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Emerico O. De Guzman, Clarence Darrow C. Valdecantos, Joy Anne C. Leong-Pambid and Gilyen Ezra Marie L. Li-Nulud
Angara Abello Concepcion Regala & Cruz

Philippines: Trends & Developments
Neptali B. Salvanera, Erwin Jay V. Filio, Franchesca Abigail C. Gesmundo and Karenina Isabel A. Lampa
Angara Abello Concepcion Regala & Cruz

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PHILIPPINES

Law and Practice

Contributed by:
Emerico O. De Guzman, Clarence Darrow C. Valdecantos, Joy Anne C. Leong-Pambid and Gilyen Ezra Marie L. Li-Nulud
Angara Abello Concepcion Regala & Cruz **see p.19**

Contents

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1. Introduction

1.1 Main Changes in the Past Year

Vaccination and Testing Requirements

The Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF), since November 2021, has mandated employers who require on-site work to demand their workers to be vaccinated against COVID-19 in areas where reported cases are increasing and/or are high. To be allowed in the work establishment, unvaccinated employees are required to undergo reverse transcriptase polymerase chain reaction (RT-PCR) tests once every two weeks or weekly antigen tests at the employees' expense. However, the IATF and the Department of Labor and Employment (DOLE) specifically prohibits terminating the employment of those who remain unvaccinated. While employers may, in the exercise of their management prerogative, direct employees to report for work on-site, they are encouraged to adopt alternative work schemes (eg, remote working arrangements) for as long as the COVID-19 pandemic persists.

Compliance with government mandates as COVID-19 prevention and control in the workplace is monitored by DOLE who may conduct routine or complaint inspections on the premises. Violation of health and safety protocols may warrant the imposition of fines and/or the issuance of a work stoppage order, depending on the gravity of the violation and the exposure to such health risks.

Isolation and Quarantine Leave

Per Labor Advisory No 1, series of 2022, employers are urged, but not mandated, to adopt paid isolation and quarantine leave programmes for employees who qualify as close contacts or as suspect, probable, or confirmed cases of COVID-19 infection, and who are required to undergo home-based or facility-based quarantine or isolation under prevailing Department of Health (DOH) issuances. These benefits shall be on top of existing leave benefits under company policies, collective bargaining agreements, the Labor Code of the Philippines ("Labor Code"), and other special laws.

Expanded Solo Parents' Welfare Act

Republic Act No 11861 or the Expanded Solo Parents' Welfare Act, promulgated on 28 June 2022, provides additional work concessions to employees who qualify as solo parents, effectively amending Republic Act No 8972 or the Solo Parents' Welfare Act of 2000. The new law expands the definition of a solo parent to include those who provide sole parental care and support of a child due to detention of the spouse for at least three months or legal separation from or abandonment by the spouse for at least six months, spouses or family members of a low or semi-skilled Overseas Filipino Worker (OFW) who is away from the Philippines for an uninterrupted period of 12 months and guardians of the child/children of such OFW, and pregnant women who provide sole parental care and support to their unborn child/children.

Solo parents are entitled to an annual parental leave of seven working days with pay, regardless of employment status, provided that they have rendered at least six months of service. The new law also reinforces anti-discrimination work policies against solo parents and encourages employers to enter into telecommuting work arrangements with such employees and to establish child minding centres where the children of solo parent employees are habitually received for purposes of care and supervision during work hours.

Failure to comply with the provisions of Republic Act No 11861 shall cause the cancellation or revocation of an establishment's business permit, franchise, and other such privileges, and shall be sanctioned with a fine of up to PHP200,000, imprisonment of up to two years, or both.

Minimum Wage Increases
From 17 May 2022 to 6 June 2022, the National Wages and Productivity Commission (NWPC) issued wage orders increasing the daily minimum wages of workers in various regions of the Philippines, except in the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM). Wage increases per region range from PHP30 to PHP110 per day. In the National Capital Region, the current minimum wage is PHP570.

2. Terms of Employment

2.1 Status of Employee

No Blue-Collar/White-Collar Worker Classification
Philippine laws do not define or describe blue-collar workers and white-collar workers. It is generally understood, however, that blue-collar workers are those who typically perform manual labour and are paid a daily wage, while white-collar workers are those who perform work in an office or administrative setting and are paid a monthly salary. Nonetheless, regardless of whether an individual is a blue-collar worker or a white-collar worker, as long as they are considered an employee, they shall be generally entitled to such rights and entitlements under the Labor Code, and other labour laws.

