

# Labour & Employment

*Contributing editors*

Matthew Howse, Sabine Smith-Vidal, Walter Ahrens and Mark Zelek



2018

GETTING THE  
DEAL THROUGH 

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*Contributing editors*

Matthew Howse, Sabine Smith-Vidal, Walter Ahrens and Mark Zelek  
Morgan Lewis & Bockius LLP

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# Preface

## Labour & Employment 2018

Thirteenth edition

**Getting the Deal Through** is delighted to publish the thirteenth edition of *Labour & Employment*, which is available in print, as an e-book, and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Argentina, Canada, Colombia, Costa Rica, Ireland, Hong Kong, Nigeria, Peru and the Philippines.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Matthew Howse, Sabine Smith-Vidal, Walter Ahrens and Mark Zelek of Morgan Lewis & Bockius LLP, for their continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
May 2018

# Philippines

Ronald Mark C Llano, Emmar Benjoe B Panahon and Hans Cedric I Santos

SyCip Salazar Hernandez & Gatmaitan

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## Legislation and agencies

### 1 What are the main statutes and regulations relating to employment?

The Labor Code of the Philippines (Presidential Decree No. 442, as amended) (the Labor Code) and the Omnibus Rules Implementing the Labor Code.

### 2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The Labor Code prohibits discrimination against women on account of their sex, and against children on account of their age.

The Magna Carta of Women (Republic Act No. 9710, as amended) prohibits discrimination against women and expressly imposes liability for damages on the person directly responsible for such discrimination.

The Anti-Age Discrimination in Employment Act (Republic Act No. 10911) prohibits discrimination on account of age, and imposes penalties for violation of the Act.

The Magna Carta for Persons with Disability (Republic Act No. 7277, as amended) provides that a qualified employee with disability shall be subject to the same terms and conditions of employment as a qualified able-bodied person.

The Solo Parents' Welfare Act (Republic Act No. 8972) prohibits an employer from discriminating against any solo parent employee with respect to the terms and conditions of employment on account of the employee being a solo parent.

The Indigenous Peoples' Rights Act (Republic Act No. 8371) prohibits discrimination against Indigenous Cultural Communities or Indigenous Peoples with respect to recruitment and conditions of employment on account of their descent.

The Philippine AIDS Prevention and Control Act (Republic Act No. 8504) prohibits discrimination, in all its forms and subtleties, against individuals with HIV or persons perceived as or suspected of having HIV.

The Anti-Sexual Harassment Act (Republic Act No. 7877) prohibits sexual harassment in the workplace.

### 3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Department of Labor and Employment (DOLE) is the primary policy-making, programming, coordinating and administrative entity in the field of labour and employment. It has primary responsibility for the promotion of gainful employment opportunities, the advancement of workers' welfare and promoting harmonious, equitable and stable employment relations.

Some of the major agencies of the DOLE that play major roles in the enforcement of employment statutes and regulations include:

- the Bureau of Labor Relations, which sets policies, standards and procedures on the registration and supervision of labour unions and their activities;
- the National Conciliation and Mediation Board, which handles conciliation, mediation and voluntary arbitration of labour disputes; and

- the National Labor Relations Commission, which is a quasi-judicial agency that has original jurisdiction to adjudicate specific labour claims and disputes.

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## Worker representation

### 4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

The Labor Code provides for and regulates the creation of legitimate labour organisations, or unions or associations of employees in the private sector that exist in whole or in part for the purpose of collective bargaining, mutual aid, interest, cooperation, protection or other lawful purposes. In particular, unions are organised for collective bargaining as well as other legitimate purposes, while workers' associations are organised for mutual aid and protection or any legitimate purpose other than collective bargaining.

The Labor Code also provides that employees may form labour-management councils to allow employees to participate in policy and decision-making processes of the establishment where they are employed, insofar as said processes will directly affect their rights, benefits and welfare, except those that are covered by collective bargaining agreements or are traditional areas of bargaining.

