Ateneo de Manila University
Labor Law 1

Module 0: General Principles and Introduction

Constitutional provisions on labor

ART. II

§ 9

The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

§ 18 ⭐

The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

ART. XIII

§ 3 ⭐

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

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

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Labor Code policies

Art. 3
Declaration of basic policy

The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

Art. 218
Declaration of policy

A. It is the policy of the State:

   a. To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes;
   b. To promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development;
   c. To foster the free and voluntary organization of a strong and united labor movement;
   d. To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;
   e. To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes;
   f. To ensure a stable but dynamic and just industrial peace; and
   g. To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.

B. To encourage a truly democratic method of regulating the relations between the employers and employees by means of agreements freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or other terms and conditions of employment, except as otherwise provided under this Code.

Statutory construction of labor laws

Art. 4
Construction in favor of labor

All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

- The principle laid down in art. 4 has been extended by jurisprudence to cover doubts in the evidence presented by the employer and the employee (*PMI0Faculty v. PMI Colleges Bohol*).

Module 1: Elements of a relationship

Labor Code definitions

- **"Employer"** includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the government, [...] as well as non-profit private institutions (art. 97 [b])
- **"Employer"** means any person, natural or juridical, employing the services of the employee (art. 173 [f])
- **"Employer"** includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer (art. 219 [e])
- **"Employee"** includes any individual employed by an employer (art. 97 [c])
- **"Employee"** means any person compulsorily covered by the GSIS [...] including the members of the Armed Forces of the Philippines, [...] or any person compulsorily covered by the SSS (art. 173 [g]).

- **"Employee"** includes any person in the employ of an employer. The term shall not be limited to the employees of a particular employer, unless the Code so explicitly states. It shall include any individual whose work has ceased as a result of or in connection with any current labor dispute or because of any unfair labor practice if he has not obtained any other substantially equivalent and regular employment (art. 219 [f])
- **"Employ"** includes to suffer or permit to work (art. 97 [e])

- In using the word "includes" [...] **Congress did not intend to give a complete definition of "employer,"** but rather that such definition should be complementary to what is commonly understood as employer.
- Congress intended the term to be understood in a broad meaning because:
    - The statutory definition includes not only "a principal employer but also a person acting in the interest of the employer"
    - The Act itself specifically enumerates those who are not included in the term "employer" (*Feati University v. Bautista*).

Sonza v. ABS-CBN Broadcasting Corp. ❤️
June 10, 2004

Case law has consistently held that the elements of an employee-employer relationship are:

a. The selection and engagement of the employee;
b. The payment of wages;
c. The power of dismissal; and
d. The employer's power to control the employee on the means and methods by which the work is accomplished.

The last element, the so-called "control test," is the most important element.

Tiangco v. ABS-CBN Broadcasting Corp.
December 6, 2021

Independent contractor – One who carries on a distinct and independent business and undertakes to perform the job, work, or service on their own account and under their own responsibility according to their 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.

- Hence, while an independent contractor enjoys independence and freedom from the control and supervision of their principal, **an employee is subject to the employer's power to control the means and methods** by which the employee's work is to be performed and accomplished.

- Thus, general rules that serve as mere guidelines toward the achievement of mutually desired results are not indicative of control over the means and methods by which the work is accomplished (*Sonza, supra*).
- In the selection and engagement of respondents, **no peculiar or unique skill, talent or celebrity status was required** from them because they were merely hired through the petitioner's personnel department just like any ordinary employee (*ABS-CBN v. Nazareno*).
- Control is present when the employer dictated the employee's work assignments and exercised control how one delivered lines, appeared on television, and sounded in broadcast *(Dumpit-Murillo v. CA*).
- Thus, a news producer is an employee because she was hired without showing that she was hired because of her unique skills, and the employer had required her to report to work for eight hours per day.
    - The burden of proof of proving that one is an independent contractor lies with the purported principal, not with the worker (*Fuji Television v. Espiritu*).
- While possessed of skills for which they were modestly recompensed by respondents, petitioners (cameramen/editors) lay no claim to fame and/or unique talents for which talents like actors and personalities are hired and generally compensated in the broadcast industry (*Begino v. ABS-CBN*).
- Control is also exercised when the employer monitored their work and ensured that their end results are acceptable and in accordance with the standards set by the company, mandated to attend seminars and workshops, controlled their schedule and work assignments, and the employer provided them with the needed tools and implements to accomplish their jobs (*Del Rosario v. ABS-CBN*).
- Control in Labor Law should not merely relate to the mutually desirable result intended by the contractual relationship. They must have the **nature of dictating the means or methods to be employed in attaining the result, or of fixing the methodology and of binding or restricting the party hired to the use of these means** (*Tongko v. Manulife*).

Bernarte v. PBA (2011) 🏀	**A basketball coach is an independent contractor.** Once in the playing court, the referees exercise their own independent judgment, based on the rules of the game, as to when and how a call or decision is to be made. The referees decide whether an infraction was committed, and the PBA cannot overrule them once the decision is made on the playing court
Consulta v. CA (2005) 👩‍💼	**An HMO management associate is an independent contractor.** Pamana paid Consulta not for labor she performed but only for the results of her labor. Without results, Consulta's labor was her own burden and loss. Her right to compensation, or to commission, depended on the tangible results of her work–whether she brought in paying recruits.
Orozco v. CA (2004) 📰	**A newspaper columnist is an independent contractor.** Aside from the constraints presented by the space allocation of her column, there were no restraints on her creativity; she was free to write her column in the manner and style she

	was accustomed to and to use whatever research method she deemed suitable for her purpose.
Escauriaga v. Fitness First (2024) 🏋	**Fitness trainers are employees**. Petitioners were bound to abide by the following Minimum Performance Standards. Two, petitioners were required to guarantee monthly sales and conduct physical training programs/packages. Three, respondents reserved the right to unilaterally revise the Minimum Performance Standards even without notice. The conduct of educational training sessions are badges of respondents' right to control the means and methods of providing physical health training packages.
Republic v. ASIAPRO (2007)	**Members of a cooperative deployed as workers by virtue of a service contract are employees**. The weekly stipends or the so-called shares in the service surplus given by the respondent cooperative to its owners-members were in reality wages. Also, the respondent cooperative is solely and entirely responsible for its owners-members, team leaders and other representatives at Stanfilco.
Villamaria v. CA (2006) 🚐	**The jeepney owner/operator-driver relationship under the boundary system is that of employer-employee** and not lessor-lessee. Requiring petitioner to drive the unit for commercial use, or to wear an identification card, or to don a decent attire, or to park the vehicle in Villamaria Motors garage, or to inform Villamaria Motors about the fact that the unit would be going out to the province for two days of more, or to drive the unit carefully, etc. necessarily related to control over the means.