Employees with Regular Status and Those Without
An employee's status may either be regular (or with indefinite term) or non-regular. A probationary employee who hurdles the performance standards set for probation attains regular status and security of tenure, with an indefinite employment term. They may not be dismissed except for a just or an authorised cause. Conversely, the following have definite or prescribed terms:

- a probationary employee – no more than 180 days;
- project employment – the duration of the project or undertaking, as stipulated in the project employment contract;
- casual employee – no more than one year; and
- a fixed-term employee – for the specific term set in the employment contract.

2.2 Contractual Relationship

Philippine laws and jurisprudence specifically recognise the following types of employment:

- regular employment;
- casual employment;
- probationary employment;
- project employment;
- seasonal employment; and
- fixed-term employment.

Regular Employment and Casual Employment
Article 295 of the Labor Code provides for two types of employment, depending on the nature of the work the employee has been engaged to perform vis-à-vis the usual trade or business of the employer.

On the one hand, an employee who has been engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer is considered as a regular employee. On the other hand, if the work the employee has been engaged to perform is not usually necessary or desirable in the usual business or trade of the employer, the employee is deemed to be a casual employee. However, a casual employee who has performed their work for at least one year, whether continuous or intermittent, is deemed to have attained regular employment but only with respect to the work they have been engaged to perform.

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Probationary Employment

Normally, an employee who is engaged for regular employment is required to first undergo probationary employment: an assessment period to determine whether the said employee is, in fact, fit for regular employment.

To provide probationary employees a fair chance at attaining regular employment, employers are legally mandated to inform their prospective probationary employees of the reasonable standards for regularisation at the time of engagement. Failure of an employer to do so will mean that the employee shall instead be under regular employment from the outset.

Probationary employment may generally not exceed six months or 180 days. In exceptional circumstances, however, this period may be extended by mutual agreement of the parties. Normally, an employee who is allowed to work beyond the period of their probationary employment shall already be considered to have attained regular employment by operation of law.

Project Employment and Seasonal Employment

Based on Article 295 of the Labor Code, an employee is deemed to be under project employment if they are assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time they were engaged for that project. Conversely, an employee is deemed to be under seasonal employment when they are engaged to perform work that is seasonal in nature and their employment is for the duration of the said season.

Fixed-Term Employment

Fixed-term employment refers to an employment with a definite period. This type of employment is not found in the Labor Code but is recognised by jurisprudence. While the Supreme Court has recognised the validity of fixed-term employment contracts, it has consistently held that this is the exception rather than the general rule.

To be valid, fixed-term employment must meet the following criteria:

- the fixed period of employment was knowingly and voluntarily agreed upon by the employer and the employee without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating their consent; and
- it satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former on the latter.

Requirements Concerning Employment Contracts

In the Philippines, employment contracts are not ordinarily classified as definite or indefinite. Instead, the type of employment contract follows the type of employment under which the employee is classified (ie, regular, casual, probationary, project, seasonal, or fixed-term).

Since employees generally enjoy security of tenure, employment contracts may only be terminated for just or authorised causes under the Labor Code, or, in the case of probationary employment, should the employee fail to meet the reasonable performance standards for their regularisation. The employment contracts for project, seasonal and fixed-term employees, on the other hand, may be terminated upon the completion of the project, the end of the season, or the expiry of the term, as the case may be.

Philippine laws do not require that the employment contract be written, although written agreements are preferred. There are, likewise, no formal requirements for an employment contract to be valid and enforceable. As a matter of fact,

the employment status of an employee does not rely solely on the stipulations in a written employment contract, as the grant and enforcement of employee rights are highly favoured. In this regard, Article 295 of the Labor Code provides that an employment shall be deemed to be regular where the employee has been engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer, subject to the exceptions provided therein, "the provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties".

Further, the law does not prescribe particular details that must be included in employment contracts. However, the employment contracts covering project, seasonal, probationary, or fixed-term employment must contain the necessary details mentioned above. Otherwise, the employee will be deemed a regular employee.

2.3 Working Hours

Maximum Working Hours per Day/Week

Article 83 of the Labor Code provides that the normal hours of work of an employee must not exceed eight hours per day. Based on an ordinary working week of six days, an employee is thus understood to have a maximum of 48 hours of work per week. After every six consecutive normal workdays, employees are entitled to a rest period of not less than 24 consecutive hours, in accordance with Article 91 of the Labor Code.