### 5 What are their powers?

The Labor Code provides that legitimate labour organisations may:

- act as the representative of its members for collective bargaining;
- obtain a certification as the exclusive representative of all the employees in an appropriate bargaining unit for purposes of collective bargaining;
- demand to be furnished by the employer, upon written request, with its annual audited financial statements after the union has been duly certified as the sole and exclusive bargaining representative of the employees in the bargaining unit;
- own property, real or personal, for the use and benefit of the labour organisation and its members;
- sue and be sued in its registered name; and
- undertake all other activities designed to benefit the organisation and its members, including cooperative, housing, welfare and other projects not contrary to law.

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## Background information on applicants

### 6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

There is no law prohibiting background checks on applicants, whether conducted by the employer or a third party. There are, however, specific laws that apply with respect to applications and background checks.

For example, the Anti-Age Discrimination in Employment Act specifically prohibits requiring the declaration of age or birth date during the application process. The implementing rules of the Data Privacy Act (Republic Act No. 10173) also provide that the applicant or data subject has a right to be informed if personal data is being collected for purposes of profiling, or for other forms of data processing. Under this law, 'profiling' includes the automated processing of personal data

(defined as information from which the identity of an individual is apparent or can be ascertained) consisting of the use of such personal data to evaluate certain personal aspects relating to a natural person.

**7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?**

The Philippine AIDS Prevention and Control Act of 1998 (Republic Act No. 8504) prohibits compulsory HIV testing as a precondition to employment. In addition, job applicants cannot be compelled to disclose their hepatitis B status and other related medical information. Access to personal data relating to an employee’s hepatitis B status is bound by the rules of confidentiality and is strictly limited to medical personnel or if legally required (DOLE Department Advisory No. 05-10).

In addition to the foregoing, medical examination results should not be used to deny employment when the denial of employment would constitute discrimination under the laws mentioned in question 2. For example, discrimination under the Magna Carta for Persons with Disability includes using qualification standards, employment tests or other selection criteria that screen out or tend to screen out a disabled person unless such standards, tests or other selection criteria are shown to be job-related for the position in question and are consistent with business necessity.

**8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?**

There are no restrictions against drug and alcohol testing, and there is no law prohibiting an employer from refusing to hire an applicant who refuses to submit to a test. However, the DOLE has issued the Guidelines for the Implementation of a Drug-Free Workplace Policies and Programs for the Private Sector (DOLE Department Order No. 053-03), which states that only drug-testing centres accredited by the Department of Health shall be utilised for drug testing.

**Hiring of employees**

**9 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?**

See question 2 on prohibitions against discrimination.

In addition, a ‘JobStart graduate’ is given preference under law in the hiring of workers by employers participating in the JobStart Philippines programme, which was established pursuant to the JobStart Philippines Act (Republic Act No. 10869). This law aims to shorten a youth’s school-to-work transition by enhancing the knowledge and skills acquired in formal education or technical training by jobseekers in order for them to become more responsive to the demands of the labour market.

**10 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?**

Generally, the law does not require an employment contract to be reduced into writing, but specific laws may require the same. For example, the Domestic Workers Act (Republic Act No. 10361) requires an employment contract to be executed between the domestic worker and the employer in a language or dialect understood by both the domestic worker and the employer. The contract must include the duties and responsibilities of the domestic worker, the period of employment, the agreed compensation and authorised deductions, among others. The Rules and Regulations Implementing the Act Providing for the Elimination of the Worst Forms of Child Labour (DOLE Department Order No. 065-04) also provides that, when the employer is in public entertainment or information, they shall submit to the DOLE regional office a written employment contract concluded between the employer and the child’s parents or guardian, and approved by the Department.

**11 To what extent are fixed-term employment contracts permissible?**

Fixed-term contracts are permitted provided that either of these two criteria are met:

- the fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress or improper

pressure being brought to bear on the employee and without any circumstances vitiating consent; or

- it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatsoever being exercised by the former on the latter.

While labour laws and jurisprudence do not provide for a maximum duration for fixed-term employment contracts, the Philippine Supreme Court has recognised the validity of a fixed-term employment contract with a duration of five years.

