol, Tagbilaran City, Bohol ★ Hon. Erico B. Aumentado ☎ Romulo L. Tagaan 501-9847 / 411-3544 fax atv256@yahoo.com / ig-cabaron@yahoo.com
PESO BUENAVISTA Buenavista, Bohol ★ Hon. Elsa G. Tirol ☎ Maria T. Duco Fax 513-9175 / 513-9091 ✉ None	PESO CALAPE Calape, Bohol ★ Hon. Sulpicio N. Yu, Jr. -N ☎ Maria Uno A. Mata 507-9180 / 507-9282 / fax 507-9237 / Cell # 09173044568 ✉ Ma_uns5374@yahoo.com
PESO CANDIJAY Candijay, Bohol ★ Hon. Sergio G. Amora III ☎ Janet G. Amora 526-0121 loc 104 / Cell # 09272054697 ✉ None	PESO CARMEN Carmen, Bohol ★ Hon. Manuel R. Molina - N ☎ Felipe L. Ramo 525-5607 / 525-9000 / Cell # 09173064817 ✉ None
PESO CATIG-BIAN Catig-Bian, Bohol ★ Capt. Roberto L. Salinas ☎ Edgar J. Angcla 416-2327 / 507-106 loc 102 ✉ None	PESO CLARIN Clarin, Bohol ★ Hon. Hermogenes L. Dizon ☎ Vicente P. Mascariñas 509-9177 / 509-9178 fax ✉ None
PESO CORELLA Corella, Bohol ★ Hon. Vito P. Rapal ☎ Ma. Asuncion L. Pandan fax 411-3865 / 411-2979 / Cell # 09294103066 ✉ tati_amer@yahoo.com	PESO CORTES Cotes, Bohol ★ Hon. Apolinaria H. Balistoy ☎ Ma. Paz Baguero fax 503-9201 / 503-9202 / Cell # 09173042830 ✉ None

**REGIONAL FEDERATION OF
PESO MANAGER
Region VII—Cebu Province**

 Devine Mercy Computer College 3/F Tanchan Bldg. Colon St., Cebu City ★ Engr. None E. Bono - President ☎ Archie G. Cariquitan / Myra M. Sumalinog 412-1075 / 412-1413 / Fax—255-1034 / Cell # 09234965802 ✉ divina_bono@yahoo.com	 SIT 211 N. Bacalso Ave., Cebu City ★ Engr. Doroteo Salazar - President ☎ Mark Jason London 261-0235 ✉ None
 UCCP 85 Osmeña Blvd., Cebu City ★ Bishop Ebenezer C. Camino - West Visayas Jurisdiction ☎ Rev. Ruth Batausa - Bohol Based 253-5181 / 2541410(F) / 253-5159 ✉ None	 Call Center Academy 79 VEG Bldg., Gen. Maxilom Ave., Cebu City ★ Kristelle Lynne Ong ☎ 412-0111 / Cell # 09173228910 ✉ cca.ceu@yahoo.com
 Cebu Educational Dev't Foundation for Information Technology Asiatown IT Park, Apas, Lahug Cebu City ★ Engr. Jose Mari T. Bigornia ☎ Bonifacio D. Belen 412-7694 to 95 / Cell # 09173248286 ✉ bdbelen@gmail.com	

**REGIONAL FEDERATION OF
PESO MANAGER
Region VII—Bohol Province**

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 PESO ANDA Anda, Bohol ★ Hon. Paulino T. Amper ☎ Lailani O. Simacio fax 528-2009 / Cell # 09198398219 / 09179271289 ✉ None	 PESO ANTEQUERA Antequera, Bohol ★ Hon. Cecelia B. Rebosura - N ☎ Jose G. Barrera fax 506-5007 / Cell # 091302262113 ✉ None

- b. The employment of the foreign national is suspended by the employer or by order of the Court.

What are the grounds for cancellation/revocation of AEP?

The Regional Director may cancel or revoke the AEP based on any of the following grounds, and after due process:

- Non-compliance with any of the requirements or conditions for which the AEP was issued;
- Misrepresentation of facts in the application;
- Submission of falsified or tampered documents;
- Meritorious objection or information against the employment of the foreign national as determined by the Regional Director;
- Foreign national has a derogatory record; and
- Employer terminated the employment of the foreign national.

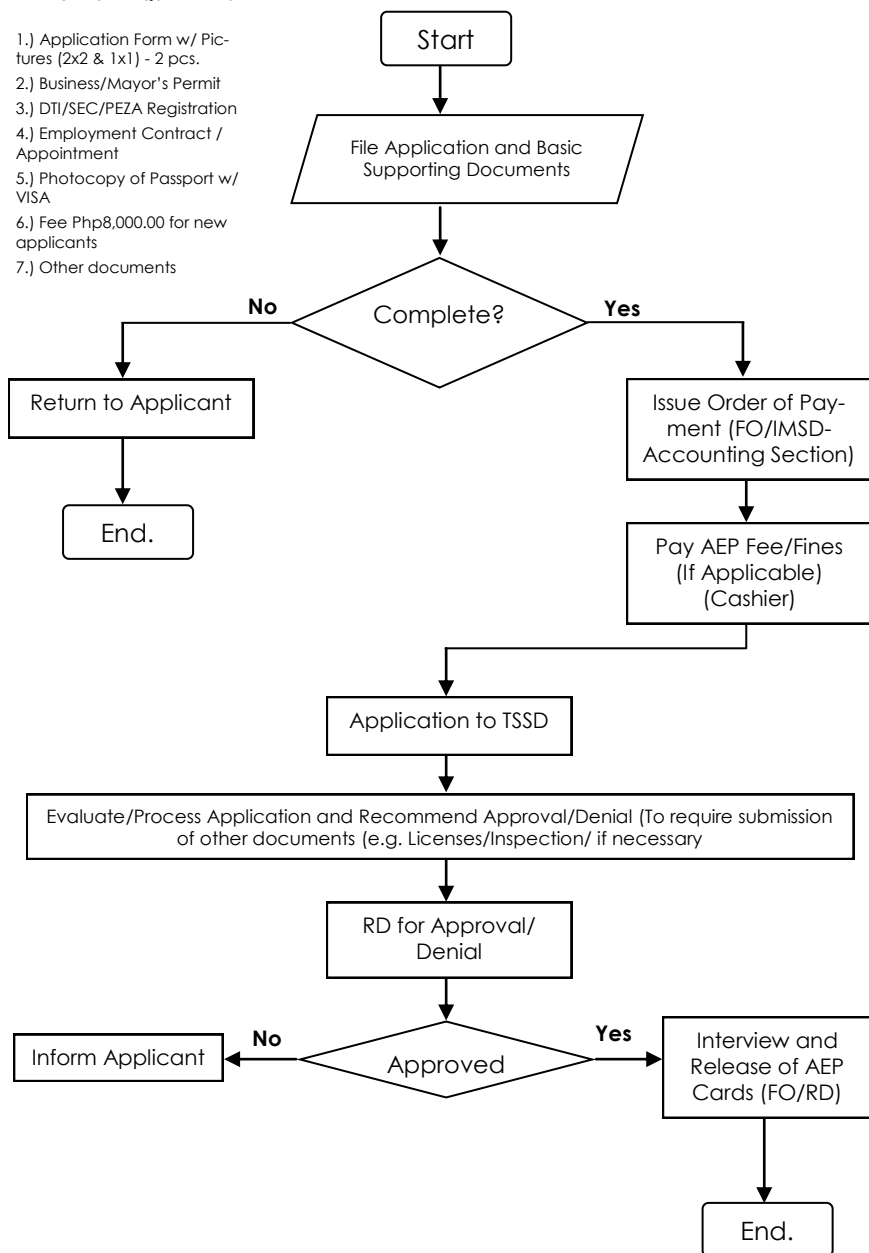
A foreign national whose application for AEP has been denied or whose AEP has been cancelled or revoked shall not be allowed to reapply in any of the DOLE Regional Offices, unless it has been corrected.

What is the penalty for working without AEP?

The Regional Director shall have the power to order and impose a fine of Ten Thousand Pesos (P10,000.00) for every year or a fraction thereof on foreign nationals found working without an AEP or with an expired AEP.

APPLICATION REQUIREMENTS

- 1.) Application Form w/ Pictures (2x2 & 1x1) - 2 pcs.
- 2.) Business/Mayor's Permit
- 3.) DTI/SEC/PEZA Registration
- 4.) Employment Contract / Appointment
- 5.) Photocopy of Passport w/ VISA
- 6.) Fee Php8,000.00 for new applicants
- 7.) Other documents











Process Flowchart for AEP Application (Alien Employment Permit)

REGIONAL FEDERATION OF PESO MANAGER Region VII—Cebu Province

CITE San Jose, Cebu City ★ Engr. Ruben Laraya ☎ Bonifacio N. Mercado, Jr. ☎ 032-345-6484 / 346-1611 / 346-2650(F) / Cell # 09213545912 ✉ mercado.bn@cite.edu.ph	CTU - Cebu City Campus M.J. Cuenco Ave., Cebu City ★ Dr. Bonifacio Villanueva - SUC President IV ☎ Nona Fe Y. Estolas ☎ 255-8553 / 412-1474 / Fax -256-1537 ✉ nj_estolas@yahoo.com
CTU - Danao City Campus Sabang, Danao City ★ Dr. Florencio L. Ramos - College Supt. ☎ Rosemarie E. Ngitngit ☎ 200-3614 / Cell # 09275391003 ✉ rongitngit@yahoo.com	CTU -Moalboal Campus Moalboal, Cebu ★ Dr. Reynaldo Gabales ☎ Dr. Reynaldo Gabales ☎ 236-2657 ✉ None
Southwestern University Urgello St., Cebu City ★ Dr. Ildegario D. Gonzales - President ☎ Prof. Pierre I. Infante ☎ 425-5555 local 201 / 415-9687 ✉ pierre.infante_2000@gmail.com	University of San Carlos P.del Rosario St., Cebu City ★ Rev. Fr.Dionisio Miranda - SVD President ☎ Fr. Patricio De Los Reyes, Jr. ☎ 253-1000-loc. 195 c/o scholarship office / Cell # 09276044819 ✉ patdlreyes@yahoo.com
University of San Jose Magallanes St., Cebu City ★ Rev. Fr. Enrico Peter Silab - OAR President ☎ Elsa Angus ☎ 253-7900 loc. 238 / 416-9962 (F) ✉ usjr_placement@usjr.edu.ph	University of the Visayas Colon St., Cebu City ★ Dr. Jose R. Gullas - Exec. VP & VP Finance ☎ Dee J P. Villanueva ☎ 255-5261 / 255-2434 / Cell # 09278413633 ✉ venice_j04@yahoo.com
University of Cebu Sanciango St., Cebu City ★ Dr. Erlinda Barcelo - Vice Chancellor for Academic Affair ☎ Joseph Emerson Juhl S. Subong ☎ 255-7777 loc.152 / 253-0729 (F) ✉ None	University of Cebu L/M AC Cortes Ave., Mandaue City ★ Ana Lisa Son - Campus Academic Director ☎ Jana Almerino ☎ 354-6666- loc. 209 / T/F 34674262 ✉ aljan_9js@yahoo.com / ratchilisatec-son@yahoo.com
College of Technological Sciences- Cebu N. Bacalso Ave., Cebu City ★ Ms. Yvette Candice G. Gotianuy - President ☎ Jesus Roberto T. Bigornia ☎ 256-1302 to 1304 / 2542434 (fax) ✉ jrgodofredo@cts.edu.ph / jedgofredo@yahoo.com	USPF Lahug, Cebu City ★ Dr. Alicia P. Cabatingan President ☎ Concepcion T. Payao ☎ 414-8773 loc. 124 / fax- 414-8772 ✉ honeybunch120873@yahoo.com
Cebu Doctors University NRA, Cebu City ★ Dr. Enrico B. Gruet - VP for Academic Affairs ☎ Mr. Jerome L. Coligado - Alumni Relations Office ☎ 238-8746-9 / 238-8333 loc. 8211 / Cell # 09325472548 ✉ gabalesamelia@yahoo.com	Employment Resource Center FGU Bldg., Ayala Center ★ Anthony John Balledos - Reg'l Employment Manager ☎ Anthony John Balledos - Reg'l Employment Manager ☎ 234-4890 / Cell # 09285031743 ✉ balledosaj@ldschurch.org