Economic realities test

Francisco v. NLRC
August 31, 2006

The proper standard of economic dependence is **whether the worker is dependent on the alleged employer for his continued employment** in that line of business.

Thus, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity, such as:

(1) the extent to which the services performed are an integral part of the employer's business;
(2) the extent of the worker's investment in equipment and facilities;
(3) the nature and degree of control exercised by the employer;
(4) the worker's opportunity for profit and loss;
(5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise;
(6) the permanency and duration of the relationship between the worker and the employer; and
(7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.

- Under the broader economic reality test, Francisco can likewise be said to be an employee because she had served the company for six years before her dismissal, receiving check vouchers indicating her salaries/wages, benefits, 13th month pay, bonuses and allowances, as well as deductions and SSS contributions from Aug. 1, 1999 to Dec. 18, 2000.
- When the control test is insufficient, the economic realities of the employment are considered to get a comprehensive assessment of the true classification of the worker.
    - Thus, under both tests, delivery riders are Lazada employees. The services performed by the riders are integral to Lazada. That respondents could have left the delivery of the goods to the sellers and buyers is of no moment because this is evidently not the business model they are implementing.
    - In carrying out their business, they are not merely a platform where parties can transact; they also offer the delivery of the items from the sellers to the buyers. The delivery eases the transaction between the sellers and buyers and is an integral part of respondent Lazada's business (*Ditiangkin v. Lazada*).

Intra-corporate disputes; corporate officers

Matling Industrial v. Coros
October 13, 2010

A position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office.

A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the By-Laws of an enabling clause on the creation of just any corporate officer position.

- Thus, a dismissed vice-president–whose position was created by the president–may file a complaint for illegal dismissal with the NLRC.
- An appointment through the issuance of a resolution by the Board of Directors does not make the appointee a corporate officer. It is necessary that the position is provided in the Corporation Code or in the by-laws (*Loreche-Amit v. Cagayan de Oro Medical Center*).
- The Labor Arbiter has the original jurisdiction over the complaint for illegal dismissal because Cosare, although an officer of Broadcom for being its AVP for Sales, was not a "corporate officer" as the term is defined by law (*Cosare v. Broadcom Asia Inc.*).
- The use of the phrase "one or more" in relation to the establishment of vice president positions without particular exception indicates an intention to give petitioner North Star's Board ample freedom to make several vice-president positions

available as it may deem fit and in consonance with sound business practice.

- Thus, the dismissal of the executive vice-president is an intra-corporate dispute (*Cacho v. Balagtas*).

Secondments

Intel Technology v. NLRC
February 5, 2014

The continuity, existence or termination of an employer-employee relationship in a typical secondment contract or any employment contract for that matter is measured by the **four-fold test**.

Retainership agreement

Bazar v. Ruizol
October 19, 2016

First, the services of [respondent] were indisputably engaged by the [NDI] without the aid of a third party. Secondly, **the fact that the [respondent] was paid a retainer fee and on a *per diem* basis does not altogether negate the existence of an [employer]-employee relationship**. The retainer agreement only provided the breakdown, of the [respondent's] monthly income Third, the [NDI's] power of dismissal can be [gleaned] from the termination of the [respondent] although couched under the guise of the non-renewal of his contract with the company. Also, the contract alone showed that the [respondent] provided service to Yamaha motorbikes brought to the NDI service shop in accordance with the manual of the unit and subject to the minimum standards set by the company. Also, tool kits were furnished to the mechanics which they used in repairs and checking of the units conducted inside or in front of the Norkis Display Center.

Ecclesiastical matters

Amari v. Villaflor
February 17, 2020

An **ecclesiastical affair** is one that concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership.

Indeed, the matter of terminating an employee, which is purely secular in nature, is different from the ecclesiastical act of expelling a member from the religious congregation.

- True, the Mission Policy Agreement may show badges of control over its members and missionaries; nevertheless, **respondent, as member of the religious congregation, must be subjected to a certain sense of control for the church to achieve the ends of its belief**.

Lack of employment contract

Parayday v. Shogun Shipping
July 6, 2020

Moreover, an employer-employee relationship may cover peripheral or core activities of the employer's business. Thus, while a worker's task is not directly related, or necessary and desirable to the business of the employer, this does not mean, however, that no employer-employee relationship exists between the worker and the employer. Accordingly, the determination of the existence of an employer-employee relationship is defined by law according to the facts of each case.

- Apply the four-fold test.

Independent contractors and labor-only contracting

Art. 106
Contractor or subcontractor

Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Art. 107
Indirect employer

The provisions of the immediately preceding article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

Effects of labor-only contracting:

1. An EER between the principal and the employees of the contractor
2. The solidary liability of the principal and the contractor to the employees in the event of any violation of the Labor Code (*Coca-Cola v. Agito*).

- An indirect employer (as defined in art. 107) can only be held solidarily liable with the independent contractor or subcontractor in the event that the latter fails to pay the wages of its employees (as described in art. 106). Thus, the indirect employer

may be considered an indirect employer only for purposes of unpaid wages (*MIESCOR v. NLRC*).

- This presupposes that a valid labor-only contracting arrangement exists!

DOLE Order No. 174-17 ⭐

Section 5. *Absolute Prohibition against Labor-only Contracting.* — Labor-only contracting, which is totally prohibited, refers to an arrangement where:

a) i. The contractor or subcontractor does not have substantial capital,[1] or

ii. The contractor or subcontractor does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others, and

iii. The contractor's or subcontractor's employees recruited and placed are performing activities which are directly related to the main business operation of the principal; or

b) The contractor or subcontractor does not exercise the right to control over the performance of the work of the employee.