**12 What is the maximum probationary period permitted by law?**

The Labor Code provides that probationary employment shall not exceed six months from the date the employee started working unless it is covered by an apprenticeship agreement stipulating a longer period. However, the Philippine Supreme Court has held that the probationary employee may voluntarily agree to an extension if it would afford the employee another chance to pass the standards for regularisation after having initially failed the probationary period.

**13 What are the primary factors that distinguish an independent contractor from an employee?**

An independent contractor is one who carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under one’s own responsibility according to one’s own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof.

A job contractor refers to any person or entity engaged in a legitimate contracting or subcontracting arrangement providing services for a specific job or undertaking farmed out by principal under a service agreement. There is legitimate job contracting when all the following concur:

- the contractor or subcontractor is engaged in a distinct and independent business and undertakes to perform the job or work on its own responsibility, according to its own manner and method;
- the contractor or subcontractor has substantial capital to carry out the job farmed out by the principal on his or her account, manner and method, investment in the form of tools, equipment, machinery and supervision;
- in performing the work farmed out, the contractor or subcontractor is free from the control or direction of the principal in all matters connected with the performance of the work except as to the result thereto; and
- the service agreement ensures compliance with all the rights and benefits for all the employees of the contractor or subcontractor under our labour laws.

On the other hand, jurisprudence has also recognised another kind of independent contractor in the form of individuals with unique skills and talents that set them apart from ordinary employees. The ‘control test’ is the primary factor determinative of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.

**14 Is there any legislation governing temporary staffing through recruitment agencies?**

Recruitment and placement refers to any act of canvassing, enlisting, contracting, transporting, utilising, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally in the Philippines or abroad, whether for profit or not. Recruitment in the Philippines is governed by the Labor Code, while recruitment for work abroad is governed by the Migrant Workers and Overseas Filipinos Act (Republic Act No. 8042, as amended).

The rules on legitimate job contracting mentioned in question 13 also provide for the temporary assignment of a contract worker for the duration of the service agreement, or only for a phase of the job or work to be undertaken.

**Foreign workers****15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?**

Foreign nationals who wish to engage in short-term employment may secure a Special Work Permit (SWP) from the Philippines' Bureau of Immigration. The SWP is valid for three months and can be extended for another three months. If the work engagement will extend beyond the six-month period, the employee will be required to obtain a Pre-Arranged Employment (9(G)) Visa, the validity of which is coterminous with the foreigner's Alien Employment Permit (AEP), which is issued by the DOLE. The AEP is valid only for the position and the company for which it was issued for a period of one year to three years, depending on the term of the employment contract. During the pendency of an application for a 9(G) visa, a foreign national may obtain a Provisional Work Permit (PWP), which is valid for three months or until a 9(G) visa has been issued, whichever comes first. The PWP can be renewed for another three months or a total of six months, if needed.

A foreign worker who obtains an AEP must again comply with the publication requirement if given an additional position in the same company or a subsequent related assignment. A change of position or employer shall require an application for a new AEP, but intra-corporate transferees who have been managers, executives or specialists of foreign service suppliers for at least one year prior to deployment to a branch, subsidiary, affiliate or representative office in the Philippines are exempt from the AEP requirement. Special visas are also available for investors and employees of offshore banking units, among others.

**16 Are spouses of authorised workers entitled to work?**

Spouses of authorised workers are generally obliged to secure their own work requirements if they wish to work in the Philippines. They are not automatically entitled to work by virtue of the fact that their spouses are authorised. However, legitimate spouses of officers and staff of international organisations of which the Philippine government is a member are, like their spouses, exempt from the AEP requirement.

**17 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?**

Foreign workers are generally required to secure an AEP from the DOLE before commencing employment. In addition, the foreign worker must obtain a Special Temporary Permit (STP) from the Professional Regulation Commission if the employment involves the practice of a profession, and an Authority to Employ Alien (AEA) from the Department of Justice if the work is in a nationalised or partially nationalised industry. In enterprises registered in preferred areas of investment, a favourable recommendation from the appropriate government agency is also needed. Failure to comply with the AEP requirement may subject employers and foreign workers to a fine of 10,000 Philippine pesos for every year or fraction thereof.