**REGIONAL FEDERATION OF
PESO MANAGER
Region VII—Cebu Province**

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 PESO STA. FE Sta. Fe, Cebu ★ Hon. Jennifer I. Ilustrisimo –N ☎ Ernesto Saagundo ☎ 438-9220 / 438-9221 / 438-9089 ✉ None	 PESO SIBONGA Sibonga, Cebu ★ Hon. Lionel E. Bacaltos –N ☎ Mildred Lauron ☎ 486-9415 / 486-9416 / F-486-9938 / 486-9422 / 486-9331 / 487-8156 / Cell # 09159885321 ✉ None
 PESO SOGOD Sogod, Cebu ★ Hon. Thaddeus D. Durano ☎ Joan Nuguid ☎ 032-431-9195 / 431-9069 L-106 Cell # 09057972756 ✉ None	 PESO TABOGON Tabogon, Cebu ★ Hon. Eusebio A. Dungog, Sr. ☎ Era. P. Aroa ☎ 032-433-9085 (loc 6) Cell # 09205187545 ✉ erapog@yahoo.com
 PESO TABUELAN Tabuelan, Cebu ★ Hon. Castano D. Gerona - N ☎ Pacita S. Castro ☎ 032-461-9027 / 461-9030 / F-461-9206 ✉ None	 PESO TALISAY Talisay, Cebu ★ Hon. Socrates C. Fernandez ☎ 272-3852 / (HR) 273-8500 / 273-1425 / 272-7729 (F) ✉ montebonmedy@yahoo.com.ph
 PESO TOLEDO CITY Toledo, City ★ Hon. Arlene Zambo ☎ Trinidad Bubuli / Arlene P. Blanco ☎ (Mayor)322-5625 / 467-9422 / (Mr. Abad) 322- 5209 / Acctg. –322-6360 / Cell # 09107968455 ✉ None	 PESO TUBURAN Tuburan, Cebu ★ Hon. Constancio V. Suez III –N ☎ Glenn G. Regado ☎ 032-463-9218 ✉ None
 PESO TUDELA Tudela, City ★ Hon. Rogelio C. Barquefo, Sr. –N ☎ Yolita Gallo Belamino ☎ Cell # 09158486614 ✉ None	 ASIAN COL TECH Colon St., Cebu City ★ Engr. Edgardo Abellanos ☎ None ☎ 255-0759 ✉ None

MINIMUM WAGE

Republic Act No. 6727 (also known as the Wage Rationalization Act) mandates the fixing of the statutory minimum wages applicable to different industrial sectors, namely, non-agricultural, agricultural plantation, and non-plantation, cottage/handicraft, and retail/service, depending on the number of workers or capitalization or annual gross sales in some sectors.

The Rules Implementing RA 6727 defines the industrial sectors as follows:

- Agriculture refers to farming in all its branches and, among others, includes the cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural or horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activities performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products.
- Plantation Agricultural Enterprise is one engaged in agriculture with an area of more than 24 hectares in a locality or which employs at least 20 workers. Any other agricultural enterprise shall be considered as –Non-plantation Agricultural Enterprise.
- Retail Establishment is one principally engaged in the sale of goods to end-users for personal or household use.
- Service Establishment is one principally engaged in the sale of service to individuals for their own or household use and is generally recognized as such.
- Cottage/Handicraft Establishment is one engaged in an economic endeavor in which the products are primarily done in the home or such other places for profit which requires manual dexterity and craftsmanship and whose capitalization does not exceed P500,000, regardless of previous registration with the defunct NACIDA.

The said law rationalized wage determination by establishing the mechanism and proper standards through the creation of Regional Tripartite Wages and Productivity Boards authorized to determine the wage rates in the different regions based on established criteria.

Existing Regional Wage Orders prescribe the daily minimum basic wage rates per industry and per locality within the region, in some instances, depending on the number of workers and the capitalization of enterprises.

The Wage Orders likewise provide the basis and procedure for exemption from compliance. Some Wage Orders grant allowances instead of wage increases.

Coverage

The wage increases prescribed under Wage Orders apply to all private sector workers and employees regardless of their position, designation, or status, and irrespective of the method by which their wages are paid, except the following:

1. House helpers, including family drivers and workers in the personal service of another whose conditions of work are prescribed in Republic Act 7655.
2. Workers and employees (a) in retail/service establishments regularly employing not more than ten (10), (b) of distressed establishments, and (c) of other firms or employers as determined by the Board, when specifically exempted from compliance for a period fixed by the Board.
3. Workers of registered Barangay Micro Business Enterprises (BMBEs) with Certificates of Authority issued by the Office of the Municipal or City Treasurer.

Basis

The basis of the minimum wage rates prescribed by law shall be the normal working hours of eight (8) hours a day.

REGIONAL FEDERATION OF PESO MANAGER Region VII—Cebu Province

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PESO MANDAUE CITY Mandaue City, Cebu ★ Hon. Jonas C. Cortes -N ☎ Musoline Suliva ☎ 345-4952/(F) 3452799 F-3452799 ✉ None	PESO MEDELLIN Medellin, Cebu ★ Hon. Ricardo R. Ramirez -N ☎ Caroline M. Embalzado ☎ 436-9555 / (F) 4362031 ✉ None
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PESO NAGA Naga, Cebu ★ Hon. Valdemar Chiong ☎ Arlene P. Alinganga ☎ 272-6655 / 272-6656 / 2726651(L-120) / F -4898 Cell # 09287229578 ✉ peso_nagacebu@yahoo.com	PESO OSLOB Oslob, Cebu ★ Hon. Ronaldo L. Guanin ☎ Proceso R. Bomediano ☎ 032-481-9142 / 481-9054 Local 101 / Cell # 09266071787 ✉ None
PESO PRADO Prado, Cebu City ★ Hon. Danilo Lim ☎ Meldrid Abella ☎ 032-2723419 ✉ None	PESO PILAR Pilar, Cebu ★ Hon. Jesus A. Fernandez, Jr. ☎ Diomedes Roche ☎ 032-4004023 ✉ None
PESO PINAMUNGAJAN Pinamungajan, Cebu ★ Hon. Geraldine P. Yapha -N ☎ Marissa O. Soberano ☎ 032-468-5594 / F-468-5526 ✉ esay_soberano@yahoo.com	PESO PORO Poro, Cebu ★ Hon. Edgar G. Rama ☎ Jocelyn Tawil ☎ 032-497-5654 / Cell # 09086050905 ✉ joylaja@yahoo.com
PESO RONDA Ronda, Cebu ★ Hon. Esteban R. Sia -N ☎ Thelma Landiza ☎ 472-8002 (local 103) / 472-9061 (local 119) ✉ emie_mg@yahoo.com	PESO SAMBOAN Samboan, Cebu ★ Hon. Raymond Joseph D. Calderon -N ☎ Fe Nellas ☎ 032-4794073 ✉ None

**REGIONAL FEDERATION OF
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Region VII—Cebu Province**

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PESO CEBU CITY Cebu City ★ Hon. Tomas R. Osmena ☎ Fidel T. Magno and Dept. Head II ☎ 254-4348 (F)/ 253-9212 ☎ None	CEBU PROVINCE Cebu Province Capitol, Cebu City ★ Hon. Gwendolyn Garcia ☎ Mathea M. Baguia and LMI Consultant ☎ 253-5710 / 255-6235/ Cell # 09277958961 ☎ pesocap@cebu.gov.ph/ matheab@yahoo.com
PESO COPOSTELA Compostela, Cebu ★ Hon. Ritchie R. Wagas -N ☎ Luis T. Reyes, Jr. ☎ 425-8565/ Cell # 09235987913 ☎ None	PESO CONSOLACION Consolacion, Cebu ★ Hon. Avelino Gungob, Sr. ☎ Romulo Mindajao ☎ 344-1236 / 346-6448/ (F) 344-1246 / 423-9920 / Cell# 09064648306 ☎ consolacioncebuphils.com.ph
PESO CORDOVA Cordova, Cebu ★ Hon. Adelino B. Sitoy - N ☎ Julita Baguio ☎ 032-4964589 / 4968013/ 238-5096 / F-236 -3812/ F=496-8309 ☎ None	PESO DAANBANTAYAN Daanbantayan, Cebu ★ Hon. Jose Sun J. Shimura ☎ Miraflor Comendador ☎ 412-8786 / 437-8670/ Cell # 09194454531 ☎ mhira_5h@yahoo.com
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PESO DUMANJUG Dumanjug, Cebu ★ Hon. Cesar Michael A. Baricuatro ☎ Arnel Famor ☎ 471-9400 / 471-9247/ F-471-9248 ☎ None	PESO GINATILAN Ginatilan, Cebu ★ Hon. Dean Michael P. Singco ☎ Marlyn Duterte ☎ F-478-9099 / 478-9100/ 478-9009 (local 104) ☎ None
PESO LILOAN Liloan, Cebu ★ Hon. Vincent Franco Domingo ☎ Adela C. Reuyan ☎ 564-3131 ☎ adelareuyan@yahoo.com	PESO LAPULAPU CITY Lapulapu, City ★ Hon. Arturo O. Radaza ☎ Grace Jamio ☎ 341-3347 (T/F) ☎ adelareuyan@yahoo.com

Monthly-Paid Employees and Daily-Paid Employees

Monthly-paid employees are those who are paid every day of the month, including unworked rest days, special days, and regular holidays.

Daily-paid employees are those who are paid on the days they actually worked and on unworked regular holidays.

Minimum Wage of Workers Paid by Results

All workers paid by results, including home workers and those who are paid on piece rate, *takay*, *pakyaw*, or task basis, shall receive not less than the applicable statutory minimum wage rates prescribed under the Regional Wage Orders for normal working hours which shall not exceed eight (8) hours a day, or a proportion thereof.

The wage rates of workers who are paid by results shall continue to be established in accordance with Article 101 of the Labor Code of the Philippines, as amended, and its implementing regulations. This will be done through:

1. Time and motion studies.
2. Consultation with representatives of employers' and workers' organizations in a tripartite conference called by the DOLE Secretary.

Request for the conduct of time and motion studies to determine whether the non-time employees in an enterprise are being paid fair and reasonable wage rates may be filed with proper Regional Office.

Where the output rates established by the employer do not conform with the standards set under the foregoing methods for establishing output rates, the employee shall be entitled to the difference between the amount he or she is entitled to receive and the amount paid by the employer.

Minimum Wage of Apprentices, Learners and Disabled Workers

Wages of apprentices and learners shall in no case be less than seventy-five percent (75%) of the applicable statutory wage rates.

Apprentices and learners are those who are covered by apprenticeship/learner ship agreements duly approved by the Technical Education and Skills Development Authority (TESDA).

A qualified disabled employee shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits or allowances as a qualified able bodied person (Sec. 5 of RA 7277 or the Magna Carta for Disabled Persons).

Minimum Wage of House helpers (RA 7655)

The minimum compensation of eight hundred pesos P800.00 a month is required for house helpers in the cities of Caloocan, Las Piñas, Makati, Malabon, Mandaluyong, Manila, Marikina, Muntinlupa, Navotas, Parañaque, Pasay, Pasig, Quezon, Taguig, and Valenzuela, and in the municipalities of Pateros and San Juan.

Meanwhile, a compensation of six hundred fifty pesos P650.00 a month is required for house helpers in other chartered cities-cities other than Manila, Pasay, Quezon, and Caloocan—highly urbanized cities, and first-class municipalities.

On the other hand, a compensation of five hundred fifty pesos P550.00 a month is required for house helpers in other municipalities.

House helpers who are receiving at least one thousand pesos (P1,000.00) a month shall be covered by the Social Security System.