Section 6. *Other Illicit Forms of Employment Arrangements.* — In addition to Section 5 of these Rules, the following are hereby declared prohibited for being contrary to law or public policy:

a) When the principal farms out work to a "Cabo"[2].
b) Contracting out of job or work through an in-house agency.[3]
c) Contracting out of job or work through an in-house cooperative[4] which merely supplies workers to the principal.
d) Contracting out of a job or work by reason of a strike or lockout whether actual or imminent.
e) Contracting out of a job or work being performed by union members and such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization as provided in Articles 259 of the Labor Code, as amended.
f) Requiring the contractor's/subcontractor's employees to perform functions which are currently being performed by the regular employees of the principal.
g) Requiring the contractor's/subcontractor's employees to sign, as a precondition to employment or continued employment, an antedated resignation letter; a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal or contractor from liability as to payment of future claims; or require the employee to become member of a cooperative.
h) Repeated hiring by the contractor/subcontractor of employees under an employment contract of short duration.
i) Requiring employees under a contracting/subcontracting arrangement to sign a contract fixing the period of employment to a term shorter than the term of the Service Agreement, unless the contract is divisible into phases for which substantially different skills are required and this is made known to the employee at the time of engagement.
j) Such other practices, schemes or employment arrangements designed to circumvent the right of workers to security of tenure.

Section 7. *When Principal is Deemed the Direct Employer of the Contractor's or Subcontractor's Employees.* — In the event that there is a finding that the contractor or subcontractor is engaged in labor-only contracting under Section 5 and other illicit forms of employment arrangements under Section 6 of these Rules, the principal shall be deemed the direct employer of the contractor's or subcontractor's employees.

- There is a *labor-only contract* when the contractor is considered merely as an agent or intermediary of the principal who is responsible to the workers in the same manner and to the same extent as if they had been directly employed by him (*MERALCO v. Benamira*).
- One who claims to be an independent contractor has to prove that he contracted to do the work according to his own methods and without being subject to the employer's control except only as to the results (*PAL v. Ligan*).
- **As a general rule, a contractor is presumed to be a labor-only contractor**, *unless such contractor overcomes the burden* of proving that it has the substantial capital, investment, tools and the like (*Diamond Farms v. Farms Agrarian Reform*).
- In essence, the contractor must carry out an independent business (*Dole Phils v. Esteva*).

First type of labor contracting

Requisites:

1. The contractor **does not have substantial capital**
2. The contractor does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others, and
3. The contractor's employees recruited and placed are **performing activities which are directly related to the main business operation** of the principal[5]

Second type of labor contracting

Requisite:

1. The contractor **does not exercise the right to**

[1] **"Substantial capital"** — refers to paid-up capital stock/shares at least Five Million Pesos (P5,000,000.00) in the case of corporations, partnerships and cooperatives; in the case of single proprietorship, a net worth of at least Five Million Pesos (P5,000,000.00).

[2] **"Cabo"** — refers to a person or group of persons or to a labor group which, under the guise of a labor organization, cooperative or any entity, supplies workers to an employer, with or without any monetary or other consideration, whether in the capacity of an agent of the employer or as an ostensible independent contractor.

[3] **"In-house agency"** — refers to a contractor which is owned, managed, or controlled directly or indirectly by the principal or one where the principal owns/represents any share of stock, and which operates solely or mainly for the principal.

[4] **"In-house cooperative"** — refers to a cooperative which is managed, or controlled directly or indirectly by the principal or one where the principal or any of its officers owns/represents any equity or interest, and which operates solely or mainly for the principal.

[5] Job contracting is permissible **only** if the following conditions are met: (1) the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work, except as to the results thereof; and (2) the contractor has substantial capital or investment (*Manila Water v. Dalumpines*).

control over the performance of the work of the employee (no control)

- The substantial capital must at least be sufficient to pay the salary of the employees for the entire period of the contract.
    - Substantial capitalization refers to the capitalization used in the *performance or completion* of the job, work or service contracted out (*Aliviado v. P&G*).
    - Thus, to assess whether there is substantial capitalization, it must be measured against the type of work which the contractor is obligated to perform for the principal (*Coca-Cola v. Agito*).
    - Thus, if the principal provides the equipment and vehicles related to the service contracted, the requisite of substantial capitalization necessarily fails because the contractor ceases to be an independent business (*Manila Water v. Dalumpines*).
    - Similarly, if the principal merely sold equipment to the contractor to increase the latter's capitalization, there is labor-only contracting (*Manila Memorial Park v. Luiz*).
- In any case, outsourcing is a legitimate activity because a company can determine in its best judgment whether it should contract out a part of its work, for as long as the employer is **motivated by good faith; the contracting is not for purposes of circumventing the law; and does not involve or the result of malicious or arbitrary action** (*Temic Automotive v. Temic Automotive Employees Union*).
    - Thus, contracting out job of work by reason of organizational realignment (to become more efficient and competitive) and a labor and cost savings device is valid (*Smart v. Astorga*).
- The finding that the contractor has only one client bolsters the finding of a prohibited labor-only contracting (*Babas v. Lorenzo Shipping*).
- Likewise, having an ID issued by the principal–and not by the purported–contractor is an indication of a labor-only contracting.
    - This is because as a general rule, IDs are issued to identify the holder as a *bona fide* employee of the issuing entity (*Teng v. Pahagac*).
- In *Barretto v. Amber Golden*, the Court held that the standard of "directly related" means that the service contracted must <u>not</u> be core function or a mere peripheral function to be a valid labor-only contracting.
    - Thus, in the food business, delivery of the food is essential in generating sales. Consequently, food delivery riders were employees of Amber.

Requisites	*Quintanar* (***EB***, 2016)	*Manila Cordage* (2020) & DO 174-17	*Nozomi* (2024)
Substantial capital Substantial investment	OR	OR	AND
Directly related	OR	AND	AND
Control	OR	OR	OR

Exemptions from DO 174-17

D.O. 174, Series of 2017, applies only to trilateral relationship which characterizes contracting or subcontracting arrangement. It does <u>not</u> contemplate to cover information technology-enabled services involving an entire or specific business process such as:

1. Business Process Outsourcing
2. Knowledge Process Outsourcing
3. Legal Process Outsourcing
4. IT Infrastructure Outsourcing
5. Application Development
6. Hardware and/or Software Support
7. Medical Transcription
8. Animation Services
9. Back Office Operations/Support (DOLE Circular 1, s. 2017)

Classes of employees

Probationary employees

Art. 296
Probationary employment

Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

- In any case, the employer is free to hire someone as regular–skipping the probationary period–from day one (*PNOC v. Buenviaje*).