Foreign nationals exempt from securing an employment permit include members of the diplomatic service and foreign government officials on the basis of reciprocity; officers and staff of international organisations of which the Philippines is a member, and their legitimate spouses desiring to work in the Philippines; 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; visiting, exchange or adjunct professors under formal agreements between universities or colleges in the Philippines and foreign universities or colleges or between the Philippine government and foreign government on the basis of reciprocity; permanent resident foreign nationals and probationary or temporary resident visa holders under the Philippine Immigration Act of 1940, and Alien Social Registration Act of 1995; refugees and stateless persons in accordance with the United Nations Convention and Protocol relating to status of refugees and stateless persons; and others granted exemption by special law.

Categories of foreign nationals excluded from the AEP requirement include members of the governing board of corporations with voting rights only that do not intervene in the management of the

corporation or in the day-to-day operation of the enterprise; presidents and treasurers that are part-owners of the company; those providing consultancy services who do not have employers in the Philippines; intra-corporate transferees who have been managers, executives or specialists in accordance with trade agreements and employees of the foreign service supplier with at least one year continuous employment prior to deployment to a branch, subsidiary, affiliate or representative office in the Philippines; under certain conditions, contractual service suppliers who are managers, executives or specialists and employees of foreign service suppliers with no commercial presence in the Philippines; and representatives of the foreign principal or employer assigned in a licensed manning agency in accordance with the POEA law, rules and regulations.

**18 Is a labour market test required as a precursor to a short- or long-term visa?**

A labour market test is necessary before an AEP may be issued. In turn, an AEP is required for the issuance of a 9(G) visa. The application for an AEP must be published, among others, in a newspaper of general circulation, to which objections must be filed within 30 days.

**Terms of employment****19 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?**

The Labor Code and its implementing rules prescribe eight hours a day, as normal hours of work, for rank-and-file employees. Work performed beyond the normal hours entitles the employee to receive overtime pay.

Employees who render services between ten o'clock in the evening and six o'clock in the morning are also entitled to a night shift differential. Employees are entitled to a rest day of not less than 24 consecutive hours after every six consecutive work days. In emergency cases, employees may be required to render work on a rest day.

Special restrictions are imposed on minors who are allowed to work. Minors below 15 years of age may be allowed to work for not more than four hours a day, and not more than 20 hours a week. They are not allowed to work between eight o'clock in the evening and six o'clock in the morning of the following day. Minors aged 15 or over but below 18 may work for not more than eight hours a day, and not more than 40 hours a week. They cannot work between ten o'clock in the evening and six o'clock the following morning.

**20 What categories of workers are entitled to overtime pay and how is it calculated?**

All rank-and-file employees in the private sector, except domestic workers, workers paid by results and non-agricultural field personnel, are entitled to overtime pay. Overtime work performed on an ordinary working day entitles employees to an additional 25 per cent of the hourly rate for that day, which shall increase to 30 per cent if the work is performed on a holiday, special day or rest day.

**21 Can employees contractually waive the right to overtime pay?**

Generally, overtime pay cannot be waived, and overtime work cannot be offset by undertime work. However, both the DOLE and the Philippine Supreme Court have allowed companies to employ a compressed workweek scheme, where the normal workweek is reduced to less than six days but the total number of work hours remains at 48 hours per week (or 40 hours per week for firms whose normal workweek is five days). Under a compressed workweek scheme, work beyond eight hours will not be compensable by overtime premium provided the total number of hours worked per day shall not exceed 12 hours (in a 48-hour workweek) or 10 hours (in a 40-hour workweek). Employers may implement a compressed workweek scheme only with the express and voluntary agreement of a majority of the covered employees and prior notice to the DOLE of the adoption of the compressed workweek.