REGIONAL FEDERATION OF PESO MANAGER Region VII—Cebu Province

 PESO ALCANTARA Alcantara, Cebu ★ Hon. Benjamin M. Lobitaña ☎ Teresita Dinolan ☎ 032-4735587/473-5664 ✉ None	 PESO ALCOY Alcoy, Cebu ★ Hon. Nicomedes A. de los Santos ☎ Ferdinand Edward Mercado ☎ 032-4839183 / 4839184 ✉ ferdzman@yahoo.com
 PESO ALEGRIA Alegria Cebu ★ Hon. Raul A. Guisadio ☎ Rey E. Peque ☎ 032-4768125/ 476-7093 ✉ None	 PESO ALOQUINSAN Aloquinsan, Cebu ★ Hon. Cynthia G. Moreno ☎ Nacianzino A. Manigos ☎ 032-4699034 loc.18 ✉ None
 PESO ARGAO Argao, Cebu ★ Hon. Edsel A. Galeos ☎ Geymar N. Pamat ☎ 032-3677111 / 367-7430 ✉ gpjplg@yahoo.com	 PESO ASTURIAS Asturias, Cebu ★ Hon. Allan L. Adlawan - N ☎ Mustiola B. Aventuna ☎ 464-9106/ 464-9172/ Fax#464-7042(L-104)/ Cell#09277987884 ✉ chola_vcn@yahoo.com
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 PESO BANTAYAN Bantayan, Cebu ★ Hon. GERALYN E. CAÑARES ☎ Melita Negapatan ☎ 032-3525247 / 4609028 -F Cel # 9182762038 ✉ negapatanmelita@yahoo.com	 PESO Barili Barili, Cebu ★ Hon. Teresito P. Mariñas-N ☎ Wilijado Carreon ☎ 4709007 / 4709008 (L-86130)/ F-470-9006 / (local 130)/ Cell # 09239961544 ✉ wilijado@yahoo.com
 PESO BOGO CITY Bogo, Cebu ★ Hon. Celestino Martinez II - N ☎ Elvira Cueva ☎ 251-2016 / 251-2001/434-8651 ✉ hroffice@yahoo.com	 PESO BOLJO-ON Boljo-on, Cebu ★ Hon. Deogenes R. Derama ☎ Violeta A. Roncesvalles ☎ 482-9119 / 482-9292/ Cell # 0919509027 ✉ atezenscab@yahoo.com
 PESO BORBON Borbon, Cebu ★ Hon. Bernard A. Sepulveda - N ☎ Rolando Bucog ☎ 432-5676 / 432-9053 (F) ✉ None	 PESO CARCAR CITY Carcar, Cebu ★ Hon. Mario Patricio P. Barcenas ☎ Analisa Varga ☎ 032-4878323 / F-4879510/ F=487-7289 ✉ eloisere106@yahoo.com.ph/ analisavarga@yahoo.com/ cutuhu_varga@yahoo.com

K. SEPARABILITY CLAUSE

Should any part of these guidelines be declared unconstitutional or against any law, remaining parts hereof shall not be affected.

This Order shall take effect immediately.

(SGD.) PATRICIA A. STO. TOMAS

Secretary

Dept. Of Labor & Employment

Office of the Secretary

Employers shall review the employment contracts of their house helpers every three (3) years with the end in view of improving the terms and conditions thereof.

Effect of Reduction of Workdays on Wages

In situations where the employer has to reduce the number of regular working days to prevent serious losses, such as when there is a substantial slump in the demand for his/her goods or services or when there is lack of raw materials, the employer may deduct the wages corresponding to the days taken off from the workweek, consistent with the principle of no work, no pay. This is without prejudice to an agreement or company policy which provides otherwise.

Penalty and Double Indemnity for Violation of the Prescribed Increases or Adjustments in the Wage Rates (RA 8188)

Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with RA 6727, shall be punished by a fine of not less than Twenty-five thousand pesos (P25,000.00) nor more than One hundred thousand pesos (P100,000.00) or imprisonment of not less than two (2) years nor more than four (4) years, or both such fine and imprisonment at the discretion of the court: *Provided*, That any person convicted hereof shall not be entitled to the benefits provided for under the Probation Law.

The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees: *Provided*, That payment of indemnity shall not absolve the employer from the criminal liability imposable hereof.

If the violation is committed by a corporation, trust, firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including, but not limited to, the president, vice-president, chief executive officer, general manager, managing director or partner.

HOLIDAY PAY (Article 94)

Definition

Holiday pay refers to the payment of the regular daily wage for any unworked regular holiday.

Coverage

This benefit applies to all employees except:

1. Government employees, whether employed by the National Government or any of its political subdivisions, including those employed in government-owned and/or controlled corporations with original charters or created under special laws;
2. Those of retail and service establishments regularly employing less than ten (10) workers;
3. House helpers and persons in the personal service of another;
4. Managerial employees, if they meet all of the following conditions:
 - 4.1 Their primary duty is to manage the establishment in which they are employed or of a department or subdivision thereof.
 - 4.2 They customarily and regularly direct the work of two or more employees therein.
 - 4.3 They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to hiring, firing, and promotion, or any other change of status of other employees are given particular weight.
5. Officers or members of a managerial staff, if they perform the following duties and responsibilities:

5. Enterprises

- Forge an Apprenticeship Agreement with qualified apprentice(s);
- Provide training to apprentices:
- Supervise and monitor the progress of the apprentice (s);
- Issue Training Certificate to apprentices who successfully complete the program and pass the assessment;
- Pay the apprentices their allowable wage and other social security and health benefits and
- Submit reports (Enrollment and Terminal Report) to TESDA Regional/ Provincial Office.

Applicants/Apprentices

The applicants shall:

- Register at the PESO using the CNMRS Form;
- Submit to PESO the accomplished CNMRS form in two (2) copies;
- Report to the enterprise for screening, if referred by the PESO; and
- Inform the PESO on the result of the application.

The apprentices shall:

- Forge an Apprenticeship Agreement with the participating enterprise;
- Comply with the enterprise requirements (e.g. clearances, medical certificate, and
- Abide with the stipulations in the Apprenticeship Agreement.

J. FUND REQUIREMENT

The funds of this program shall be initially sourced from the regular funds of the DO and TESDA Central Offices. Thereafter, cash DOLE and TESDA Regional Offices include the program in their regular budget.

- e. Provided list of registered enterprise with corresponding skills for apprenticeship to DOLE Regional/Provincial Offices;
- f. Assist enterprise in the development of competency assessment instrument;
- g. Administer competency assessment to apprentices, whenever applicable and issue Certificate of Competency;
- h. Submit enrollment and terminal reports to OA, copy furnished DOLE Regional/Provincial Office; and
- i. In cases where there is no presence of DOLE in the province, TESDA Provincial Office shall assist the applicant-apprentice.

3. DOLE Regional Offices (DOLE-RO)

- Conduct promotion and advocacy of the program in coordination with TESDA Regional Office;
- Provide technical supervision and assistance to PESO in the implementation of the program;
- Maintain a separate database for the Kasanayan at Hanapbuhay Manpower Register in the region;
- Identify prospective enterprise in coordination with TESDA RO, and
- Submit reports on registered and referred applicants to BLE, copy furnished TESDA Regional/Provincial Office.

Public Employment Service Office (PESO)

- Receive application, register, match and refer applicant-apprentice to participating enterprises and submit to DOLE-RO duplicate copy;
- Facilitate absorption of an apprentice-graduate into regular employment;
- Submit required reports on applicants registered to the DOLE Regional/Provincial Office;
- Assist the DOLE and TESDA RO/PO in the conduct of promotion, and advocacy of the program; and
- Assist the DOLE and TESDA RO/PO in the identification of prospective enterprises.

- 5.1 Primarily perform work directly related to management policies of their employer;
- 5.2 Customarily and regularly exercise discretion and independent judgment;
- 5.3 (a) Regularly and directly assist a proprietor or managerial employee in the management of the establishment or subdivision thereof in which he or she is employed; or (b) execute, under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; or (c) execute, under general supervision, special assignments and tasks; and
- 5.4 Do not devote more than twenty percent (20%) of their hours worked in a workweek to active ties which are not directly and closely related to the performance of the work described in paragraphs 5.1, 5.2, and 5.3 above.

6. 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.

Regular Holidays

Every employee covered by the Holiday Pay Rule is entitled to his/her daily basic wage . This means that the employee is entitled to at least 100% of his/her basic wage even if he/she did not report for work, provided he/she is present or is on leave of absence with pay on the work day immediately preceding the holiday.

Work performed on that day merits at least twice (200%) the basic wage of the employee.

Where the holiday falls on the scheduled rest day of the employee, work performed on said day merits at least an additional 30% of the employee's regular holiday rate of 200% or a total of at least 260% (Please see Premium Pay).

When a regular holiday falls on a Sunday, the following Monday shall not be a holiday, unless a proclamation is issued declaring it a special day.

Unless otherwise modified by law, order, or proclamation, the following are the twelve (12) regular holidays in a year under Executive Order No. 292, as amended by Republic Act 9492:

New Year's Day - January 1
Maundy Thursday - Movable Date
Good Friday - Movable Date
Araw ng Kagitingan - Monday nearest April 9
Labor Day—Monday nearest May 1
Independence Day—Monday nearest June 12
National Heroes Day—Last Monday of August
Eid al-Fitr - Movable Date
Eid al-Adha—Movable Date
Bonifacio Day - Monday nearest November 30
Christmas Day - December 25
Rizal Day - Monday nearest December 30

When *Araw ng Kagitingan* falls on the same day as Maundy Thursday or Good Friday, a covered employee is entitled to at least two hundred percent (200%) of his/her basic wage even if said day is unworked. Where the employee is required to work on that day, he/she is entitled to an additional 100% of the basic wage plus ECOLA.

Muslim Holidays

Presidential Decree 1083 (Code of Muslim Personal Laws of the Philippines), as amended, recognizes the four (4) Muslim holidays, namely:

1. *Āmun Jadid* (New Year), which falls on the first day of the lunar month of *Muharram*;
2. *Maulid-un-Nabi* (Birthday of the Prophet Muhammad), which falls on the twelfth day of the third lunar month of *Rabi-ul-Awwal*;
3. *Lailatul Isrā Wal Mi'rāj* (Nocturnal Journey and Ascension of the Prophet Muhammad), which falls on the twenty-seventh day of the seventh lunar month of *Rajab*;

I. INVOLVED AGENCIES AND OTHER STAKEHOLDERS

The implementation of the program is a joint responsibility of the Development of Labor and Employment (DOLE) and the Technical Education and Skills Development Authority (TESDA). To ensure its effective implementation, the following duties/ responsibilities shall be undertaken by the respective office/agencies:

1. TESDA (Office of Apprenticeship) and Department of Labor and Employment (Bureau of Local Employment) shall jointly:

- a. Formulate guidelines on the implementation of the program;
- b. Develop information materials;
- c. Conduct briefing, training and orientation for DOLE and TESDA Regional and Provincial Offices;
- d. Initially, assist DOLE and TESDA RO/PO with the advocacy of the program; and
- e. Monitor and evaluate program implementation and recommend measures to improve strengthen and sustain the program.

TESDA-OA shall:

- a. Facilitate the approval of new apprenticeable occupation; and
- b. Build and maintain a *Kasanayan* at Hanapbuhay Registry of Enterprise in coordination with TESDA Planning Office (PO).

BLE shall:

- a. Build and maintain the *Kasanayan* at Hanapbuhay Manpower Registry in the Phil-JobNet as part of the Computerized National Manpower Registry of Skills (CNMRS)

2. TESDA Regional/Provincial Office

- a. Conduct promotion and advocacy of the program in coordination with DOLE Regional Offices;
- b. Identify prospective enterprise in coordination with DOLE Regional Offices;
- c. Evaluate and approve programs of participating enterprises;
- d. Issue Certification of Registration to participating enterprises;

E. ENTITLEMENT OF THE APPRENTICES

Apprentices shall be entitled to receive a wage not less than 75 percent of the prevailing minimum wage and benefits such as social security and health benefits, and overtime pay. An apprentice can work overtime provided there are no regular workers to do the job and the time spent on overtime work is duly credited to his training hours.

F. INCENTIVES TO PARTICIPATING ENTERPRISES

Participating enterprise shall be entitled to any of the following:

1. Payment of 75 percent of the prevailing minimum wage to apprentices; or
2. an additional deduction from taxable income of one-half (1/2) of the value of labor training expenses incurred for developing the productivity and efficiency of apprentices shall be granted to the person or enterprise organizing an apprenticeship program: Provided, however, that such deduction shall not exceed ten(10%) percent of direct labor wage; and, that the person or enterprise who wishes to avail himself or itself of this incentive should pay his apprentices the minimum wage. (As provided for under Book II, Title II, Chapter I , Article 71 of the Labor Code)

G. REGISTRATION OF APPRENTICESHIP PROGRAM

The enterprise shall register its apprenticeship program with any of the TESDA Provincial Offices. It shall submit the following:

1. Letter of Application;
2. Certification that the number of apprentices to be hired is not more than 20 percent of the total regular workforce; and
3. Skills Training Outline.

No enterprise shall be allowed to hire apprentices unless its apprenticeship program is registered and approved by TESDA.

H. APPRENTICESHIP AGREEMENT

No apprenticeship training will commence until an Apprenticeship Agreement has been forged between an enterprise and an apprentice.

4. 'Id-ul-Adha (Hari Raha Haji), which falls on the tenth day of the twelfth lunar month of Dhu' I-Hijja.