Abbott Laboratories v. Alcaraz ❤️
July 23, 2013

A probationary employee may be terminated for any of the following:

(a) A just cause
(b) An authorized cause
(c) When he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer

The employer is made to comply with the two requirements when dealing with a probationary employee:

1. The employer must communicate the regularization standards to the probationary employee

2. The employer must make such communication at the time of the probationary employee's engagement

General rule: An employer is deemed to have made known the standards that would qualify a probationary employee to be a regular employee when it has exerted reasonable efforts to apprise the employee of what he is expected to do or accomplish during the period of probation.

- **Exception:** When the job is self-descriptive in nature, in the case of maids, cooks, drivers or messengers.

- Example of the exception: Due to the nature and variety of these managerial functions, it is already sufficient that they are informed of their duties and responsibilities, the adequate performance of which is the inherent and implied standard for regularization; this is unlike other jobs, such as in sales, where a quantitative regularization standard, like a sales quota, is readily articulable to the employee at the outset (*Jaso v. Metrobank*).

Extension of probation period

1. An evaluation at the end of the period of probationary employment
2. The extension was made before the lapse of the original period agreed by the parties (*Umali v. Hobbywing Solutions Inc.*)

Regular and casual employees

Art. 295
Regular and casual employment

The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer[.]

[xxx]

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered as regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

PLDT v. Arceo
May 5, 2006

A regular employee is:
(1) One who is either engaged to perform activities that are necessary or desirable in the usual trade or business of the employer **or**
(2) A casual employee who has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

- To determine whether an employee is regular or not, case law dictates that there must be a **reasonable connection between his or her activities and the usual business o f the employer**, which can be *gauged by examining the nature of the services rendered* by the employee and its relation to the general scheme under which the business or trade is pursued in the usual course (*GMA Network Inc. v. Cabaluna [resol.], Fuji Television, supra*).
    - Thus, Coca-Cola's route helpers are regular employees, because the loading and unloading of the products to various delivery points is necessary or desirable. This, despite rendering less than one year of service (*Basan v. Coca-Cola*).
- The one-year period of service may be shortened through a provision in the collective bargaining agreement (*Pier 8 Arrastre v. Boclot*).
    - This, despite the workers being not usually necessary or desirable and failing to render one year of service.
- If there is doubt in the necessity and desirability, the one-year period prevails (*The Peninsula Manila v. Alipio*).
- Repeated rehiring of a fixed-term employee indicates the necessity of the work (*Sampana v. The Maritime Trading*).

Fixed-term employees

Brent School v. Zamora
February 5, 1990

Requisites for a valid fixed-term contract:
1. The fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought about upon the employee and absent any other circumstances vitiating his consent; **OR**
2. When 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 over the latter.

- Termination due to expiration of the contract does not need notice (*Brent, supra*).
- Thus, a **contract of adhesion** is indicative that the parties are not on equal footing, with the weaker party's participation being reduced to the alternative "to take it or leave it" (*Rowell Industrial Corp. v. CA*).
- In cases where periods are imposed to prevent an employee from acquiring security of tenure, fixed-term employment contracts must be disregarded for being contrary to public policy and morals.
    - The holding in *Brent* is limited to cases where the parties are more or less on an equal footing when they enter into the contract.
    - The employer's moral dominance was seen by the fact that the employee's entire family depended on the employer (*Claret School v. Sinday*).

Project employees

Art. 295
Regular and casual employment

The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

[xxx]

Gadia v. Skyes Asia
January 28, 2013

Project employee – One who is assigned to a project which begins and ends at determined or determinable times.

- They may be lawfully terminated at the completion of the project.

Project

1. A particular job or undertaking that is within the regular or usual business of the employer but is distinct and separate, and identifiable from the other undertakings of the company
2. A particular job or undertaking that is not within the regular business of the corporation

Requisites for a project-based employee:

1. The employee was assigned to carry out a specific project or undertaking
2. The duration and scope of which were specified at the time they were engaged for such project

- **Test vs. regular employees:** Whether the project employee was assigned to carry out a specific project or undertaking, the duration and scope of which were identified at the time the employees were engaged for that project (*Poseidon Fishing v. NLRC*).
- While length of time is *not* the controlling test for project employment, it is vital in determining if the employee was hired for a specific undertaking or tasked to perform functions vital, necessary, and indispensable to the usual trade or business of the employer (*Malicdem v. Marulas Industrial*).
- The rule that employees initially hired on a temporary basis may become permanent employees by reason of their length of service is <u>not applicable to project-based employees</u> (*Herma Shipyard v. Oliveros*).
- There must be a determination of, or a clear agreement on, the completion or termination of the project at the time the employee is engaged (*Jamias v. NLRC*).

Regularization of a project employee

Maraguinot v. NLRC
January 22, 1998

A project employee or a member of a work pool may acquire the status of a regular employee when the following concur:

(1) There is a continuous rehiring of project employees even after cessation of a project (same employer for the same tasks or nature of tasks); **<u>and</u>**
(2) The tasks performed by the alleged project employee are vital, necessary and indispensable to the usual business or trade of the employer.

- Thus, allowing the worker to continue after the end of the project–without a subsequent contract or appointment that specified a particular duration for the extension–regularized that employee.
    - This, despite the fact that he was assigned to other projects and the fact that there were gaps in between said projects. He already attained security of tenure (*Pasos v. PNCC*).

Two types of employees in the construction industry

Project employees	Those employed in connection with a particular construction project or phase thereof and such employment is coterminous with each project or phase
Non-project employees	Those employed without reference to any particular construction project or phase of a project

- Thus, when a construction worker is transferred from one project to another, without any contract specifying the duration of the project, specific work, and made known to them, they became non-project employees (*Exodus International v. Biscocho*).

