

# Philippine labor laws that employers must know

October 18, 2009 by [Vanessa Abrugar](#)



Knowing laws on labor and employment is vital to one's business because a minor violation could lead you to big trouble. Most employers, especially those who do not have legal counsel, violate these laws usually not because they intend to, but because of sheer ignorance. Unfortunately, ignorance of the law does not excuse them from complying with it. Companies have closed shop after their employees slapped them with labor suits which ended up with these companies paying huge amounts of money representing unpaid wages or benefits and damages. To avoid being in the same situation, the following are relevant laws which you should always bear in mind as you go about your business and deal with your employees:

## 1. “Regular” employment

Article 280 of the Labor Code of the Philippines (LCP) describes different types of employment namely: regular, casual, project or seasonal. These distinctions are important because some rights and benefits attach only to regular employees, especially the right to security of tenure.

The most common type of employment now is the fixed term employment or contractual. Most companies prefer this to save labor costs because if they hire regular employees, they cannot terminate their employment expediently without valid and legal cause and the payment of separation pay and other benefits.

So if you do not intend to consider the person hired as a regular employee, you must inform him on the day he starts to work – that is, whether he is a casual, seasonal, project or a fixed term employee. If not, then he will be considered regular even if the employment contract says otherwise. Also in some instances, even if it is expressly stipulated to be a non-regular type, if the nature of the work is usually necessary and desirable to your business, then he will still be considered regular.

## 2. Probationary employment

The period should not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. (*Article 281*) A probationary employee may be dismissed for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known to him at the time he is hired. If he is not informed of these reasonable criteria, he will be considered a regular employee. So, employers should watch out for this requirement. Also, a probationary employee may become regular if he is allowed to work after the probationary period.

### **3. Minimum employable age**

The minimum employable age in the Philippines is fifteen years, with the exception of some instances when a child below 15 may be hired after complying with certain conditions. (*See RA 7610, Sec 12, as amended by RA 7658 and RA 9231; see also DOLE Department Order No. 65-04*).

### **4. Prohibition against stipulation of marriage**

You cannot require as a condition of employment or continuation of employment that a woman employee shall not get married. It is also unlawful to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage. (*Article 136, LCP*)

### **5. Anti-sexual Harassment law**

An employer commits sexual harassment when a sexual favor is made as a condition for hiring and for continued employment or reemployment. (Section 3, RA 7877)

### **6. Minimum wage and other benefits**

You must comply with the minimum wage rates prescribed by your respective Regional Tripartite Wages and Productivity Boards authorized by the state to fix the minimum wage. Note that there are civil and criminal violations for non-compliance with these wage orders.

The employer must also pay the employees the compensation and other benefits to which they are entitled under the Labor Code such as overtime pay, night shift pay, holiday pay, etc. as well as those provided under special laws such as 13<sup>th</sup> month pay.

### **7. Form, payee, time and place of payment of wages**

**Form.** You should, as a rule, pay in cash. Payment by promissory notes, vouchers, coupons, tokens, tickets, or chits is prohibited. This is illegal even if both the employee and employer agreed. You may, however, pay by check or money order but you must comply with guidelines prescribed by the Department of Labor. (*See Article 102, LCP; also Sec 2, Rule VIII, Book III, IRR*)

**Time.** Wages should be paid at least once every 2 weeks or twice a month at intervals not exceeding 16 days. The only exception is when there is *force majeure* or circumstances beyond the employer's control, but he should pay immediately after such *force majeure* or circumstances have ceased. (*See Article 103, LCP*)

**Place.** As a rule, the employer should pay at or near the place of work, except in cases of deteriorating peace and order situation and emergencies or calamities which makes payment in the workplace impossible. But the employer is required to provide transportation and the time for traveling should be considered as compensable hours worked. (*See Article 104, LCP; also Sec 4a, Rule VIII, Book III, IRR*)

Payment may also be made through banks or through an ATM facility, but guidelines provided by the Department of Labor must be complied with (*See Article 104, LCP; also Sec 4, Rule VIII, Book III and Labor Advisory on Payment of Salaries through ATM*)

## **8. Other prohibited acts or practices**

### **Gender discrimination**

“It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.” (*Article 135, LCP*)

### **Compulsory Patronage**

You cannot compel employees to purchase your goods or services or to patronize any store or products of any other person. (*Article 112, LCP*). It is unlawful for the employer to interfere with the employee’s freedom to spend his wages. Similar acts are punished criminally under Article 288 of the Revised Penal Code of the Philippines.

### **No wage deductions**

It is a common practice in the Philippines that creditors demand that the debtor-employee’s wage be paid directly to them. Some employers allow deductions from the wage or payment of the entire amount to these creditors not knowing that this is illegal. Under Article 105 of our Labor Code, payment should be made directly to the employee and under Article 113, no deductions from the wages are allowed.