These official holidays shall be observed in the provinces of Basilan, Lanao del Norte, Lanao del Sur, Maguindanao, North Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Sur and in the cities of Cotabato, Iligan, Marawi, Pagadian, Zamboanga and in such other Muslim provinces and cities as may be created by law. Upon proclamation by the President of the Philippines, Muslim holidays may also be officially observed in other provinces and cities.

The dates of Muslim holidays shall be determined by the Office of the President of the Philippines in accordance with the Muslim Lunar Calendar (Hijra).

Presidential Proclamation No. 1198 (26 October 1973) provides:

"All private corporations, offices, agencies and entities or establishments operating within the provinces and cities enumerated herein shall observe the legal holidays as proclaimed, provided, however, that all Muslim employees working outside of the Muslim provinces and cities shall be excused from work during the observance of the Muslim holidays as recognized by law without diminution or loss of wages during the said period."

Considering that all private corporations, offices, agencies, and entities or establishments operating within the designated Muslim provinces and cities are required to observe Muslim holidays, both Muslims and Christians working within the Muslim areas may not report for work on the days designated by law as Muslim holidays.

Absences

1. All covered employees shall be entitled to a holiday pay when they are on leave of absence with pay on the work day immediately preceding the regular holiday. Employees who are on leave of absence without pay on the day immediately preceding a regular holiday may not be paid the required holiday pay if they did not work on such regular holiday.
2. Employers shall grant the same percentage of the holiday pay as the benefit granted by competent authority in the form of employee's compensation or social security payment, whichever is higher, if the employees are not reporting for work while on such leave benefits.

3. Where the day immediately preceding the holiday is a non-work day in the establishment or the scheduled rest day of the employee, he/she shall not be deemed to be on leave of absence on that day, in which case he/she shall be entitled to the holiday pay if he/she worked on the day immediately preceding the nonwork day or rest day.

Successive Regular Holidays

Where there are two (2) successive regular holidays, like Maundy Thursday and Good Friday, an employee may not be paid for both holidays if he/she absents himself/herself from work on the day immediately preceding the first holiday, unless he/she works on the first holiday, in which case he/she is entitled to his/her holiday pay on the second holiday.

Temporary or Periodic Shutdown/Cessation of Work

In cases of temporary or periodic shutdown and temporary cessation of work of an establishment, as when a yearly inventory or when the repair or cleaning of machineries and equipment is undertaken, the regular holidays falling within the period shall be compensated in accordance with the Rules Implementing the Labor Code, amended.

Holiday Pay of Certain Employees

1. Where the covered employee is paid on piece-rate basis, his/her holiday pay shall not be less than his/her average daily earnings for the last seven (7) actual work days preceding the regular holiday; provided, however, that in no case shall the holiday pay be less than the applicable statutory minimum wage rate.
2. Seasonal workers may not be paid the required holiday pay during off-season when they are not at work.
3. Workers who do not have regular working days, such as stevedores, shall be entitled to this benefit.

B. DEFINITION OF TERMS

1. Apprenticeship – training within employment involving a contract between an apprentice and an enterprise on an apprenticeable occupation.
2. Apprentice – a person undergoing training for an approved apprenticeable occupation during an established period and covered by an apprenticeship agreement.
3. Apprenticeship Agreement – a contract wherein a prospective enterprise binds himself to train the apprentice who, in turn, accepts the terms of training for a recognized apprenticeable occupation emphasizing the rights, duties and responsibilities of each party.
4. Apprenticeable Occupation – an occupation officially approved for apprenticeship by TESDA.
5. Training Certificate – an document issued by the participating enterprise to an apprentice who completes the apprenticeship period.
6. Enterprise – a participating established that directly engages an apprentice based on an approved Apprenticeship Program.
7. Letter of Application – a letter signifying the intentions of the enterprise to register in the Apprenticeship Program.
8. Certificate of Registration – a document issued by TESDA granting an authority to a participating enterprise to offer the program in a particular occupation.

C. COVERAGE:

Any enterprise duly registered with the appropriate government authorities with ten (10) or more regular workers is qualified to join the program. The number of apprentices for each participating enterprise shall not be more than 20 percent of its total regular workforce.

Any unemployed person 15 years old and above may apply for apprenticeship with any participating enterprise.

D. APPRENTICESHIP PERIOD

The apprenticeship period shall not be less than four (4) months but not more than six (6) months. However, the participating employer has the option to hire the apprentice even prior to the completion of the apprenticeship period.

Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Intramuros, Manila

DEPARTMENT ORDER NO. 68-04
Series of 2004

GUIDELINES IN THE IMPLEMENTATION
OF THE KASANAYAN AT HANAPBUHAY
(An Apprenticeship and Employment Program)

In the interest of the service, the “Kasanayan at Hanapbuhay Program” (An Apprenticeship and Employment Program) is hereby adopted, as a bridging mechanism to further enhance the government’s skills development and employment facilitation programs.

This program is envisioned to provide new entrants to the labor force with the opportunity to acquire basic skills and work experience, which are of prime importance to employers in hiring new employees. In addition, this shall serve as a venue for private companies to demonstrate their corporate social responsibility, as well as contribute to the development of the country’s human resources.

A. OBJECTIVES:

In general, the Kasanayan at Hanapbuhay Program aims to provide a mechanism that shall ensure the availability of qualified skilled workers based on industry needs and requirements, as well as facilitate and speed up the marching of jobseekers with available jobs.

Specially, the program shall:

1. provide opportunity for new entrants to the labor force to acquire experience and skills;
2. generate commitment from enterprise in developing the skills of the Filipino workforce; and
3. facilitate the absorption of apprentices into the regular workforce after their apprenticeship.

PREMIUM PAY (Articles 91-93)

A. Definition

Premium pay refers to the additional compensation for work performed within eight (8) hours on non-work days, such as rest days and special days.

B. Coverage

This benefit applies to all employees except:

1. Government employees, whether employed by the National Government or any of its political subdivisions, including those employed in government-owned and/or controlled corporations with original charters or created under special laws;

2. Managerial employees, if they meet all of the following conditions:

2.1 Their primary duty is to manage the establishment in which they are employed or of a department or subdivision thereof.

2.2 They customarily and regularly direct the work of two or more employees therein.

2.3 They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to hiring, firing, and promotion, or any other change of status of other employees are given particular weight.

3. Officers or members of a managerial staff, if they perform the following duties and responsibilities:

3.1 Primarily perform work directly related to management policies of their employer;

3.2 Customarily and regularly exercise discretion and independent judgment;

3.3 (a) Regularly and directly assist a proprietor or managerial employee in the management of the establishment or subdivision thereof in which he or she is employed; or (b) execute, under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; or (c) execute, under general supervision, special assignments and tasks; and

3.4 Do not devote more than twenty percent (20%) of their hours worked in a workweek to activities which are not directly and closely related to the performance of the work described in paragraphs 3.1, 3.2, and 3.3 above.

4. Househelpers and persons in the personal service of another;
5. Workers who are paid by results, including those who are paid on piece rate, *takay*, *pakyaw*, or task basis, and other non-time work, if their output rates are in accordance with the standards prescribed in the regulations, or where such rates have been fixed by the Secretary of Labor and Employment;
6. Field personnel, if they regularly perform their duties away from the principal or branch office or place of business of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.



((Individuals concerned are presumed to be in possession of employment visa/work permit or equivalent document.))

Who then shall issue final exit clearance to individuals falling under the “special cases” category?

The BI shall clear for final departure the afore-cited individuals subject to its own guidelines.

Are there exceptions to this guideline?

Yes, there are exceptions, viz:

Trainees of PEZA-registered companies bound for Korea;

Exception to this exception:

Trainees of PEZA-registered companies with trainee visas. *(In this case, it is still BI which issues the clearance for an individual's departure without need of securing SEC from POEA).*

Trainees with trainee visas exceeding SIX (6) MONTHS and which are without clear indications that visas are ineligible to conversion and/or extension.

(Under the exceptions, the individual concerned shall be required to secure SEC first from POEA before BI issues clearance for final departure.)

**As defined under RA 8042*

***Definition taken from Rule 1 (e) Book II (National Manpower Development Program) of the Omnibus Rules Implementing the Labor Code.*

Special Days

Special Days

Under Executive Order. 292, as amended by R.A. 9492 provides that the (3) special days in the Philippines shall be observed as follows:

Ninoy Aquino Day - Monday nearest August 21

All Saints' Day - November 1

Last Day of the Year - December 31

The “no work, no pay” principle applies during special days and on such other special days as may be proclaimed by the President or by Congress.

Workers who are not required or permitted to work on special days are not entitled to any compensation. This, however, is without prejudice to any voluntary practice or provision in the Collective Bargaining Agreement (CBA) providing for payment of wages and other benefits for days declared as special days even if unworked.

On the other hand, work performed on special days merits additional compensation of at least thirty percent (30%) of the basic pay or a total of one hundred thirty percent (130%). Where the employee works on a special day falling on his rest day, he/she shall be entitled to an additional compensation of at least fifty percent (50%) of his/her basic wage or a total of one hundred fifty percent (150%).

2. Special Work Days

For work performed on a declared Special Work Day, an employee is entitled only to his/her basic rate. No premium pay is required since work performed on said day is considered work on an ordinary work day.

Premium Pay Rates

The minimum statutory premium pay rates are as follows:

1. For work performed on rest days or on special days:
Plus 30% of the daily rate of 100% or a total of 130%.
2. For work performed on a rest day which is also a special day:
Plus 50% of the daily rate of 100% or a total of 150%.
3. For work performed on a regular holiday which is also the employee's rest day (not applicable to employees who are not covered by the holiday-pay rule).

Plus 30% of the regular holiday rate of 200% based on his/her daily basic wage rate or a total of 260%.

OVERTIME PAY (Article 87)

Definition

Overtime pay refers to the additional compensation for work performed beyond eight (8) hours a day.

Coverage

Same as those covered under **Premium Pay**.

Overtime Pay Rates

The minimum overtime pay rates vary according to the day the overtime work is performed, as follows:

1. For work in excess of eight (8) hours performed on ordinary working days: Plus 25% of the hourly rate.
2. For work in excess of eight (8) hours performed on a scheduled rest day, a special day, and a regular holiday: Plus 30% of the hourly rate on said days.

Expatriate- shall refer to a foreign national allowed under the law to engage in employment in the Philippines.

Filipino Expatriate- shall refer to a Filipino national allowed to engage in employment outside the Philippines pursuant to the laws of the host country.

Who shall be issued an Overseas Employment Certificate by POEA?

All departing OFWs who have complied with the requirements set by POEA whether agency hires, name/direct hires or workers hired under the Government Placement facility of POEA.

Is there a need to secure OEC from POEA for Filipino non-contract workers who leave on employment visa/work permit or equivalent document to work abroad but who remain in the employment of local companies in the Philippines?

NO, because OEC can only be issued when there is a bonafide overseas employment as herein defined .

Under the Memorandum of Agreement executed between the POEA and BI (Bureau of Immigration) dated November 13, 2002 and amended on August 15, 2005, the following were categorized as "special cases" which do not need the issuance of Special exit Clearance from POEA:

Regular employees of local companies assigned or posted to their mother or sister companies or subsidiaries abroad for training/ job enhancement, or assignment to host company's clients, or transfer on secondment arrangement for a limited period of time;

Employees of PEZA-registered companies leaving for Korea for Training, and;

Religious missionaries who are assigned temporarily abroad to do missionary work;

"Conduction Crew" seafarers;

Filipino seafarers who are required to undergo special training abroad as prescribed by the prospective foreign employer;

Filipino workers and spouses who are covered by the Work to Residence Policy, and who applied for immigration to New Zealand with no pre-arranged employment with an employer prior to their departure; and

Filipino workers required to undergo final interview or qualifying examination abroad as prescribed by the prospective foreign employer.

ISSUANCE OF OEC/SPECIAL EXIT CLEARANCE TO FILIPINO EXPATRIATES/ TRAINEES

POEA- Philippine Overseas Employment Administration. It is an attached agency of the Department of Labor and Employment (DOLE) that manages labor migration .

Overseas Employment- shall refer to Employment of a Filipino worker outside the Philippines covered by a valid contract.

Overseas or Migrant Filipino Worker- shall refer to any person, eighteen years of age or above, as provided in RA 8042, who is to be engaged or is engaged or has been engaged in a remunerated activity in a state of which the worker is not a legal resident.