Project-based vs. regular employees (*Carpio v. Modair*)

	Regular	**Project-based**
Nature	Activities are usually necessary or desirable to the employer's usual business or trade	Activities are for a specific project or undertaking
Duration	Indefinite; continues as long as the business exists and the role is needed	Specified at the time of engagement; linked to the completion of the project
Security of tenure	Can only be terminated for just or authorized causes	Naturally ends upon completion of the project
Backwages	Computed from dismissal until reinstatement (or finality of decision for separation pay)	Computed from dismissal until the actual completion of the work/project

Burden of proof	Generally presumed if the employer cannot prove project status	Employer must prove: 1) Specific project assignment, and 2) Duration/scope were specified at the start

Seasonal employees

Art. 295
Regular and casual employment

The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

[xxx]

Universal Robina Sugar v. Acibo
January 15, 2014

To be a seasonal employee, the employer must show that:

(1) The employee must be performing work or services that are seasonal in nature; and
(2) He had been employed for the duration of the season.

- Seasonal workers do not become regular employees by the mere fact that they have rendered at least one year of service (*Benares v. Pancho*).
- It is not enough that they perform work or services that are seasonal in nature. **They must have been employed only for the duration of one season.**
  - Thus, they are free to work during off-season (*Hacienda Bino v. Cuenca*).
- **Regular seasonal workers** – When "seasonal" workers are continuously and repeatedly hired to perform the same tasks or activities for several seasons or even after the cessation of the season (*Universal Robina Sugar, supra*).

Field workers

Dasco v. PHILTRANCO
June 29, 2016

Field personnel – Those whose performance of their job/service is not supervised by the employer or his representative, the workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty.
  - Hence, they are paid a specific amount for rendering specific service or performing specific work.

Thus, to conclude whether an employee is a field employee, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer
  - In doing so, an inquiry must be made as to whether or not the employee's time and performance are constantly supervised by the employer.

Teachers and professors

Probationary period for academic personnel

Section 92. Probationary Period. – Subject in all instances to compliance with the Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis.

- The period of probation shall be counted in terms of school years and not calendar years (*Magis v. Manalo*).

Magis Young Achievers' Learning Center v. Manalo
February 13, 2009

Requisites for permanent appointment:

1. Completion of the probation period (*i.e.,* three consecutive years)
2. He is a full-time teacher[6]
3. The services he rendered are satisfactory

- This is not to say that part-time teachers may not have security of tenure. The school cannot lawfully terminate a part-timer *before* the end of the agreed period without just cause (*St. Mary's University v. CA*).
- In a situation where the probationary status overlaps with a fixed-term contract *not specifically used for the fixed term it offers*, art. 281 prevails and the fixed-period character of the contract must give way.
  - Fixed-term faculty can only be done during the probationary period (*Mercado v. AMA*).
- The minimum requirements under the 1992 Manual of Regulations for Private School cannot be waived by a collective bargaining agreement (CBA).
  - Thus, a stipulation in the CBA which allows non-masters degree holders to teach in the undergraduate programs was void, because the 1992 Manual requires a master's degree (*Son v. UST*).

Conditional employment contract

- When a perfected contract of employment is subject to a suspensive condition, its effectivity shall

[6] Who are considered **full-time academic personnel:** (1) Possesses minimum academic qualifications; (2) Paid monthly or hourly; (3) Total working day of not more than 8 hours a day is devoted to the school; (4) No other remunerative occupation during regular work hours that will conflict with the working hours in the school; and (5) Not teaching full-time in any other educational institution.

take place only if and when the event which constitutes the condition happens or is fulfilled.

- Thus, an employer may decline employing someone who has failed background checks, if such background checks were a condition of employment (*Sagun v. ANZ Global*).

Module 2: Wages

Concept and definition

"Wage" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee. "Fair and reasonable value" shall not include any profit to the employer, or to any person affiliated with the employer (art. 98 [f]).

- **Payment by result** is a method of compensation. It is a *method of computing compensation*, not a basis for determining the existence of EER. Thus, one may be paid on the basis of results or time expended on the work, and may or may not acquire an employment status (*Tan v. Lagrama*).
  - The four-fold test prevails.

Commissions

The determination of whether commission forms part of the basic salary depends upon the circumstances or conditions for its payment.[7]

1. Commission earned by salesmen form part of their basic salary.
2. Commissions may be excluded from basic salary if they were productivity bonuses, which were generally tied to the productivity, or capacity for revenue production and such bonuses closely resemble profit-sharing payments and had no clear direct or necessary relation to the amount of work actually done (*Philippine Spring Water Resources v. Mahilum*).

Facilities vs. supplements

Mabeza v. NLRC
April 18, 1997

The employer must satisfy requirements before facilities can be deducted:

1. The facilities must be shown to be customarily furnished by the trade;
2. The facilities must be voluntarily accepted in writing by the employee; and
3. The facilities must be charged at a fair and reasonable value.

[7] The distinction is important, because basic salary is the basis for the computation of the 13th month pay and backwages.

- A benefit or privilege granted to an employee *for the convenience of the employer is not a facility*. They were supplements.
  - The criterion in making a distinction lies not so much in the kind but in the purpose.
  - In this case, the lodging facility was a supplement because hotel workers are required to work different shifts and are expected to be available at various odd hours. Their ready availability is necessary in the operations of a small hotel (*Mabeza v. NLRC*).

	Facilities	**Supplements**
Definition	Articles or services for the benefit of the employee or his family	Extra benefits given
Who benefits?	Employee	Employer
Part of wages?	Yes	No
Deductible?	Yes	No

Exemptions from the minimum wage

- Among the benefits granted by law to registered barangay micro business enterprises is the exemption from the payment of taxes and the coverage of the Minimum Wage Law.[8]
  - This is not to say that employees of sari-sari stores do not deserve fair treatment under our labor laws. The protection of labor, however, must be balanced with the protection of establishments whose clientele mainly consists of the working class and the urban poor. When awarding labor claims, the tribunal must also consider the type of establishment employing the laborer (*Cabug-os v. Espina*).

Other exemptions from the minimum wage:

1. Depressed areas, as authorized by the SOLE
2. Household or domestic helpers, including family drivers and persons in the person service of another (*but see* Kasambahay Law)
3. Workers employed in any establishment duly registered with the National Cottage Industries Development Authority
4. Workers in any duly registered cooperative (*Labor Code IRR, bk. III, rule VII, §§ 2-3*).

Wage-fixing

Art. 99
Regional Minimum Wages

The minimum wage rates for agricultural and

[8] **Section 8.** *Exemption from the Coverage of the Minimum Wage Law* – The BMBEs shall be exempt from the coverage of the Minimum Wage Law: Provided, That all employees covered under this Act shall be entitled to the same benefits given to any regular employee such as social security and healthcare benefits (RA 9178).

non-agricultural employees and workers in each and every region of the country shall be those prescribed by the Regional Tripartite Wages and Productivity Board.