**22 Is there any legislation establishing the right to annual vacation and holidays?**

Under the Labor Code, rank-and-file employees who have rendered at least 12 months of service, whether continuous or broken, are entitled to a yearly service incentive leave of at least five days with pay, unless



the employee already enjoys vacation leave with pay of at least five days. The service incentive leave may be used for vacation or sick leave. Unused service incentive leave is convertible to cash.

The Administrative Code of 1987 provides for the special and regular holidays in the Philippines. The President also declares the regular and special holidays through Presidential Proclamations issued annually.

### **23 Is there any legislation establishing the right to sick leave or sick pay?**

Philippine law does not require employees to grant sick leave or sick pay. The minimum required by the law is the service incentive leave discussed in question 22. Under the Labor Code and the Social Security Law (Republic Act No. 1161, as amended by Republic Act No. 8282), employees are entitled to benefits in case of permanent or temporary total disability or permanent partial disability. However, employers are not barred from providing more favourable benefits such as sick leave on top of those mandated by law.

See also our discussion in question 25 on the other mandatory leave benefits under law.

### **24 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?**

The law does not provide for the circumstances when an employee may take a leave of absence. The company may, however, introduce reasonable policies to govern leave of absence. The mandated service incentive leave discussed in question 22 may also be used for this purpose.

### **25 What employee benefits are prescribed by law?**

In addition to prescribed hours of work, holiday pay, overtime pay, premium pay, night shift differential and service incentive leave, employees, when applicable, are entitled to maternity leave, paternity leave, parental leave for solo parents, leave for victims of violence against women and their children, special leave for women who undergo gynaecological surgery, 13th month pay, retirement pay and benefits, separation pay, benefits under the Employees' Compensation Program, health insurance benefits, social security benefits and housing benefits.

### **26 Are there any special rules relating to part-time or fixed-term employees?**

The DOLE Explanatory Bulletin on Part-Time Employment (1996) defines part-time employees as those whose regular hours of work are substantially less than the normal hours prescribed. Employers may proportionately decrease the daily wage and wage-related benefits granted by law in accordance with the hours worked, but part-time workers remain entitled to overtime, premium, holiday and 13th month pay. They may also earn service incentive leave with pay, computed proportionately to the daily work rendered and daily salary received. Part-time employees also receive benefits upon retirement.

Regarding fixed-term employment, see question 11.

### **27 Must employers publish information on pay or other details about employees or the general workforce?**

Employers are not required to publish information regarding details of employment. Details on salary and compensation are often kept confidential.

## **Post-employment restrictive covenants**

### **28 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?**

The Philippine Supreme Court has ruled that post-termination covenants are valid if they contain reasonable limitations as to time, trade or activity, and place. The restriction must be reasonable and not greater than necessary to protect the employer's legitimate business interests. In determining the reasonableness of the restriction, courts consider the following factors:

- whether the covenant protects a legitimate business interest of the employer;
- whether the covenant creates an undue burden on the employee;
- whether the covenant is injurious to public welfare;

- whether the time and territorial limitations contained in the covenant are reasonable; and
- whether the restraint is reasonable from the standpoint of public policy.

Because these covenants are treated on a case-to-case basis, there is no set maximum period for their duration. However, a two-year restriction has been held to be valid.

### **29 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?**

Employers are not required to pay former employees for the duration of the time specified in post-employment restrictive covenants.

## **Liability for acts of employees**

### **30 In which circumstances may an employer be held liable for the acts or conduct of its employees?**

The Civil Code (Republic Act No. 386, as amended) imposes vicarious liability on employers for the damages caused by employees acting within the scope of their assigned tasks. This liability is negated if employers prove that they exercised ordinary diligence to prevent damage.

Employers who are common carriers are held liable for the death of or injuries to passengers through the negligence or wilful acts of their employees, even if such employees acted beyond the scope of their authority or in violation of the orders of the employer.

If an employee dies or is injured due to the negligence of a fellow employee, the latter and the employer are held solidarily liable for the damages due. Employers are not liable if the fellow employee's intentional or malicious act is the only cause of the death or injury, unless it is shown that the employer did not exercise due diligence in the selection or supervision of the employee at fault.