Documented Migrant Workers-* *those who possess valid passports and visas or permits to stay in the host country and whose contracts of employment have been processed by the POEA if required by law or regulation; or those registered by the Migrant-Workers and Other Overseas Filipinos Resource Center or by the Embassy.*

E-Receipt/OEC (Overseas Employment Certificate) - It is a document issued by POEA to departing OFWs after compliance with certain requirements. It serves as the worker's exit clearance or exit pass at the airport upon departure and is a proof that its holder is a duly documented OFW. *It shall also be used to exempt the OFW from the payment of travel tax and airport terminal fees.*

Special Exit Clearance - It is a special clearance issued by POEA for travel abroad in accordance with the guidelines issued by the Administration. It serves as an individual's exit clearance or exit pass at the airport upon departure.

Conduction Crew Seafarers - *Seafarers who are under the employment of a Philippine shipping company who are assigned to accompany or "conduct a vessel that is being imported by the said shipping company from a foreign port to the Philippines since they remain to be under the employ of their local companies.*

Training –** *is the systematic development of the attitude/knowledge/skill behavior pattern required for the adequate performance of a given job or task.*

Stipulated Overtime Rates

Generally, the premium pay for work performed on rest days, special days or regular holidays is included as part of the regular rate of the employee in the computation of overtime pay for overtime work rendered on said days, especially if the employer pays only the minimum overtime rates prescribed by law.

The employees and employer, however, may stipulate in their collective agreement the payment for overtime work at rates higher than those provided by law.

NIGHT SHIFT DIFFERENTIAL (Article 86)

Definition

Night Shift Differential (NSD) refers to the additional compensation of ten percent (10%) of an employee's regular wage for each hour of work performed between 10 p.m. and 6 a.m.

Coverage

This benefit applies to all employees except:

1. Government employees, whether employed by the National Government or any of its political subdivisions, including those employed in government-owned and/or controlled corporations with original charters or created under special laws;

2. House helpers and persons in the personal service of another;

3. Managerial employees, if they meet all of the following conditions:

3.1 Their primary duty is to manage the establishment in which they are employed or of a department or subdivision thereof.

3.2 They customarily and regularly direct the work of two or more employees therein.

3.3 They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to hiring, firing, and promotion, or any other change of status of other employees are given particular weight.

4. Officers or members of a managerial staff, if they perform the following duties and responsibilities:

4.1 Primarily perform work directly related to management policies of their employer;

4.2 Customarily and regularly exercise discretion and independent judgment;

4.3 (a) Regularly and directly assist a proprietor or managerial employee in the management of the establishment or subdivision thereof in which he or she is employed; or (b) execute, under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; or (c) execute, under general supervision, special assignments and tasks; and

4.4 Do not devote more than twenty percent (20%) of their hours worked in a workweek to activities which are not directly and closely related to the performance of the work described in paragraphs 4.1, 4.2, and 4.3 above;

5. Field personnel and those whose time and performance are unsupervised by the employer.

SERVICE CHARGES (Article 96)

Sharing

All rank-and-file employees of employers collecting service charges are entitled to an equal share in the eighty-five percent (85%) of the total of such charges. The remaining fifteen percent (15%) of the charges may be retained by management to answer for losses and breakages and for distribution to managerial employees, at the discretion of the management in the latter case. Service charges are collected by most hotels and some restaurants, night clubs, cocktail lounges, among others.

OUR PROGRAMS:

A. Labor-Management Cooperation

- An ADR mechanism at the plant level;
- A pro-active program of workers and management representatives meeting periodically to discover, discuss and resolve workplace issues and problems;
- A non-adversarial relationship between labor and management; and
- NCMB facilitates formation of LMC's, conducts seminars and skills enhancement training using standard LMC appreciation course modules.

B. Grievance Machinery or Procedure

- Is part of the continuous process of collective bargaining;
- It is intended to promote friendly dialogue between labor and management as a means of maintaining industrial peace

C. Voluntary Arbitration

- A mode of labor dispute settlement where the disputants themselves select the third party "magistrate"; and
- It takes into account the plant level grievance machinery/procedure before taking cognizance of the dispute; and
- NCMB assists parties select Voluntary Arbitrator and subsidizes arbitration

D. Conciliation – Mediation

- It is the most widely recognized type of alternative dispute resolution procedure;
- Gives the parties more control over decisions than adjudication; and
- Processes are less formal than adjudication

NATIONAL CONCILIATION AND MEDIATION BOARD

CREATION AND LEGAL BASIS:

NCMB was created EO No. 126 as amended by EO 251 in response to the constitutional mandate, particularly paragraph 3, Section 3, Article XIII

" The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster Industrial Peace."

- par. 3, sec. 3, Art. XIII, 1986 Constitution

FUNCTIONS:

Serves as a machinery that shall ensure prompt response to all labor-management disputes that may arise and shall work towards their early and amicable settlement; It absorbs the conciliation, mediation, labor-management cooperation and voluntary arbitration functions of the Bureau of Labor Relations and its counterparts in the regional offices of the DOLE.

VISION:

Sustainable Industrial Peace: A continuing strategy to attract both local and foreign investors.

MISSION:

Effective Prevention and Settlement of Labor Disputes through:

Labor-Management Cooperation (LMC)
Grievance Settlement and Voluntary Arbitration
Conciliation-Mediation

Payments

The shares of the employees in the service charges shall be distributed to them once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days.

Where the company stopped collecting service charges, the average share previously enjoyed by the employees for the past twelve (12) months immediately preceding such stoppage shall be integrated into their basic wages.

Tips

Where a restaurant or similar establishment does not collect service charges but has a practice or policy of monitoring and pooling tips given voluntarily by its customers to its employees, the pooled tips should be monitored, accounted, and distributed in the same manner as the service charges.

SERVICE INCENTIVE LEAVE (Article 95)

Coverage

Every employee who has rendered at least one (1) year of service is entitled to Service Incentive Leave (SIL) of five (5) days with pay.

This benefit applies to all employees except:

1. Government employees, whether employed by the National Government or any of its political subdivisions, including those employed in government-owned and/or -controlled corporations with original charters or created under special laws;
2. House helpers and persons in the personal service of another;
3. Managerial employees, if they meet all of the following conditions:

3.1 Their primary duty is to manage the establishment in which they are employed or of a department or subdivision thereof.

3.2 They customarily and regularly direct the work of two or more employees therein.

3.3 They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to hiring, firing, and promotion, or any other change of status of other employees are given particular weight.

4. Officers or members of a managerial staff, if they perform the following duties and responsibilities:

4.1 Primarily perform work directly related to management policies of their employer;

4.2 Customarily and regularly exercise discretion and independent judgment;

4.3 (a) Regularly and directly assist a proprietor or managerial employee in the management of the establishment or subdivision thereof in which he or she is employed; or (b) execute, under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; or (c) execute, under general supervision, special assignments and tasks; and

4.4 Do not devote more than twenty percent (20%) of their hours worked in a workweek to activities which are not directly and closely related to the performance of the work described in paragraphs 4.1, 4.2, and 4.3 above;

5. Field personnel and those whose time and performance is unsupervised by the employer;

6. Those already enjoying this benefit;

7. Those enjoying vacation leave with pay of at least five (5) days; and

8. Those employed in establishments regularly employing less than ten (10) employees.

LOSS OF CONFIDENCE

Loss of confidence as a just cause for dismissal was never intended to provide employers with a blank check for terminating their employees. Such a vague, all-encompassing pretext as loss of confidence, if unqualifiedly given the seal of approval by this Court, could readily reduce to barren form the words of the constitutional guarantee of security of tenure. Having this in mind, **loss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To the first class belong managerial employees, i.e., those vested with the powers or prerogatives to lay down management policies (effect personnel movements) x x x or effectively recommend such managerial actions; and to the second class belong cashiers, auditors, property custodians, etc., or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. (Rolando V. Aromin vs. NLRC, et. al. G.R. No.164824. April 30, 2008)**

DUE PROCESS

In employee termination cases, the well-entrenched policy is that no worker shall be dismissed except for a just or authorized cause provided by law and after due process. Clearly, dismissals have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and second, the legality in the manner of dismissal, which constitutes procedural due process. **(Tirazona vs. CA, G.R. No. 169712, March 14, 2008)**

THE JOB AS PROPERTY RIGHT

Historically there have been three kinds of property: “real” property such as land; “personal” property such as money, tools, furnishings, and personal possessions; and “intangible” property such as copyrights and patents. It is not too farfetched to speak of the emergence of a fourth—the “property in the job” – closely analogous to property in the land in pre-modern times.

For the great majority of people in most developed countries, land was the true “means of production” until well into this century, often until World War II. It was property in land which gave access to economic effectiveness and with it to social standing and political power. It was therefore rightly called by the law “real” property.

In modern developed societies, by contrast, the overwhelming majority if the people in the labor force are employees of organizations...and the “means of production” is therefore the job. The job is not “wealth.” It is not “personal property” in the legal sense. But it is a “right” in the means of production, an *jus in rem*, which is the old definition of real property. Today the job is the employee’s means of access to social status, to personal opportunity, to achievement, and to power.

At the very least, employing organizations will have to recognize that jobs have some of the characteristics of property rights and cannot therefore be diminished or taken away without due process. Hiring, firing, promotion, and demotion must be subject to pre-established objective, public criteria. And there has to be a review, a pre-established right to appeal to a higher judge in all actions affecting right in and to the job.

The evolution of jobs into a kind of property also demands that there be no “expropriation without compensation,” and that employers take responsibility to anticipate redundancies, retain employees about to be laid off, and find and place them in new jobs. It requires redundancy planning rather than unemployment compensation.

PETER F. DRUCKER

The Changing World of the Executive

Meaning of “one year of service”

The phrase “one year of service” of the employee means service within twelve (12) months, whether continuous or broken, reckoned from the date the employee started working. The period includes authorized absences, unworked weekly rest days, and paid regular holidays. If through individual or collective agreement, company practice or policy, the period of the working days is less than twelve (12) months, said period shall be considered as one year for the purpose of determining the entitlement to the service incentive leave.

Usage/Conversion to Cash

The service incentive leave may be used for sick and vacation leave purposes. The unused service incentive leave is commutable to its money equivalent at the end of the year. In computing, the basis shall be the salary rate at the date of conversion.

MATERNITY LEAVE (RA 1161, as amended by RA 8282)

Coverage This benefit applies to all female employees, whether married or unmarried.

Entitlement

Every pregnant employee in the private sector, whether married or unmarried, is entitled to maternity leave benefit of **sixty (60) days** in case of normal delivery or miscarriage, or **seventy-eight (78) days**, in case of Caesarian section delivery, with benefits equivalent to **one hundred percent (100%) of the average daily salary credit** of the employee as defined under the law.

To be entitled to the maternity leave benefit, a female employee should be an SSS member employed at the time of her delivery or miscarriage; she must have given the required notification to the SSS through her employer; and her employer must have paid at least three monthly contributions to the SSS within the twelve-month period immediately before the date of the contingency (i.e., childbirth or miscarriage).

The maternity leave benefit, like other benefits granted by the Social Security System (SSS), is granted to employees in lieu of wages. Thus, this may not be included in computing the employee's thirteenth-month pay for the calendar year.

PATERNITY LEAVE (RA 8187)

Coverage

Paternity Leave is granted to all married male employees in the private sector, regardless of their employment status (e.g., probationary, regular, contractual, project basis). The purpose of this benefit is to allow the husband to lend support to his wife during her period of recovery and/or in nursing her newborn child.

Government employees are also entitled to the paternity leave benefit. They shall be governed by the Civil Service rules.

The Paternity Leave Benefit

Paternity leave benefit shall apply to the first four (4) deliveries of the employee's lawful wife with whom he is cohabiting. For this purpose, cohabiting¹¹ means the obligation of the husband and wife to live together.

If the spouses are not physically living together because of the work station or occupation, the male employee is still entitled to the paternity leave benefit.

The paternity leave shall be for seven (7) calendar days, with full pay, consisting of basic salary and mandatory allowances fixed by the Regional Wage Board, if any, provided that his pay shall not be less than the mandated minimum wage.

33. May the services of an employee be terminated due to disease?

Yes. The employer may terminate employment on ground of disease only upon the issuance of a certification by a competent public health authority that the disease is of such nature or at such stage that cannot be cured within a period of six months even with proper medical treatment.

34. If the employer for valid reasons suspend operations of his business, can the workers be reinstated upon resumption of operations?

If the period of suspension of operations does not exceed six months, the workers shall be reinstated to their respective positions without loss of seniority rights if they indicated their desire to resume work not later than one month from the resumption of operations of business.