Art. 101
Payment by results

The Secretary of Labor and Employment shall regulate the payment of wages by results, including *pakyao*, piecework, and other non-time work, in order to ensure the payment of fair and reasonable wage rates, preferably through time and motion studies or in consultation with representatives of workers' and employers' organizations.

Art. 124
Standards/criteria for minimum wage fixing

The regional minimum wages to be established by the Regional Board shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the employees within the framework of the national economic and social development program. In the determination of such regional minimum wages, the Regional Board shall, among other relevant factors, consider the following:

(a) The demand for living wages;
(b) Wage adjustment vis-à-vis the consumer price index;
(c) The cost of living and changes or increases therein;
(d) The needs of workers and their families;
(e) The need to induce industries to invest in the countryside;
(f) Improvements in standards of living;
(g) The prevailing wage levels;
(h) Fair return of the capital invested and capacity to pay of employers;
(i) Effects on employment generation and family income; and
(j) The equitable distribution of income and wealth along the imperatives of economic and social development.

[xxx]

Authority to prescribe guidelines → NWPC
Authority to issue wage orders → RTWPB

Nasipit Lumber Co. v. NWPC
April 27, 1998

The Labor Code, as amended by RA 6727 (the Wage Rationalization Act), grants the National Wages and Productivity Commission (NWPC) the power to prescribe rules and guidelines for the determination of appropriate wages in the country. Hence, "guidelines" issued by the Regional Tripartite Wages and Productivity Boards (RTWPB) without the approval of or, worse, contrary to those promulgated by the NWPC are ineffectual, void and cannot be the source of rights and privileges.

While the RTWPB has the power to issue wage orders under Article 122 (b) of the Labor Code, such orders are subject to the guidelines prescribed by the NWPC.

Two methods for determining the minimum wage

ECOP v. NWPC
September 24, 1991

The determination of wages has generally involved two methods:

1. **Floor-wage method** – This involves the fixing of a determinate amount that would be added to the prevailing statutory minimum wage.
2. **Salary-ceiling method** – The wage adjustment is applied to employees receiving a certain denominated salary ceiling.

- In any case, the RTWPB is not empowered to order an "across the board" wage increase to all employees and workers. It may only increase the *minimum wage* (*Metrobank v. NWPC*).

Examples!

Floor-wage method – In this method, the law mandates a specific fixed amount (*e.g.,* P50) to be added to the daily pay of all workers currently earning the statutory minimum wage (say, P500).
- Worker A (entry-level): P500 + P50 = P550
- Worker B (mid-level): P540 + P0 = P540

The seniority gap is obliterated. Worker A, who has no experience, is now earning P10 more than his supervisor, Worker B.

Salary-ceiling method – This applies the wage increase to everyone earning below a certain ceiling, preserving the hierarchy to a better degree. Let's say the law mandates a P40 increase for all employees earning *below* P600.
- Worker A: P500 + P40 = P540
- Worker B: P540 + P40 = P580

However, distortion may still be felt by workers who earn slightly above the ceiling. Say, Worker C earns P610–he's not entitled to the increase, but the wages of Workers A and B are now closer to his.

Applying for exemptions to wage orders

NWPC v. APL
March 12, 2014

If the exemption was outside the four exemptible categories, the exemptible category should be:

(1) In accord with the rationale for exemption
(2) Reviewed/approved by the NWPC
(3) Upon review, the RTWPB issuing the wage order must submit a strong and justifiable reason/s for the inclusion of such category.

The wage orders issued by the RTWPBs could be reviewed by the NWPC *motu proprio* or upon appeal.

Wage distortion

Art. 124
Standards/criteria for minimum wage fixing

[xxx]

Where the application of any prescribed wage increase by virtue of a law or wage order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the

voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any increase in prescribed wage rates pursuant to the provisions of law or wage order.

As used herein, a wage distortion shall mean a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

[xxx]

- The definition of "wage distortion," shows that such distortion can so exist when, as a result of an increase in the prescribed wage rate, an elimination or severe contraction of intentional quantitative differences in wage or salary rates would occur "between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.
    - In mandating an adjustment, the law did not require that there be an elimination or total abrogation of quantitative wage or salary differences; a severe contraction thereof is enough. In this case, the contraction between personnel groupings comes close to 83%, which cannot, by any stretch of imagination, be considered less than severe (*Metrobank Union v. NLRC*).

Prubankers Association v. Prudential Bank
January 25, 1999

Wage distortion involves four elements:

1. An existing hierarchy of positions with corresponding salary rates
2. A significant change in the salary rate of a lower pay class *without* a concomitant increase in the salary rate of a higher one
3. The elimination of the distinction between the two levels
4. The existence of the distortion in the same region of the country

- Thus, if the increase in the salaries was due to the increase in hiring rates, there can be no wage distortion.
    - This is because wage distortion under art. 124's contemplation may only be due to a prescribed law or wage order–not an exercise of management prerogative (*Philippine Geothermal v. Chevron*).

Payment of wages

Art. 102. **Forms of payment**

General rule: Wages must be paid in legal tender only. The use of promissory notes, vouchers, coupons, tokens, tickets, chits, or any other object is prohibited, even if requested by the employee.

Exceptions:
1. It is customary on the date of the Code's effectivity
2. It is necessary due to special circumstances specified in DOLE regulations; or
3. It is stipulated in a Collective Bargaining Agreement (CBA)

Art. 103. **Time of payment**

General rule: Wages shall be paid at least once every two weeks or twice a month at intervals not exceeding 16 days. No payment shall be made less frequently than once a month.

Exceptions:
1. In cases of *force majeure* or circumstances beyond the employer's control, payment must be made immediately after such circumstances cease
2. For work that cannot be completed in two weeks (and absent a CBA/award), payments are made at intervals not exceeding 16 days in proportion to work completed, with final settlement upon completion (task-based work)

Art. 104. **Place of payment**

General rule: Payment shall be made at or near the place of undertaking.