## **Taxation of employees**

### **31 What employment-related taxes are prescribed by law?**

Under the recently amended National Internal Revenue Code (Republic Act No. 8424, as recently amended by Republic Act No. 10963), employees with compensation income of more than 250,000 Philippine pesos are subject to income tax at a graduated rate of 20-35 per cent. The employer is required to deduct and withhold these taxes, and remit the same to the Bureau of Internal Revenue.

Also, fringe benefits granted to managerial and supervisory employees are subject to 35 per cent fringe benefits tax on its grossed-up monetary value payable by the employer.

## **Employee-created IP**

### **32 Is there any legislation addressing the parties' rights with respect to employee inventions?**

The Intellectual Property Code (Republic Act No. 8293, as amended) mandates that patent rights over inventions made by employees as a 'result of the performance of his regularly assigned duties' shall belong to the employer, unless there is an agreement to the contrary. Otherwise, if the invention was made outside the employee's regular duties, the patent rights shall belong to the employee.

### **33 Is there any legislation protecting trade secrets and other confidential business information?**

The Securities Regulation Code (Republic Act No. 8799) protects confidential business information by prohibiting the Securities and Exchange Commission (SEC) from revealing trade secrets contained in any application or document filed with the SEC.

The Revised Penal Code also prescribes criminal liability to employees that reveal the trade secrets of an employer.

The National Internal Revenue Code likewise punishes any officer or employee of the Bureau of Internal Revenue that divulges any secrets, operation, style, work or confidential information regarding the business of any taxpayer.

### Update and trends

The National Privacy Commission in 2016 issued the implementing rules and regulations of the Data Privacy Act of 2012, which regulates data and information processing. In terms of employment, the regulations affect how employers process personal information and sensitive personal information of its employees.

Also, the DOLE has issued several regulations in the past year that aim to crack down on labour-only contracting, which is prohibited by law. These include regulations that provide:

- stricter requirements for registration of independent contractors; and
- regulations that clarify the procedure for assessments and violations for findings of labour-only contracting arrangements.

The DOLE has been aggressive in investigating labour-only contracting arrangements as part of the current administration's promise to combat and end 'endo' (or end-of-term) contracts that defeat employees' rights to security of tenure.

### Data protection

#### 34 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Data Privacy Act of 2012 restricts the processing of sensitive personal information and requires compliance with the principles of transparency, legitimate purpose and proportionality. It provides for the right of the data subject to be informed of the processing of the personal information pertaining to the data subject and other relevant data. Reasonable access must also be given to the contents of the personal information, sources thereof, recipients, manner of processing, etc.

### Business transfers

#### 35 Is there any legislation to protect employees in the event of a business transfer?

There is no legislation that protects employees in the event of a business transfer. However, the Philippine Supreme Court has declared that, in mergers and acquisitions, the contracts of employees cannot be considered as part of a corporation's assets and liabilities that may be unilaterally transferred by the employer (*Bank of the Philippine Islands v BPI Employees Union-Davao Chapter*, GR No. 164301, 10 August 2010). The employee must consent if their employment would be transferred to another employer since employment is a personal consensual contract.

### Termination of employment

#### 36 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

The Philippines is a 'for cause' jurisdiction. Causes for termination of employment may either be:

- a 'just cause' under Article 297, ie:
  - serious misconduct or wilful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
  - gross and habitual neglect by the employee of his duties;
  - fraud or wilful breach by the employee of the trust reposed in him by his employer or duly authorised representative;
  - commission of a crime or offence by the employee against the person of his employer or any immediate member of his family or his duly authorised representative; and
  - other causes analogous to the foregoing;
- an 'authorised cause' under Article 298, ie:
  - installation of labour-saving devices;
  - redundancy;
  - retrenchment to prevent losses; and
  - closure or cessation of operation of the establishment or undertaking due to serious business losses or financial reverses; or
- 'disease' under Article 299.