Flexible Work Arrangements

Based on DOLE Advisory No 02-2009 and No 04-2010, the adoption of flexible work arrangements must be anchored on a voluntary agreement between the employer and the employees and may only be temporary in nature.

One such flexible work arrangement is a compressed workweek (CWW). In a CWW, the normal workday is increased to more than eight hours but does not exceed twelve hours, without the corresponding overtime premium. The normal working week is then reduced to less than the usual number of workdays in a week, but the total number of working hours per week shall remain.

Other flexible work arrangements include:

- reduction of workdays;
- rotation of workers;
- forced leave;
- broken time schedule; and
- flexi-holidays schedule.

Part-Time Contracts

There are no specific terms required for part-time contracts, except for the exact hours of work expected to be rendered in a day or during the working week. It must be emphasised, however, that employees who render part-time work are also entitled to the benefits mandated under the law, proportionate to the duration of the services rendered vis-à-vis those granted to regular employees.

Overtime Rules and Regulations

Under Article 87 of the Labor Code, work may be performed beyond eight hours a day, provided that the employee is paid for the overtime work. While employees may not generally be compelled to render overtime work, they may be required to render emergency overtime work under the circumstances provided in Article 89 of the Labor Code, such as when there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to the employer or when the work is necessary to prevent loss or damage to perishable goods.

The rates of overtime pay vary depending on the day when the overtime work is performed, viz:

- for overtime work on an ordinary working day, the employee shall be entitled to additional compensation equivalent to their regular wage plus at least 25% thereof; and
- for overtime work on a scheduled rest day, a special day and a regular holiday, the employee shall be entitled to an additional compensation equivalent to the employee's rate for the first eight hours on such rest day, special day or regular holiday plus at least 30% thereof.

The 2022 Handbook on Workers' Statutory Monetary Benefits, issued by the DOLE, sets forth the rules to be followed for the payment of overtime premiums during a regular holiday, special day, or an employee's rest day.

2.4 Compensation

Minimum Wage

An employer is mandated to pay an employee a daily wage not less than the prevailing minimum wage rate in the region based on the most recent wage order promulgated by the NWPC. Employers who pay their employees below the minimum wage may be subject to punishment. In the capital Metro Manila region, the latest Wage Order (NCR No 23) prescribes a minimum daily wage of PHP570.00, effective 4 June 2022.

13th Month Pay

13th month pay is an additional income given to rank-and-file employees who have worked for at least one month during the calendar year and is equivalent to one 12th of the basic salary within a calendar year. While the employer is required to pay its qualified employees their 13th-month pay not later than the 24th day of December every year, the employer may opt to pay half of the 13th-month pay before the opening of the regular school year and the other half on or before the 24th day of December. Per Labor Advisory No 18, series of 2021, employers are required to report their compliance to the DOLE no later than 15 January of the following year by filing a 13th month pay report via online through the DOLE Establishment Report System.

Bonuses

Bonuses are generally granted to an employee as an act of generosity on the part of the employer. As a rule, therefore, an employee cannot claim entitlement to their bonuses. However, when a bonus is stipulated in a contract or a collective bargaining agreement (CBA) or is given unconditionally, it shall form part of an employee's wage and must therefore be given to them as a matter of right.

Government Intervention in Compensation/ Increases

Other than setting minimum wages per region, the government allows employers and employees to agree on compensation levels and other terms and conditions of employment. Where there are unions representing the employees in a specified bargaining unit, the government allows these unions to collectively bargain with the employer with respect to wages, hours of work, and all other terms and conditions of employment.

2.5 Other Terms of Employment

Service Incentive Leave

Under Article 95 of the Labor Code, an employee who has rendered at least one year of service is entitled to a Service Incentive Leave (SIL) of five days with pay, which may be used for vacation and sick leave purposes. The unused SIL is commutable to its money equivalent at the end of the year. Other than the five-day SIL, an employer is not obliged to provide other vacation leaves, whether paid or unpaid, of the same import.

Required Leaves

Maternity leave

Pursuant to Republic Act No 11210, or the Expanded Maternity Leave Law, all female employees are entitled to a maternity leave benefit of 105 days with full pay, with an option to extend for an additional 30 days but without pay, regardless of whether the birth of the child is via caesarean section or natural delivery. Female employees who qualify as a solo parent under Republic Act No 11861, or the Expanded Solo Parents' Welfare Act, are entitled to an additional maternity benefit of 15 days. However, in the case of a miscarriage or an emergency termination of pregnancy, the maternity leave benefit shall only be 60 days with full pay.