If the shutdown is for a period of not more than six months such as may occur in equipment check or repair, stock inventory of lack of raw materials, the employee is only temporarily laid off and, therefore, employer-employee relationship is not severed. If it will last for a period of more than six months leading to termination of employment, the requirements of the law and rules on employee dismissals must be observed.

The employer, however, may extend the period of suspension provided that the employee is paid his or her wages and other benefits during the extension. If the employer decides to dismiss the employee after completion of the investigation, the employee is not bound to reimburse the amount paid to him or her during the extended period. The employer is required to give immediately the notice to dismiss him or her stating clearly the reasons for the dismissal. Preventive suspension is not a disciplinary measure, and should be distinguished from suspension imposed as a penalty.

30. Is the employer's decision on termination final?

No. A dismissed employee may still question the validity or legality of his or her dismissal by filing a complaint for illegal or unjust dismissal before the Arbitration Branch of NLRC. In such a case, the burden of proving that the dismissal is for a valid or authorized cause rests on the employer.

31. During the pendency of the termination case in the company level, may an employee be retained in his or her work?

An employee may be retained in his or her work even during the pendency of a termination case under the following circumstances:

1. Upon serving the preventive suspension period of 30 days; and
2. Upon management prerogative allowing the employee to continue employment poses no serious or no imminent threat to the life or property of the employer or his or her co-employees.

32. May the effects of termination be suspended pending resolution of the case?

Yes. The Secretary of Labor may provisionally order a reinstatement in the event of prima facie finding that the dismissal may cause a serious labor dispute as in a strike or lock-out, or is in implementation of mass lay-off.

Usage of the paternity leave shall be after the delivery, without prejudice to an employer's policy of allowing the employee to avail of the benefit before or during the delivery, provided that the total number of days shall not be more than seven (7) calendar days for each covered delivery.

Conditions for Entitlement

A married male employee shall be entitled to paternity leave benefit provided that he has met the following conditions:

1. He is an employee at the time of the delivery of his child;
2. He is cohabiting with his spouse at the time that she gives birth or suffers a miscarriage;
3. He has applied for paternity leave with his employer within a reasonable period of time from the expected date of delivery by his pregnant spouse, or within such period as may be provided by company rules and regulations, or by collective bargaining agreement; and
4. His wife has given birth or suffered a miscarriage.

Application for Paternity Leave

The married male employee shall apply for paternity leave with his employer within a reasonable period of time from the expected date of delivery by his pregnant spouse, or within such period as may be provided by company rules and regulations, or by collective bargaining agreement. In case of a miscarriage, prior application for paternity leave shall not be required.

Non-conversion to Cash

In the event that the paternity leave is not availed of, it shall not be convertible to cash and shall not be cumulative.

Crediting of Existing Benefits

1. If the existing paternity leave benefit under the collective bargaining agreement, contract, or company policy is greater than seven (7) calendar days as provided for in RA 8187, the greater benefit shall prevail.

2. If the existing paternity leave benefit is less than that provided in RA 8187, the employer shall adjust the existing benefit to cover the difference. Where a company policy, contract, or collective bargaining agreement provides for an emergency or contingency leave without specific provisions on paternity leave, the employer shall grant to the employee seven (7) calendar days of paternity leave.

PARENTAL LEAVE FOR SOLO PARENTS (RA 8972)

Coverage

Parental leave for solo parents is granted to any solo parent or individual who is left alone with the responsibility of parenthood due to:

1. Giving birth as a result of rape or, as used by the law, other crimes against chastity;
2. Death of spouse;
3. Spouse is detained or is serving sentence for a criminal conviction for at least one (1) year;
4. Physical and/or mental incapacity of spouse as certified by a public medical practitioner;
5. Legal separation or de facto separation from spouse for at least one (1) year: Provided that he/she is entrusted with the custody of the children;
6. Declaration of nullity or annulment of marriage as decreed by a court or by a church: Provided, that he/she is entrusted with the custody of the children;
7. Abandonment of spouse for at least one (1) year;
8. Unmarried father/mother who has preferred to keep and rear his/her child/children, instead of having others care for them or give them up to a welfare institution;
9. Any other person who solely provides parental care and support to a Department of Social Welfare and Development (DSWD) or duly appointed legal guardian by the court; and

26. May an employer transfer an employee to another place of work without prior notice?

No, but if the urgency of the service requires a transfer, and such transfer is exercised in good faith for the advancement of the employer's interest and will not adversely affect the rights of the employee, the transfer may be undertaken even without the employee's consent.

27. Can a non-union member avail of the grievance machinery in case of termination?

It depends. If a non-union member belonging to an appropriate bargaining unit of the recognized bargaining agent pays agency fees to the union and accepts the benefits under the collective agreement, said non-union member may avail of the grievance machinery. On the other hand, if the non-union member is not part of the appropriate bargaining unit of the recognized bargaining agent and is expressly excluded in the collective agreements, said employee cannot avail of the grievance machinery.

28. What is a reasonable period for an employee subjected to dismissal to answer charges against him or her by the employer?

A reasonable period should be provided wherein the employee can answer all the charges against him or her, gather evidence and confront the witnesses against him or her. It should include the opportunity to secure the assistance of a representative who could be a union officer. Reasonableness of the period should be based, among others, on the gravity of the charges against the employee.

29. May an employee charged with an offense be placed under preventive suspension while he or she is preparing to answer charges filed against him or her by the employer?

Yes but only on grounds that his or her continued presence inside the company premises poses a serious imminent threat to the life or property of the employer or his or her co-workers, and only for a period of 30 days. After 30 days, the employee should be reinstated to his or her former position or in a substantially equivalent position.

22. Is proof of financial losses necessary to justify redundancy?

No. In redundancy, the existing manpower of the establishment is in excess of what is necessary to run its operation in an economical and efficient manner.

23. Are there other conditions before an employee may be dismissed on the ground of redundancy?

Yes. It must be shown that:

- There is good faith in abolishing redundant position;
- There is fair and reasonable criteria in selecting the employees to be dismissed, such as but not limited to less preferred status (e.g. temporary employee), efficiency and seniority.
- A one-month prior notice is given to the employee and DOLE Office as prescribed by law.

24. Will the failure to comply with the due process requirements invalidate a dismissal with an otherwise established just or authorized cause?

No. The employee, however, will be entitled to payment of indemnity in the form of nominal damages, the amount of which is addressed to the sound discretion of the Court, taking into consideration the relevant circumstances.

25. What is the difference between transfer and promotion?

Promotion is the advancement of an employee from one position to another with an increase in duties and responsibilities, and is usually accompanied by an increase in salary. Promotion is a privilege and as such may be declined by the employee.

Transfer is lateral movement that does not amount to a promotion. It constitutes a valid exercise of management prerogative, unless it is one to defeat an employee's right to self-organization, to get rid of undesirable workers, or to penalize an employee of his or her union activities. If done in good faith, management's decision to transfer an employee may not be questioned. An employee's refusal to transfer may constitute willful disobedience, a just cause for his or her dismissal.

10. 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: Provided, that such abandonment, disappearance, or prolonged absence lasts for at least one (1) year.

Definition of Terms

Parental leave shall mean leave benefits granted to a solo parent to enable him/her to perform parental duties and responsibilities where physical presence is required.

Child refers to a person living with and dependent on the solo parent for support. He/she is unmarried, unemployed, and below eighteen (18) years of age, or even eighteen (18) years old and above but is incapable of self-support because he/she is mentally- and/or physically-challenged.

The Parental Leave Benefit

The parental leave, in addition to leave privileges under existing laws, shall be for seven (7) work days every year, with full pay, consisting of basic salary and mandatory allowances fixed by the Regional Wage Board, if any, provided that his/her pay shall not be less than the mandated minimum wage.

Conditions for Entitlement

A solo parent employee shall be entitled to the parental leave, provided that:

1. He/she has rendered at least one (1) year of service, whether continuous or broken;
2. He/she has notified his/her employer that he/she will avail himself/herself of it, within a reasonable period of time; and
3. He/she has presented to his/her employer a Solo Parent Identification Card, which may be obtained from the DSWD office of the city or municipality where he/she resides.

Non-conversion to Cash

In the event that the parental leave is not availed of, it shall not be convertible to cash, unless specifically agreed on previously.

Crediting of Existing Leave

If there is an existing or similar benefit under a company policy or a collective bargaining agreement, the same shall be credited as such. If the same is greater than the seven (7) days provided for in RA 8972, the greater benefit shall prevail.

Emergency or contingency leave provided under a company policy or a collective bargaining agreement shall not be credited as compliance with the parental leave provided for under RA 8972.

Termination of the Benefit

A change in the status or circumstance of the parent claiming the benefit under the law, such that he/she is no longer left alone with the responsibility of parenthood, shall terminate his/her eligibility for this benefit.

Protection Against Work Discrimination

No employer shall discriminate against any solo parent employee with respect to terms and conditions of employment on account of his/her being a solo parent.

LEAVE FOR VICTIMS OF VIOLENCE AGAINST WOMEN AND THEIR CHILDREN (RA 9262)

Definition

Violence against women and their children, as used in Republic Act 9262 (the Anti-Violence Against Women and Their Children Act of 2004), refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or

18. What is separation pay?

In authorized cause terminations, separation pay is the amount given to an employee terminated due to retrenchment, closure or cessation of business or incurable disease. The employee is entitled to receive the equivalent of one month pay or one-half month pay, whichever is higher, for every year of service.

In just cause termination, separation pay is also the amount given to employees who have been dismissed without just cause and could no longer be reinstated.

19. When is reinstatement not possible, such that separation pay shall be given to an illegally dismissed employee?

- a) when company operations have ceased;
- b) when an employee's position or an equivalent thereof is no longer available;
- c) when the illegal dismissal case has engendered strained relations between the parties, in cases of just causes and usually when the position involved requires the trust and confidence of the employer;
- d) when a substantial amount of years have lapsed from the filing of the case to its finality.

20. May an employee dismissed for just cause be entitled to separation pay?

As a rule, no. But in instances where the just cause for dismissal is other than serious misconduct or moral turpitude, the employee may be awarded **Financial Assistance** in the amount of one month's pay as a form of compassionate justice.

21. Is proof of financial losses necessary to justify retrenchment?

Yes. Proof of actual or imminent financial losses that are substantive in character must be proven to justify retrenchment.

13. In what forms may reinstatement be effected?

Reinstatement may be actual or payroll in nature, at the option of the employer.

14. What is meant by 'full back wages'?

Full back wages refers to all compensation, including allowances and other benefits with monetary equivalent that should have been earned by the employee but was not collected by him or her because of unjust dismissal. It includes all the amounts he or she could have earned starting from the date of dismissal up to the time of reinstatement.

15. In cases of illegal dismissal, may a dismissed employee who has found another job still be entitled to collect full back wages from his or her former employer?

Yes. Full back wages is a form of penalty imposed by law on an employer who illegally dismisses his or her employee. The fact that the dismissed employee may already be employed and earning elsewhere does not extinguish the penalty.

16. What if the former position of the employee no longer exists at the time of reinstatement?

In that case, the employee shall be given a substantially equivalent position in the same establishment without loss of seniority right and to back wages from the time compensation was withheld up to the time of reinstatement.

17. Suppose it is the establishment that no longer exists at the time an order for reinstatement is made. What benefits can the employee claim?

The worker is entitled to a separation pay equivalent to at least one-month pay or one month pay for every year of service whichever is higher, a fraction of at least six months shall be considered as one whole year. The period of service is deemed to have lasted up to the time of closure of the establishment. He or she may also claim back wages to cover the period between dismissal from work and the closure of the establishment.

illegitimate, within or without the family abode, which will result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.

Coverage and Purpose

Private sector women employees who are victims as defined in RA 9262 shall be entitled to the paid leave benefit under such terms and conditions provided herein.

The leave benefit shall cover the days that the woman employee has to attend to medical and legal concerns.

Requirement for Entitlement

To be entitled to the leave benefit, the only requirement is for the victim-employee to present to her employer a certification from the Punong Barangay (barangay chairman) or barangay kagawad (barangay councilor) or prosecutor or the Clerk of Court, as the case may be, that an action relative to the matter is pending.

The Benefit

In addition to other paid leaves under existing labor laws, company policies, and/or collective bargaining agreements, the qualified victim-employee shall be entitled to a leave of up to ten (10) days with full pay, consisting of basic salary and mandatory allowances fixed by the Regional Wage Board, if any.

The said leave shall be extended when the need arises, as specified in the protection order issued by the barangay or the court.

Usage of the Benefit

The usage of the ten-day leave shall be at the option of the woman employee. In the event that the leave benefit is not availed of, it shall not be convertible into cash and shall not be cumulative.