In relation to concerted activities, participation in an illegal strike by union officers, commission of illegal acts by union officers or employees and violation of a return-to-work order issued by the Labor Secretary are also causes for termination of employment.

#### 37 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

A notice of termination is required to be given to an employee prior to dismissal. The notice requirements vary depending on the ground for termination.

For just causes, the notice of termination can only be issued to the employee after compliance with the due process requirements under law (see question 40).

For authorised causes, the employee must be notified at least one month prior to the effective date of termination (see question 40.)

An employer may not provide pay in lieu of notice.

#### 38 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Notice of termination is not required in cases of:

- fixed-term employees in case of the expiration of their term, since the termination of employment had already been agreed upon at the time of the engagement; and
- project employees, whose employment is automatically terminated at the end of the duration of the project agreed upon.

#### 39 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

The Labor Code provides for the payment of separation pay to employees whose employment was terminated due to authorised causes or disease.

For termination due to installation of labour-saving devices or redundancy, the separation pay is at least one month's pay or at least one month's pay for every year of service, whichever is higher. For termination due to retrenchment, closures or cessation of operations of establishment not due to serious business losses or reverses, or disease, the separation pay is at least one month's pay or at least one-half of a month's pay for every year of service, whichever is higher.

#### 40 Are there any procedural requirements for dismissing an employee?

Yes, the procedural requirements depend on the cause of termination.

If the dismissal is due to just causes under Article 297 of the Labor Code, the employer is required to furnish the employee with a first written notice indicating the specific grounds for dismissal and to afford the employee an ample opportunity to be heard. After determining that the dismissal is justified, the employer should serve a second written notice of termination.

If the termination is for authorised causes under Article 298 of the Labor Code, the employer is mandated to serve a written notice on the employee and the DOLE at least one month prior to the intended date of the dismissal.

#### 41 In what circumstances are employees protected from dismissal?

Employees are, under all circumstances, protected from unjust dismissal pursuant to their right to security of tenure as enshrined in the Philippine Constitution (article XIII, section 3) and reiterated in the Labor Code (article 3).

#### 42 Are there special rules for mass terminations or collective dismissals?

No. It is necessary, however, that the pertinent procedural and substantive requirements under the Labor Code are met and complied with as discussed above.

#### 43 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Both class and collective actions are allowed. The class action available to employees is known as 'class suit' under the 1997 Rules of Civil

Procedure. It is allowed 'when the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all parties'. Collective action is likewise permitted pursuant to the right of legitimate labour organisations or unions to strike and picket in accordance with the procedural and substantive requirements under the law.

**44 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?**

Yes, an employee is considered retired upon reaching the retirement age stipulated in the collective bargaining agreement (CBA) or in the employment contract. In the absence of any agreement, the Labor Code provides for a mandatory retirement age of 65 years old. However, for underground mining employees, the mandatory retirement age is 60 years old.

**Dispute resolution**

**45 May the parties agree to private arbitration of employment disputes?**

The parties may agree to private arbitration, but this will not deprive Philippine labour courts or agencies of jurisdiction over certain labour disputes as provided by law. In the Philippines, jurisdiction is granted by law and may not be waived by the parties.

However, the Labor Code requires parties to a CBA to establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their CBA.

**46 May an employee agree to waive statutory and contractual rights to potential employment claims?**

An employee may waive his rights to employment claims provided the following requirements are present:

- the employee executes a deed of quitclaim voluntarily;
- there is no fraud and deceit on the part of any of the parties;
- the consideration of the quitclaim is credible and reasonable; and
- the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognised by law (*Goodrich Manufacturing Corporation v Ativo*, GR No. 188002, 1 February 2010).

**47 What are the limitation periods for bringing employment claims?**

The limitation period depends on the nature of the employment claim. For money claims arising from an employer-employee relationship, an employee has three years from the time the cause of action accrued within which to file his or her action. On the other hand, illegal dismissal cases, which are considered as quasi-delict, are prescribed after four years counted from the time the cause of action accrued. For unfair labour practices, the claim must be filed within one year of the time the acts complained of were committed.

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