There are however exceptions to these provisions:

1. when the employee authorized his employer in writing to pay his wages to a member of his family;
2. payment to another person of any part of the employee’s wages is authorized by existing law such as that under the SSS law where remittance is a duty of the employer,
3. payment for insurance premiums of the employee
4. payment for union dues where the right to check-off has been recognized by the employer in accordance with a collective agreement or authorized in writing by the individual employees concerned; or
5. in case of death of the employee, payment may be made to his heirs
6. deductions for facilities – These are goods or services provided by the employer to the employee for the benefit of the employee and his family.
7. deductions for loss or damages – This is allowed if the practice is recognized in the industry (such as deductions for car washing expenses for taxis) or necessary or desirable to the business. But the employer must prove clearly that it is indeed the employee who is responsible for the loss or damage.

## **9. Unfair Labor Practices**

These are acts which violate the constitutional right workers to organize and are considered inimical to the legitimate interests of both the worker and the employer, especially their right to bargain collectively and deal with each other peacefully. Unfair labor practices may be committed by employers (Art 248, LCP) and by labor organizations or unions (Art 249, LCP).

## **10. Employee's right to self-organization and the right to strike**

These rights are expressly provided by the 1987 Constitution and the Labor Code. Employers should not interfere with or deny their employees their right to form organizations for their mutual aid or protection and to form unions for the purpose of negotiating the terms and conditions of employment with their employer. Employees also have the right to strike but this may only be exercised after complying with guidelines provided by the DOLE. Otherwise, the strike may be considered illegal and may be a cause for terminating their employment.

## **11. Valid termination of employment**

If you want to dismiss an employee from his job, it should be for a cause provided by law and you must comply with procedural requirements. Just causes which are voluntary acts of the employee are enumerated in Article 282 (LCP) while authorized causes, which are attributed to the employer, are provided by Article 283 and 284.

For a valid dismissal, substantive (Art. 282, 283, 284) and procedural requirements (Article 277b; also Department Order No. 9, June 21, 1997) must be complied with.

### ***Just causes***

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b. Gross and habitual neglect by the employee of his duties;
- c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- e. Analogous or similar causes

### **Procedure for termination due to just causes: (Twin Notice Rule)**

- (1) Serve the **first written notice** on the employees containing the specific ground/s for termination and a directive that they are given the opportunity to submit their written explanation within a reasonable period.
- (2) After serving the first notice, the employers should schedule and conduct a **hearing or conference** wherein the employees will be given the opportunity to:
  - (a) explain and clarify their defenses to the charge against them;
  - (b) present evidence in support of their defenses; and
  - (c) rebut the evidence presented against them by the management.

During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

Note however, that in a recent case decided by the Supreme Court, a hearing or conference is not mandatory. It is enough that the employee is given an opportunity to be heard, which could be through submission of position papers or other evidence.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that:

- (a) all circumstances involving the charge against the employees have been considered; and
- (b) grounds have been established to justify the severance of their employment

#### ***Authorized causes***

1. Installation of labor saving device
2. Redundancy
3. Retrenchment to prevent losses
4. Closure due to serious business losses
5. Disease

#### **Procedure for termination due to authorized causes:**

(1) Serve a written notice upon the worker at least one month or 30 days before the intended date of the termination. This is to inform the employee of the impending loss of his employment so he could at the earliest opportunity look for prospective jobs.

(2) Serve a written notice on the DOLE at least one month or 30 days before the intended date of the termination. This is in order for the DOLE to:

- a. Determine the validity of the dismissal; and
- b. To intervene for a possible conciliation or mediation

(3) To give separation pay such as when termination is due to redundancy, but not when the employer is suffering from severe financial losses.

If you do not comply with procedures, even you have a valid cause for terminating the employment; you may still be required to pay damages: Fifty thousand pesos (P50,000) if the cause was attributed to you as employer or thirty thousand pesos (P30,000) if the cause was attributed to the employee.

## Conclusion

The key to avoiding violations of labor and employment laws is by being a good employer – that is, giving your employees at least the minimum benefits and standard working conditions provided by law, allowing them to reasonably exercise their rights as workers, especially the right to self-organize and always exercising good faith and fairness in dealing with them. As employer, you must not only think of the profit you can earn from your business, but also the human factor in every employment relationship

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## Overtime pay laws and computation in the Philippines

October 10, 2009 by [Vanessa Abrugar](#)



Man is not a machine. At the end of the day, he has to rest to rejuvenate and prepare himself for tomorrow's work. That is why labor standard laws in many countries set up maximum hours of work for employees. In the Philippines, our Labor Code fixed the maximum at eight (8) hours a day (see Article 83, Labor Code of the Philippines) for six consecutive work days (Article 91, LCP). If the employee works beyond eight hours, the employer is required to pay an additional compensation equivalent to the employee's regular wage plus at least twenty-five percent (25%) of such regular wage. The rate is increased to thirty percent (30%) if the worker renders overtime on a holiday or rest day. (Article 87, LCP).