THIRTEENTH-MONTH PAY (PD 851)

Coverage

All employers are required to pay their rank and file employees thirteenth-month pay, regardless of the nature of their employment and irrespective of the methods by which their wages are paid, provided they worked for at least one (1) month during a calendar year. The thirteenth-month pay should be given to the employees not later than December 24 of every year.

Definition of Rank-and-File Employees

The Labor Code, as amended, distinguishes a rank-and-file employee from a managerial employee. A managerial employee is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, layoff, recall, discharge, assign, or discipline employees, or to effectively recommend such managerial actions. All employees not falling within this definition are considered rank-and-file employees.

The above distinction shall be used as guide for the purpose of determining who are rank-and-file employees entitled to the thirteenth-month pay.

Minimum Amount

The thirteenth-month pay shall not be less than one-twelfth (1/12) of the total basic salary earned by an employee in a calendar year.

The "basic salary" of an employee for the purpose of computing the thirteenth-month pay shall include all remunerations or earnings paid by his or her employer for services rendered. It does not include allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick leave credits, overtime, premium, night shift differential and holiday pay.

9. In a case for illegal dismissal, who has the burden of proving that the dismissal is legal?

The employer has the burden of proving that the dismissal was legal.

10. On what grounds may an employee question his or her dismissal?

An employee may question his or her dismissal based on substantive or procedural grounds.

The **Substantive** aspect pertains to the absence of a just or authorized cause supporting the dismissal.

The **procedural** aspect refers to giving the employee the opportunity to explain and /or opportunity to be heard prior to termination.

11. What are the rights afforded to an unjustly dismissed employee?

An employee who is dismissed without **just cause** is entitled to any or all of the following:

- a) reinstatement without loss of seniority rights and privileges, or separation pay if reinstatement is not possible;
- b) full back wages, inclusive of allowances and other benefits or their monetary equivalent from the time compensation was withheld from him or her up the time of reinstatement;
- c) damages and attorney's fees if the dismissal was done in bad faith.

12. What is reinstatement?

Reinstatement means restoration of the employee to the position from which he or she has been unjustly removed.

Reinstatement without loss of seniority rights means that the employee, upon reinstatement, should be treated in matters involving seniority and continuity of employment as though he or she had not been dismissed from work.

6. What is due process in the context of termination of employment?

Due process means the right of an employee to be notified of the reason for his or her dismissal and, in case of just causes, to be provided the opportunity to be heard and to defend himself or herself.

7. What are the components of due process in termination cases?

In a termination for a just cause, due process involves the two-notice rule:

- A **notice of intent** to dismiss specifying the ground for termination, and giving to said employee reasonable opportunity within which to explain his or her side;
- A hearing or conference where the employee is given opportunity to respond to the charge, present evidence or rebut the evidence presented against him or her;
- A **notice of dismissal** indicating that upon due consideration of all the circumstances, grounds have been established to justify the termination.

In a termination for an **authorized cause**, due process means a written notice of dismissal to the employee specifying the grounds given, at least 30 days before the date of termination. A copy of the notice shall be furnished the Regional Office of the Department of Labor and Employment (*disease not curable within six months as certified by competent public authority, and (DOLE).

8. May an employee question the legality of his or her dismissal?

Yes. The legality of the dismissal may be questioned before the Labor Arbiter of the National Labor Relations Commission (NLRC), through a complaint for illegal dismissal. In establishments with a collective bargaining agreement (CBA), the grievance machinery established under the CBA. If the issue is not resolved at this level, it will be submitted to voluntary arbitration.

However, these salary-related benefits should be included as part of the basic salary in the computation of the thirteenth-month pay if these are treated as part of the basic salary of the employees, through individual or collective agreement, company practice or policy.

Exempted Employers

The following employers are not covered by PD 851:

1. The government and any of its political subdivisions, including government-owned and -controlled corporations, except those corporations operating essentially as private subsidiaries of the government;
2. Employers who are already paying their employees thirteenth-month pay or more in a calendar year or its equivalent at the time of the issuance of PD 851;
3. Employers of house helpers and persons in the personal service of another in relation to such workers; and
4. Employers of those who are paid on purely commission, boundary or task basis, and those who are paid a fixed amount for performing specific work, irrespective of the time consumed in the performance thereof (except those workers who are paid on piece-rate basis, in which case their employer shall grant them thirteenth-month pay).

As used herein, "workers paid on piece-rate basis" shall refer to those who are paid a standard amount for every piece or unit of work produced that is more or less regularly replicated, without regard to the time spent in producing the same.

The term "its equivalent" as used above shall include Christmas bonus, midyear bonus, cash bonuses, and other payments amounting to not less than one-twelfth (1/12) of the basic salary but shall not include cash and stock dividends, cost of living allowance, and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits.

Time of Payment of Thirteenth-Month Pay

The thirteenth-month pay shall be paid not later than December 24 of every year. An employer, however, may give to his or her employees one-half (1/2) of the thirteenth-month pay before the opening of the regular school year and the remaining half on or before December 24 of every year. The frequency of payment of this monetary benefit may be the subject of an agreement between the employer and the recognized/collective bargaining agent of the employees.

Thirteenth-Month Pay for Certain Types of Employees

1. Employees who are paid on piecework basis are entitled to the thirteenth-month pay.

2. Employees who are paid a fixed or guaranteed wage plus commission are also entitled to the thirteenth-month pay, based on their earnings during the calendar year (i.e., on both their fixed or guaranteed wage and commission).

In the consolidated cases of *Boie Takeda Chemicals, Inc. vs. Dionisio de la Serna*, G.R. No. 92174 December 10, 1993, and *Philippine Fuji Xerox Corporation vs. Cresenciano B. Trajano and Philippine Fuji Xerox Employees Union*, G.R. No. 102552 December 10, 1993, the Supreme Court ruled that commissions, while included in the generic term wage, are not part of "basic salary/wage" and therefore should not be included in computing the thirteenth-month pay.

Thus:

In remunerative schemes consisting of a fixed or guaranteed wage plus commission, the fixed or guaranteed wage is patently the "basic salary" for this is what the employee receives for a standard work period.

4. What are the just causes for termination?

The just causes for termination by the **employer** are:

- serious misconduct;
- willful disobedience of employer's lawful orders connected with work;
- gross and habitual neglect of duty;
- fraud or breach of trust;
- commission of a crime or offense against the employer, employer's family or representative; and family or representative; and ,
- other analogous causes.

The just causes for termination by the **employee** are:

- serious insult by the employer or his or her representative on the honor and person of the employee;
- inhuman and unbearable treatment accorded the employee by the employer or his or her representative;
- commission of a crime by the employer or his or her representative commission of a crime by the against the person of the employee or any of the immediate members of his or her family; and
- other analogous causes.

5. What are the authorized causes for termination?

The authorized causes for termination are:

- a) installation of labor-saving devices;
- b) redundancy;
- c) retrenchment to prevent losses;
- d) closure or cessation of business; and
- e) Disease not curable within six months as certified by competent public authority, and continued employment of the employee is prejudicial to his or her health or to the health of his or her co-employees.

RIGHT TO SECURITY OF TENURE

1. What is the right to security of tenure?

The right to security of tenure means that a regular employee shall remain employed unless his or her services are terminated for just or authorized cause and after observance of due process of law.

2. What are the provisions in the Labor Code that protect the right to security of tenure?

The Labor Code protects the right of security of tenure, specifically through the following provisions:

- Arts. 280-281 Differentiation of kinds of employment;
- Arts. 282-285- Just and authorized causes for termination of employment;
- Art. 277 – Observance of administrative due process;
- Art. 277 [b]– Right of workers to demand proof that dismissal is for just or authorized cause;
- Art. 279 – Right to contest dismissal;
 - Right to reinstatement without loss of seniority rights, full back wages and other benefits;
- Art. 223 – Right to appeal and to reinstatement pending appeal;
- Arts. 283-284 Right to separation pay; and
- Art. 287 – Right to retirement benefits.

3. What is the difference between a just and authorized cause of termination?

Just cause refers to a wrong doing committed by the employee on the basis of which the aggrieved party may terminate the employer-employee relationship.

Authorized cause refers to a cause brought about by changing economic or business conditions of the employer.

Commissions are given for extra efforts exerted in consummating sales or other related transactions. They are, as such, additional pay, which this Court has made clear do not form part of the "basic salary" (228 SCRA 329 [1993])

3. Employees with multiple employers

Government employees working part-time in a private enterprise, including private educational institutions, as well as employees working in two or more private firms, whether on full-time or part-time basis, are entitled to the thirteenth-month pay from all their private employers, regardless of their total earnings from each of their employers.

Thirteenth-Month Pay of Resigned or Separated Employee

An employee who has resigned or whose services are terminated at any time before the time of payment of the thirteenth-month pay is entitled to this monetary benefit in proportion to the length of time he or she has worked during the year, reckoned from the time he or she has started working during the calendar year up to the time of his or her resignation or termination from the service. Thus, if he or she worked only from January to September, his or her proportionate thirteenth-month pay should be equal to one-twelfth (1/12) of his or her total basic salary earned during that period.

Non-inclusion in Regular Wage

The mandated thirteenth-month pay need not be credited as part of the regular wage of employees for purposes of determining overtime and premium payments, fringe benefits, as well as contributions to the State Insurance Fund, Social Security System, Medicare, and private retirement plans.

SEPARATION PAY (Articles 283-84)

Separation pay is given to employees in instances covered by Articles 283 and 284 of the Labor Code of the Philippines. An employee's entitlement to separation pay depends on the reason or ground for the termination of his or her services. An employee may be terminated for just cause (i.e., gross and habitual neglect of duty, fraud, or commission of a crime), and other similar causes as enumerated under Article 282 of the Labor Code and, generally, may not be entitled to separation pay⁹. On the other hand, where the termination is for authorized causes, separation pay is due.

One-Half Month Pay per Year of Service

An employee is entitled to receive a separation pay equivalent to one-half (1/2) month pay for every year of service, a fraction of at least six months being considered as one (1) whole year, if his/her separation from the service is due to any of the following authorized causes:

1. Retrenchment to prevent losses (i.e., reduction of personnel effected by management to prevent losses);
2. Closure or cessation of operation of an establishment not due to serious losses or financial reverses; and
3. When the employee is suffering from a disease not curable within a period of six (6) months and his/her continued employment is prejudicial to his/her health or to the health of his/her co-employees.

In no case will an employee get less than one (1) month separation pay if the separation is due to the above stated causes, and he/she has served for at least six (6) months.

Thus, if an employee had been in the service for at least six (6) months but less than a year, he/she is entitled to one (1) full month's pay as his/her separation pay if his/her separation is due to any of the causes enumerated above.

Retirement It is a cash benefit paid to a member who can no longer work due to old age.

A member is qualified to avail himself of this benefit if:

1. He/she is 60 years old and unemployed and has paid at least 120 monthly contributions prior to the semester of retirement.
2. He/she is 65 years old, whether employed or not. If employed he/she should have paid 120 monthly contributions prior to the semester of retirement, whether employed or not.

The types of retirement benefits are:

- a. the monthly pension, and
- b. the lump sum amount.

The monthly pension is a lifetime cash benefit paid to a retiree who has paid at least 120 monthly contributions to the SSS prior to the semester of retirement.

The lump sum amount is granted to a retiree who has not paid the required 120 monthly contributions.

C.5. Death & Funeral

The death benefit is a cash paid to the beneficiaries of a deceased member.

The primary beneficiaries are the legitimate dependent spouse until he or she remarries and legitimate, legitimated, legally adopted or illegitimate dependent children of the member. In the absence of primary beneficiaries, the secondary beneficiaries are the dependent parents of the member. In their absence, the person designated by the member as beneficiary in his/her member's record will be the recipient.

The types of death benefits are:

1. the monthly pension; and
2. the lump sum amount.

The monthly pension is granted only to the primary beneficiaries of a deceased member who had paid 36 monthly contributions before the semester of death.

The lump sum is the amount granted to the primary beneficiaries of a deceased member who had paid less than 36 monthly contributions before the semester of death.

1. he/she is unable to work due to sickness or injury and is thus confined either in the hospital or at home for at least four days;

2. he/she has paid at least three monthly contributions within the 12-month period immediately before the semester of sickness;

3. he/she has used up all current company sick leaves with pay for the current year; and

4. he/she has notified his/her employer.