Exceptions:
1. When payment cannot be effected due to the deterioration of peace and order, or by reason of actual/impending emergencies (*e.g.,* fire, flood, epidemic, other calamity)
2. When the employer provides free transportation to the employees back and forth
3. Under any analogous circumstances, but the time spent in collecting wages shall be considered as compensable hours worked (IRR, rule VIII, § 4)

Art. 105. **Direct payment of wages**

General rule: Wages must be paid directly to the workers to whom they are due.

Exceptions:
1. The worker may be paid through another person via written authority for that purpose
2. Payment may be made to the heirs without intestate proceedings. Heirs of age must execute an affidavit; for minors, the natural guardian executes it. Payment is made through the Secretary of Labor or their representative, who acts as a referee for distribution.
3. Where payment to another person is authorized by law (*e.g.,* art. 116) (IRR, rule VIII, § 5).

Payment by check – Allowed, when:

1. It is customary on the date of the effectivity of the Labor Code,
2. It is stipulated in a CBA, or
3. Where all of the following conditions are met:
    a. There is a bank within a one-kilometer radius from the workplace
    b. The employer does not receive any pecuniary benefit
    c. The employees are given reasonable time during banking hours to withdraw their wages, and shall be considered as compensable hours worked if done during working hours
    d. The payment by check is with the written consent of the employee if there's no CBA

Wage deductions

Art. 112
Non-Interference in Disposal of Wages

No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages. He shall not in any manner force, compel, or oblige his employees to purchase merchandise, commodities or other property from any other person, or otherwise make use of any store or services of such employer or any other person.

- Thus, a company policy which limited the amount of loan an employee may take out up to only 50% of his salary. In carrying out the 50% cap policy, the employer effectively limits its employees on the utilization of their salaries when it is apparent that as long as the employee is qualified to avail the same, he/she may apply for an SSS loan (*Coca-Cola Bottlers Philippines v. CCBPI Sta. Rosa Plant Employees' Union*).

Art. 113 ⭐
Wage deductions

No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

(1) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;
(2) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and
(3) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.

- Absent a showing that the withholding of wages falls under the exceptions provided in art. 113, the withholding is unlawful.
    - Although management prerogative refers to the right to regulate all aspects of employment, it cannot be understood to include the right to temporarily withhold salary/wages without the consent of the employee (*SHS Perforated v. Diaz*).
- A job placement fee which is 25% of the salary was also declared void for being illegal and inequitous (*Commando Security v. NLRC*).

Milan v. NLRC
February 4, 2015

As a general rule, employers are prohibited from withholding wages from employees. However, our law supports the employers' institution of clearance procedures before the release of wages.

The Civil Code provides that the employer is authorized to withhold wages for debts due. Debt in this case refers to any obligation due from the employee to the employer. It includes any accountability that the employee may have to the employer. Accountability, in its ordinary sense, means obligation or debt.

- Thus, the Court upheld the holding of the wages of several employees who refused to vacate the properties of the employer. An employer is allowed to withhold terminal pay and benefits pending the employee's return of its properties.

Art. 114
Deposits for loss or damage

No employer shall require his worker to make deposits from which deductions shall be made for the reimbursement of loss of or damage to tools, materials, or equipment supplied by the employer, except when the employer is engaged in such trades, occupations or business where the practice of making deductions or requiring deposits is a recognized one, or is necessary or desirable as determined by the Secretary of Labor and Employment in appropriate rules and regulations.

Art. 115
Limitations

No deduction from the deposits of an employee for the actual amount of the loss or damage shall be made unless the employee has been heard thereon, and his responsibility has been clearly shown.

Deductions for loss or damage, or deposits are only valid when:

1. The employee was clearly shown to be responsible for the loss or damage
2. The employee was given reasonable opportunity to show cause why deduction should *not* be made
3. The amount of the deduction is fair and reasonable, and shall not exceed the actual loss or damage
4. The deduction shall not exceed 20% of the employee's weekly wages (*Labor Code IRR, bk. III, rule VIII, § 11*).

Unlawful acts

1. **Withholding of wages and kickbacks prohibited** (art. 116)
    a. General rule: It is unlawful for any person to withhold wages or induce a worker to give up any part of their wages through force, stealth, intimidation, or threat.
    b. Exception: Deductions are only permitted with the worker's consent (or as otherwise authorized by law).
2. **Deduction to ensure employment** (art. 117)
    a. Absolute rule: It is unlawful to make deductions from wages for the benefit

of the employer (or their representative/intermediary) as consideration for a promise of employment or retention in employment.

3. **Retaliatory measures** (art. 118)
   a. Employers are prohibited from refusing to pay, reducing wages/benefits, discharging, or discriminating against any employee who has:
      i. Filed a complaint or instituted a proceeding under this Title
      ii. Testified or is about to testify in such proceedings
4. **False reporting** (art. 119)
   a. It is unlawful for any person to knowingly make a false statement, report, or record filed or kept pursuant to the provisions of this Code.

Thirteenth month pay

All employers are hereby **required to pay all their rank-and-file employees** regardless of the nature of their employment, a **13th-month pay not later than December 24** of every year (*§ 1, P.D. 851, as amended*).

Exempted employees:

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 already paying their employees a 13th month pay or more in a calendar year or its equivalent at the time of this issuance;
3. Employers of household 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 where the workers are paid on piece-rate basis in which case the employer shall grant the required 13th month pay to such workers (*Revised guidelines on the implementation of the 13th month pay*)[9]

- Under PD 851 and its implementing rules, the basic salary of an employee is used as the basis in the determination of his 13th-month pay. Any compensations or remunerations which are deemed not part of the basic pay is excluded as basis in the computation of the mandatory bonus.
  - Thus, payments for sick, vacation or maternity leaves premium for work done on rest days and special holidays, including pay for regular holidays and night differentials (a.k.a. *fringe benefits*) are not considered in the computation of basic wage (*SMC v. Inciong*).

Are commissions part of the 13th month pay?

- Commissions that are an **integral, demandable part of an employee's basic salary** structure and **directly proportional to individual effort** are **included** in the 13th-month pay computation, whereas payments that partake of the nature of productivity bonuses or profit-sharing are excluded as they are not part of the basic salary.