### *Who are covered?*

All employees in all establishments and undertakings whether for profit or not are entitled to overtime pay for work rendered beyond eight (8) hours. But this does not apply to managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results. Employees in the government are also entitled to overtime pay but they are governed by Civil Service laws and rules. Only employees in the private sector are covered by the Labor Code.

### *Special rules for health personnel*

For health personnel in (1) cities and municipalities with a population of at least one million (1,000,000) or in (2) hospitals and clinics with a bed capacity of at least one hundred (100), their normal hours of work are eight (8) hours a day, for five (5) days a week, exclusive of time for meals. (Article 83, LCP)

Health personnel includes resident physicians, nurses, nutritionists, dietitians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, attendants and all other hospital or clinic personnel.

Overtime work by health personnel included in the two abovementioned instances is, as a rule, not allowed since it involves strenuous physical work considering the number of patients or clients they must attend to. However, they may be compelled to work beyond such hours where the exigencies of the service require that they work for six (6) days or forty-eight (48) hours. But the employer is required to pay an additional compensation of at least thirty percent (30%) of their regular wage for work on the sixth day.

### ***Can an employee be compelled to render overtime?***

When an employee spends additional time for work, he puts in more physical and mental effort. It is but proper that he be compensated for that. He is also delayed in going home and cannot spend time with family and enjoy the comforts of his home. As such, the law discourages employers to require employees to work overtime. Generally, he cannot compel the employee to render overtime, except in certain instances (Sec 10, Rule I, Bk. III, IRR) to wit:

- 1) When the country is at war or when any other national or local emergency has been declared by the National Assembly or the Chief Executive;
- 2) When overtime work is necessary to prevent loss of life or property, or in case of imminent danger to public safety due to actual or impending emergency in the locality caused by serious accident, fire, floods, typhoons, earthquake, epidemic or other disaster or calamities;
- 3) When there is urgent work to be performed on machineries, installations, or equipment, in order to avoid serious loss or damage to the employer or some other causes of similar nature;
- 4) When the work is necessary to prevent loss or damage to perishable goods;
- 5) When the completion or continuation of work started before the 8th hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer;
- 6) When overtime work is necessary to avail of favorable weather or environmental conditions where performance or quality of work is dependent thereon.

### ***Can an employee insist on working overtime?***

The employee cannot compel his employer to allow him to work overtime when the circumstances does not require him to do so as when there is actually no work to be performed.

### ***Under time cannot be offset by overtime***

Under time work on any particular day shall not be offset by overtime work on any other day (Article 88, LCP). The reason behind this is fairness. If the employee works for less than eight hours, he will be paid only for the corresponding number of hours he had actually worked. If on another day he works beyond the maximum hours, he should be given additional compensation.

Non-payment of overtime pay is not only illegal but also contrary to public policy. The employer cannot use the overtime to offset the under time because payment of overtime pay is mandatory. However, he may either deduct the under time from the wage of the employee, or through other

approaches. Although these methods are not provided by law, these may be found in company policies or established by company practices.

### ***Computation of wages***

The computation of overtime pay, pay for work done on holidays, premium on nightshift and 13th month pay are set out by the following rules:

#### Computing Overtime:

On Ordinary Days

Number of hours in excess of 8 hours (125% x hourly rate)

On a rest day, special day or regular holiday

Number of hours in excess of 8 hours (130% x hourly rate)

#### Computing pay for work done on:

A special day (130% x basic pay)

A special day, which is also a scheduled rest day (150% x basic pay)

A regular holiday (200% x basic pay)

A regular holiday, which is also a scheduled rest day (260% x basic pay)

#### Computing Night Shift Premium Where Night Shift is a Regular Work:

On Ordinary day (110% x basic hourly rate)

On a rest day, special day, regular holiday (110% of regular hourly rate for a rest day, special day, regular holiday)

#### Computing Overtime on Night Shift:

On ordinary day (110%) x overtime hourly rate)

On rest day, special day or regular holiday (110% x overtime hourly rate for rest days, special days, regular holidays)

#### Computing 13th Month Pay:

Total basic salary earned for the year exclusive of overtime, holiday, and night shift differential pay divided by 12 = 13th month pay.