The amount of an employee's sickness benefit is computed as: the daily sickness allowance times the approved number of days. Effective May 24, 1997, the daily sickness allowance is 90 per cent of the average daily salary credit (*Section 14 of Republic Act 8282*). C.2. *Maternity* (see 8. *Maternity Leave*) C.3. *Disability* It is a cash benefit paid to a member who becomes permanently disabled, either partially or totally. A member who suffers partial or total permanent disability, with at least one (1) contribution paid to the SSS prior to the semester of contingency, is qualified. The complete and permanent loss of use of any of the following parts of the body under permanent partial disability: one thumb, sight of one eye, one big toe, one index finger, hearing of one ear, one hand, one middle finger, hearing of both ears, one arm, one ring finger, one foot, one ear, one little finger, one leg, both ears. The following fall under permanent total disability:

1. Complete loss of sight of both eyes;
2. Loss of two limbs at or above the ankle or wrists;
3. Permanent complete paralysis of two limbs;
4. Brain injury causing insanity; and
5. Other cases as determined and approved by the SSS.

Types of disability benefits:

1. The monthly pension which is paid to a disabled member who has paid at least 36 monthly contributions to the SSS; and
2. The lump sum amount which is granted to those who have not paid the required 36 monthly contributions.

One-Month Pay per Year of Service

An employee is entitled to separation pay equivalent to his/her one-month pay for every year of service, a fraction of at least six (6) months being considered as one whole year, if his/her separation from service is due to any of the following:

1. Installation by employer of labor-saving devices;
2. Redundancy, as when the position of the employee has been found to be excessive or unnecessary in the operation of the enterprise;
3. Impossible reinstatement of the employee to his or her former position or to a substantially equivalent position for reasons not attributable to the fault of the employer, as when the reinstatement ordered by a competent authority cannot be implemented due to closure or cessation of operations of the establishment/employer, or the position to which he or she is to be reinstated no longer exists and there is no substantially equivalent position in the establishment to which he or she can be assigned.

Notice of Termination

The employer may terminate the employment of any employee due to the above-mentioned authorized causes by serving a written notice on the employee and the Department of Labor and Employment through its regional office having jurisdiction over the place of business at least one (1) month before the intended date thereof.

Basis of Separation Pay

The computation of separation pay of an employee shall be based on his/her latest salary rate.

Inclusion of Regular Allowance in the Computation

In the computation of separation pay, it would be an error not to integrate the allowance with the basic salary. The salary base properly used in computing the separation pay should include not just the basic salary but also the regular allowances that an employee has been receiving.

RETIREMENT PAY (Article 287, as amended by RA 7641)

Coverage

1. Employees shall be retired upon reaching the age of sixty (60) years or more but not beyond sixty-five (65) years old (and have served the establishment for at least five (5) years).
2. This benefit applies to all employees except:

- 1) government employees;
- 2) employees of retail, service and agricultural establishments/operations regularly employing not more than ten (10) employees.
3. Retirement Age for Underground Mine Employees under Republic Act 8558.

The retirement age of underground mine employees has been reduced to a much lower age. For this purpose, an underground mine employee refers to any person employed to extract mineral deposits underground or to work in excavations or workings such as shafts, winzes, tunnels, drifts, crosscuts, raises, working places whether abandoned or in use beneath the earth's surface for the purpose of searching for and extracting mineral deposits.

In the absence of a retirement plan or other applicable agreement providing for retirement benefits of underground mine employees in the establishment, an employee may retire upon reaching the compulsory retirement age of sixty (60) years or upon optional retirement at the age of fifty (50) years, provided he/she has served for at least five (5) years as an underground mine employee or in underground mine of the establishment.

Amount of Retirement Pay

The minimum retirement pay shall be equivalent to one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year.

Inpatient hospital care:

- ☐ Room and board;
- ☐ Services of health care professionals ☐ Diagnostic, laboratory, and other medical examination services;
- ☐ Use of surgical or medical equipment and facilities;
- ☐ Prescription drugs and biologicals, subject to the limitations stated in Section 37 of RA 7875; and
- ☐ Inpatient education packages.

Outpatient care:

- ☐ Services of health care professionals;
- ☐ Diagnostic, laboratory, and other medical examination services;
- ☐ Personal preventive services;
- ☐ Prescription drugs and biologicals, subject to the limitations described in Section 37 of RA 7875; and
- ☐ Emergency and transfer services.

SOCIAL SECURITY BENEFITS (RA 1161, as amended by RA 8282)

The Social Security Program

The Social Security Program¹⁵ provides a package of benefits in the event of death, disability, sickness, maternity and old age. Basically, the SSS provides for a replacement of income lost on account of the aforementioned contingencies.

Coverage

- ☐ A private employee, whether permanent, temporary or provisional;
- ☐ A household helper earning at least P1,000 a month is subject to compulsory coverage starting Sept. 1, 1993

The Benefits

1 *Sickness* The sickness benefit is a daily cash allowance paid for the number of days a member is unable to work due to sickness or injury. A member is qualified to avail himself/herself of this benefit if:

The Philippine Health Insurance Corporation or PhilHealth¹⁴ is the mandated administrator of the Medicare program under the National Health Insurance Act of 1995 (Republic Act 7875).

Coverage

The program covers the following:

1. Employed Members – all those employed in the government and private sector.

2. Individually Paying Members – self-employed, overseas Filipino workers, professionals in private practice (doctors, lawyers, dentists, etc.)

3. Non-paying Members – the following are entitled to lifetime coverage:

□ Retirees and pensioners of the GSIS and SSS (including permanent total disability and survivorship pensioners of the SSS) prior to the effectivity of RA 7875 on March 4, 1995.

□ Members who have reached the retirement age and have paid at least 120 monthly contributions. Optional Retirees (under A1616, PD 1146 or PD 1184) are not yet entitled to lifetime coverage until they reach the age of retirement (60 years old).

4. Indigent Members – under the indigent component of the NHIP.

The Benefits

A unified benefit package for all PhilHealth members is being implemented which includes the following categories of personal health services:

For the purpose of computing retirement pay, "one-half month salary" shall include all of the following:

1. Fifteen (15) days salary based on the latest salary rate;
2. Cash equivalent of five (5) days of service incentive leave;
3. One-twelfth (1/12) of the thirteenth-month pay or a total of 22.5 days.

Other benefits may be included in the computation of the retirement pay upon agreement of the employer and the employee.

Illustration:

One-half month salary = (15 days x latest salary per day) + (5 days leave x latest salary per day) + (1/12 of thirteenth-month pay)
Minimum Retirement Pay = number of years in service x One-half month salary

or

Minimum Retirement Pay = Daily Rate x 22.5 days x number of years in service
For covered workers who are paid by results and do not have a fixed monthly salary rate, the basis for the determination of the salary for fifteen (15) days shall be their average daily salary (ADS). The ADS is derived by dividing the total salary or earnings for the last twelve months reckoned from the date of retirement by the number of actual working days in that particular period, provided that the determination of rates of payment by results are in accordance with the established regulations.

Retirement under a Collective Bargaining Agreement/ Applicable Contract

Any employee may retire or be retired by his or her employer upon reaching the retirement age established in the CBA or other applicable agreement/contract and shall receive the retirement benefits granted therein; provided, however, that such retirement benefits shall not be less than the retirement pay required under RA7641, and provided further that if such retirement benefits under the agreement are less, the employer shall pay the difference.

Where both the employer and the employee contribute to a retirement fund pursuant to the applicable agreement, the employer's total contributions and the accrued interest thereof should not be less than the total retirement benefits to which the employee would have been entitled had there been no such retirement benefits' fund. If such total portion from the employer is less, the employer shall pay the deficiency.

Retirement of Part-time Workers

Part-time workers are also entitled to retirement pay of one month salary for every year of service under RA 7641 after satisfying the following conditions precedent for optional retirement: (a) there is no retirement plan between the employer and the employee, (b) the employee should have reached the age of sixty (60) years, and should have rendered at least five (5) years of service with the employer.

Applying the foregoing principle, the components of retirement benefit of part-time workers may likewise be computed at least in proportion to the salary and related benefits due them.

Other Benefits upon Retirement

The retirement benefits under RA 7641 and RA 8558 are separate and distinct from those granted by the Social Security System.

Under the law, upon optional or compulsory retirement, the employee is also entitled to the proportionate thirteenth-month pay for the calendar year and to the cash equivalent of accrued leave benefits.

BENEFITS UNDER THE EMPLOYEES' COMPENSATION PROGRAM (PD 626)

The Employees' Compensation Program

The Employees' Compensation Program (ECP) is a government program designed to provide a package of benefits for public and private sector employees and their dependents in the event of work-related contingencies such as sickness, injury, disability, or death.

Where: A claim may be filed at any GSIS branch office, for government employees, or at any SSS branch office, for employees in the private sector.

Period of Appeal. The claimant shall file with the GSIS or the SSS, as the case may be, a notice of appeal within thirty (30) calendar days from receipt of the decision.

Obligations/Responsibilities of Employers

1. **Contribution to the State Insurance Fund (SIF).** – The employer shall contribute in behalf of his or her employees to the SIF, from which payments for benefits are drawn.

2. **Registration.** – Every employer (and every employee as well) shall be registered with the GSIS or SSS by accomplishing the prescribed forms.

3. **Safety Devices.** – The employer shall comply with health and safety laws and shall take the necessary precautions for the prevention of work-related disability or death.

4. **Employer's Logbook.** – The employer is required to maintain a logbook to contain his or her employees' sickness, injuries, disabilities, and deaths. Notification of such contingencies to the GSIS or SSS shall be made within five (5) days from the date of contingency.

5. **Deprivations Clause.** – No contract, regulation, or device whatsoever shall operate to deprive the employee or his/her dependents of any part of the ECP compensation package.

PHILHEALTH BENEFITS (RA 7875, as amended by RA 9241)

The National Health Insurance Program

The National Health Insurance Program (NHIP), formerly known as Medicare, is a health insurance program for SSS members and their dependents whereby the healthy subsidize the sick who may find themselves in need of financial assistance when they get hospitalized.

Death benefits which are granted to beneficiaries of an employee who dies as a result of sickness or injury arising out of employment. When a worker on PTD status dies, his or her primary beneficiaries shall receive eighty percent (80%) of his or her monthly income benefit plus ten percent (10%) for every dependent child but not exceeding five (5).

Kinds of Disability

There are three (3) types of loss of income benefits:

Temporary Total Disability (TTD) benefit which is given to an employee who is unable to work for a continuous period not exceeding 120 days.

Permanent Partial Disability (PPD) benefit which is given to a worker who loses a body part and consequently the loss of the use of that body part.

Permanent Total Disability (PTD) benefit which is given if the employee's inability to work lasts for more than 240 days. PTD benefit can be claimed in the following cases:

1. complete loss of vision;
2. loss of two limbs at or above the ankles or wrists;
3. permanent and complete paralysis of two limbs, and
4. brain injury resulting in incurable imbecility or insanity, if caused by work.

Filing of Claims

Employees can claim only for work-connected sickness, injuries, or death.

Who may file: The claimant or his/her representative may file an appropriate claim with the GSIS, in case of public sector claimant, or with the SSS, in case of private sector claimant.

When: A claim may be filed within three (3) years from the date of the occurrence of the contingency (i.e., sickness, injury, or death).

How: Fill in the prescribed forms supplied by the GSIS or SSS and attach the supporting documents required for every contingency.

For more information, please write or call the **Employees' Compensation Commission** (ECC), Information and Public Assistance Division, located at 355 Sen. Gil Puyat Avenue, Makati City. Telephone Nos. 899-4251 to 52 locals 227 and 228; Fax: 897-7597. Public Assistance Center (PAC) Telephone No. 899-4251.

Email: ecc_mis@info.com.ph. Website: www.ecc.gov.ph

Coverage

The ECP covers all workers in the formal sector.

Coverage in the ECP starts on the first day of employment.

Employees in the private sector who are registered members of the Social Security System (SSS), except self-employed workers and voluntary members of the SSS.

The Benefits

Loss of income benefit or a cash benefit given to a worker to compensate for lost income due to his or her inability to work.

Medical benefits which include the reimbursement of the cost of medicine for the illness or injury, payments to providers of medical care, hospital care, surgical expenses, and the costs of appliances and supplies where necessary. The medical services are limited to ward services of an accredited hospital.

Rehabilitation services include physical therapy, vocational training, and special assistance provided to employees who sustain a disability as a result of sickness or injury arising out of employment. The objective is to develop the workers' mental, vocational, and social potential and to help them remain as productive members of society.

Career's allowance which is provided to an employee who suffers a permanent total disability (PTD) arising out of employment the extent of which is such that he or she could not on his or her own attend to his or her basic personal needs.