	Phil. Duplicators (1993; 1995 [MR])	*Boie-Takeda* (1993)
Employee	Salesmen who close or make actual sales of duplicating machines	Medical representatives and rank-and-file employees
Nature of the commission	Remuneration for services rendered, directly proportional to individual effort and specific results achieved	Payments tied to the company's profit generation or capacity for revenue, resembling profit-sharing
Salary structure	Fixed wage was very small, representing only 15-30% of total earnings; commissions formed the bulk of the basic pay	Commissions were treated as additional monetary benefits or extra pay on top of the basic salary
Work performed	Employees were engaged in selling goods to customers	Employees were engaged in promotion; they do not affect sales as they only visit doctors and leave samples
Included in 13th month pay?	**Yes**	**No**

- The 13th month pay of the bus drivers and conductors who are *paid a fixed or guaranteed minimum wage in case their commissions be less than the statutory minimum*, and commissions only in case where the same is over and above the statutory minimum, must be equivalent to one-twelfth (1/12) of their total earnings during the calendar year (*Philippine Agricultural Commercial and Industrial Workers Union v. NLRC*).
- Task-base or pakyaw employees are not covered by 13th month pay (*David v. Macasio*).

Service charge

Art. 96
Service charge

All service charges collected by hotels, restaurants and similar establishments shall be distributed completely and equally among the covered workers except managerial employees.

In the event that the minimum wage is increased by law or wage order, service charges paid to the covered employees shall not be considered in determining the employer's compliance with the increased minimum wage.

To facilitate resolution of any dispute between the

[9] 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.

management and the employees on the distribution of service charges, a grievance mechanism shall be established. If no grievance is established or if inadequate, the grievance shall be referred to the regional office of the Department of Labor and Employment which has jurisdiction over the workplace for conciliation.

For purposes of this Article, managerial employees refer to any person vested with powers or prerogatives to lay down and execute management policies or hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or to effectively recommend such managerial actions.

Non-diminution of benefits

Art. 100 ⭐
Prohibition Against Elimination or Diminution of Benefits

Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

- The term "benefits" mentioned in the non-diminution rule refers to monetary benefits or privileges given to the employee with monetary equivalents. Such benefits or privileges form part of the employees' wage, salary or compensation making them enforceable obligations (*Royal Plant Workers Union v. Coca-Cola*). 🪑
    - Thus, there's no diminution if the employer decided to stop having Saturday work, because work schedule is a management prerogative. The Saturday pay is just a consequence of such a prerogative, and is not company practice (*Coca-Cola v. ICCPELU*).
- If an employer consistently includes certain benefits in the computation over a period of time, it is seen as a voluntary and intentional practice, not a mistake. Such benefits granted over time cannot be unilaterally withdrawn (*Sevilla Trading Co. v. Semana*).
    - In cases involving money claims of employees, the employer has the burden of proving that the employees did receive the wages and benefits and that they were paid in accordance with law (*Arco Metal Products v. Samahan ng mga Manggagawa sa Arco-Metal-NAFLU*).
- But See: Art. 100 protects only those benefits that were already in place before the Labor Code was enacted. It prevents employers from reducing benefits already received at that time. It does not apply to benefits granted after the Labor Code's adoption, meaning parties can negotiate changes to those benefits (*e.g.,* through a CBA) without violating the non-diminution rule (*Insular Hotel Employees Union v. Waterfront Insular Hotel Davao).*

Globe Mackay v. NLRC ❤️
June 29, 1988

To consider paying of benefits as voluntary employer practice, the following must concur:

1. Practiced over a **long period of time**
2. It is **consistent**
3. It is **deliberate**

- Without clear administrative guidelines, the employer cannot be faulted for misapplying the law. The payments resulted from a legal misinterpretation, not an established practice. Since it was a past error being corrected, no vested rights were created, and no diminution of benefits occurred.
- There is no diminution if the cause of the suspension of the benefit (*e.g.,* a monthly ration of fuel) had been occasioned by force of circumstances affecting the employer's business, and is not even part of the employee's basic salary nor the management's payroll vouchers (*Asis v. Minister of Labor*).

Bonuses; when enforceable

American Wire and Cable Daily Rated Employees Union v. American Wire and Cable
April 29, 2005

A bonus is an amount granted and paid to an employee for his industry and loyalty which contributed to the success of the employer's business and made possible the realization of profits. It is an act of generosity granted by an enlightened employer to spur the employee to greater efforts for the success of the business and realization of bigger profits. The granting of a bonus is a management prerogative, something given in addition to what is ordinarily received by or strictly due the recipient. Thus, a bonus is not a demandable and enforceable obligation, except when it is made part of the wage, salary or compensation of the employee.

For a bonus to be enforceable, it must have been promised by the employer and expressly agreed upon by the parties, or it must have had a fixed amount and had been a long and regular practice on the part of the employer (*see Globe Mackay* requisites).

General rule: A bonus is not demandable and enforceable.
- **Exceptions:**
    - When promised by the employer and expressly agreed upon by the parties
    - Had a fixed amount and had been a long and regular practice on the part of the employer (consistent and deliberate).

Worker preference

Art. 110
Worker preference in case of bankruptcy

In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their wages and other monetary claims, any provisions of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before claims of the government and other creditors may be paid.

- Worker's preference can only be enforced when there is a declaration of bankruptcy or a judicial liquidation present (*DBP v. LA*).

- Art. 110 grants employees a preference of credit, not a lien. In bankruptcy, insolvency, or liquidation proceedings, it ensures unpaid employees' wages are prioritized over certain other claims against the employer's properties (*DBP v. Secretary*).
- Although the terms declaration of bankruptcy and judicial liquidation have been eliminated by the amendment of art. 110, it does not mean that the requirement of a prior declaration of bankruptcy or judicial liquidation is not any more required (*DBP v. NLRC*).

Attorney's fees

Art. 111
Attorney's fees

(a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

Prescriptive periods

Art. 306
Money claims

All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

[xxx]

Art. 307
Institution of money claims

Money claims specified in the immediately preceding Article shall be filed before the appropriate entity independently of the criminal action that may be instituted in the proper courts.

Pending the final determination of the merits of money claims filed with the appropriate entity, no civil action arising from the same cause of action shall be filed with any court. This provision shall not apply to employees compensation cases which shall be processed and determined strictly in accordance with the pertinent provisions of this Code.

- Art. 306 does not cover money **claims consequent to illegal dismissal** such as backwages or damages. Thus, the prescriptive period is four years, pursuant to the Civil Code (*Arriola v. Pilipino Star Ngayon*).

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