Ref: <http://businessaccent.com/2009/10/10/overtime-pay-laws-and-computation-in-the-philippines/>

# How to compute 13th Month Pay: DOLE Philippines

October 4, 2009 by [Victorino Q. Abrugar](#)



We are already on the month of October and after a few months, Christmas season is here again. For employees, that season sounds delightful. Aside from the enjoyable Christmas party and the series of vacations, the long awaiting 13th Month pay will finally land in our hands. For employers, this extra month pay is an additional mandated expense given to employees once or twice (installment) a year. However, some good business owners and employers see the giving of this added remuneration to employees as an appreciation and gratitude for their valuable contribution to their companies.

An employer must know how to compute the lawful amount of 13th month pays to be distributed to his employees. On the other hand, it is clever for an employee to know the computation of his thirteenth month paycheck to ensure that he is receiving it in the right amount of money. So to know what must be known, the following guidelines are presented below.

## **How to compute?**

Section 2(a) of PD No. 851, which was issued by former president Ferdinand E. Marcos on December 16, 1975, stated that:

“thirteenth-month pay” shall mean one twelfth (1/12) of the basic salary of an employee within a calendar year.

According to the Revised Guidelines on the Implementation of the 13th Month Law issued on November 16, 1987 by then Labor Secretary Franklin Drilon:

the “basic salary” of an employee for the purpose of computing the 13th month pay shall include all remunerations or earning paid by this employer for services rendered but 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 differential and holiday pay, and cost-of-living allowances. However these salary-related benefits should be included as part of the basic salary in the computation of the 13th month pay if by individual or collective agreement, company practice or policy, the same are treated as part of the basic salary of the employees.

Based on the foregoing information, we can arrive with the following formula in computing 13th month pay:

13monthpay = total basic salary within the calendar year / 12

### **Is it taxable?**

Thirteenth month pay and other benefits amounting to P 30,000 and below are not subject to income tax. This means, if you receive P 40,000, the P10,000 excess is already taxable.

### **Who are entitled?**

Memorandum Order No. 28, issued by former President Corazon C. Aquino on August 13, 1986, modified Section of PD No. 851 and provided that all employers are hereby required to pay all their rank-and-file employees a 13th month pay not later than December 24 of every year.

Before its modification by the aforementioned Memorandum Order, P.D. No. 851 excludes from entitlement to the 13th month pay those employees who were receiving a basic salary of more than P1,000.00 a month. With the removal of the salary ceiling of P1,000.00, all rank and file employees are now entitled to a 13th month pay regardless of the amount of basic salary that they receive in a month if their employers are not otherwise exempted from the application of P.D. No. 851. Such employees are entitled to the benefit regardless of their designation or employment status, and irrespective of the method by which their wages are paid, provided that they have worked for at least one (1) month during a calendar year.

### **Who are considered rank-and-file employees?**

According to the Labor code, all employees not falling within the definition of a managerial employee are considered rank-and-file employees. A managerial employee is one who is vested with powers of prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall discharge, assign or discipline employees, or to effectively recommend such managerial actions.

### **How about resigned and separated employees?**

An employee who has resigned or whose services were terminated at any time before the time for payment of the 13th month pay is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his resignation or termination from the service. Thus, if he worked only from January up to September his proportionate 13th month pay should be equivalent of 1/12 his total basic salary he earned during that period.

The payment of the 13th month pay may be demanded by the employee upon the cessation of employer-employee relationship. This is consistent with the principle of equity that as the employer can require the employee to clear himself of all liabilities and property accountability, so can the employee demand the payment of all benefits due him upon the termination of the relationship.

### **When to pay?**

The required 13th month pay shall be paid not later than December 24 of each year. An employer, however, may give to his employees one half (½) of the required 13th month pay before the opening of the regular school year and the other half on before the 24th of December of every year. The frequency of payment of this monetary benefit may be the subject of agreement between the employer and the recognized/collective bargaining agent of the employees.

**Who are considered exempted employers?**

The following employers are still not covered by P.D. No. 851:

- a. The Government and any of its political subdivisions, including government-owned and controlled corporations, excepts those corporations operating essentially as private subsidiaries of the Government;
- b. Employers already paying their employees a 13th month pay or more in a calendar year or its equivalent at the time of this issuance;
- c. Employers of household helpers and persons in the personal service of another in relation to such workers; and
- d. 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 where the workers are paid on piece-rate basis in which case the employer shall grant the required 13th month pay to such workers.

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 on paragraph (b) hereof shall include Christmas bonus, mid-year bonus, cash bonuses and other payments amounting to not less than 1/12 of the basic salary but shall not include cash and stock dividends, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits. Where an employer pays less than required 1/12th of the employees basic salary, the employer shall pay the difference.

Ref: <http://businessaccent.com/2009/10/04/how-to-compute-13th-month-pay-dole-philippines/>