A female employee entitled to maternity leave benefits may allocate up to seven days of the said benefits to the child's father. In the case of death, absence or incapacity of the father, the allocation may be provided to an alternative caregiver, who may be a relative within the fourth degree of consanguinity or the current partner of the female employee sharing the same household.

Paternity leave

Section 2 of Republic Act No 8187, or the Paternity Leave Act, provides that every married male employee is entitled to a paternity leave benefit of seven working days with full pay for the first four deliveries of his legitimate spouse with whom he is cohabiting.

Parental leave

Section 8 of the Expanded Solo Parents' Welfare Act grants a special leave benefit of not more than seven working days every year to a solo parent who has rendered at least six months of service.

Leave for female victims of violence

Section 43 of Republic Act No 9262, or the Anti-Violence Against Women and Their Children Act, provides that a female employee who is a victim of the crime of violence against women and their children is entitled to a paid leave benefit of up to ten days per year, which shall be extendible when the need arises, as specified in the protection order.

Leave due to gynaecological surgery

Section 18 of Republic Act No 9710, or the Magna Carta of Women, grants a female employee who has rendered continuous aggregate service of at least six months for the last 12 months a special leave benefit of two months with full pay based on their gross monthly compensation following surgery caused by gynaecological disorders.

Limitations on Confidentiality, Non-disparagement Requirements

In accordance with the principle of autonomy of wills under contract law, there are no limitations as to confidentiality or non-disparagement clauses found in an employment contract. An employer may perpetually prohibit an employee from divulging confidential information that they received in the course of their employment. Similarly, an employer may prohibit an employee from taking any action that may impact its business or reputation. Confidentiality or non-disparagement clauses typically impose penalties for violating the same in the form of liquidated damages, the amount of which may be tempered by the courts if found to be unreasonable in relation to the breach.

Employee Liability

To the employer

An employee's liability to their employer for loss or damage may be enforced through deposits and wage deductions, albeit at very stringent standards.

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Under Article 114 of the Labor Code, an employer may require its employees to make deposits from which deductions shall be made for the reimbursement of loss or damage to tools, materials, or equipment supplied by the employer only under the following circumstances:

- when the employer is engaged in such trades, occupations or business where the practice of making deductions or requiring deposits is a recognised one; or
- the deposit is necessary or desirable as determined by the DOLE Secretary in appropriate rules and regulations.

DOLE Department Order No 195, series of 2018, likewise adds, as an exception, deductions with written authorisation of the employee for payment to the employer or a third person, provided that the employer does not receive any direct or indirect pecuniary benefit from the transaction.

Nonetheless, Article 115 of the Labor Code and DOLE Labor Advisory No 11, Series of 2014 provides that 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 their responsibility has been clearly shown. In no case shall the deduction exceed 20% of the employee's wages in a week.

To third persons

As regards an employee's liability to third persons, Article 2180 of the Civil Code of the Philippines provides that employers shall be liable for the damages caused by their employees acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

3. Restrictive Covenants

3.1 Non-competition Clauses

Non-compete clauses may be included in Philippine employment contracts, especially if substantial investment in the employees is involved. According to Philippine jurisprudence, while there is no hard and fast rule to determine the validity or enforceability of a non-compete clause, it may be struck down when, based on the circumstances, the restriction is unreasonable so as to unduly restrain trade (ie, time, place, scope of trade), when it is contrary to the public welfare, and when the restriction is greater than is necessary to afford fair and reasonable protection to the party in whose favour it is imposed.

Non-compete clauses may be enforced by filing a civil case with the regular courts of competent jurisdiction within ten years from the time the right of action accrues, as stated in Article 1144 of the Civil Code. The extent of the liability depends on the stipulation in the contract and/or the damages that may be proven arising from the breach. Typically, however, non-compete clauses include the imposition of a penalty in the form of liquidated damages set at a fixed amount. While the employer may stipulate any amount, courts may still temper the same upon judicial review if the amount is found to be unconscionable or iniquitous in light of the circumstances.

3.2 Non-solicitation Clauses – Enforceability/Standards

Similar to non-compete clauses, non-solicitation clauses, whether with regard to employees or customers, may be enforced by filing a civil case with the regular courts within ten years from the time the right of action accrues. There are no set standards for the validity or enforceability of such clauses, except as to their reasonableness. The Civil Code allows the parties to a contract to agree on such terms as they may deem conveni-

ent, provided that they are not contrary to law, morals, good customs, public order, or public policy. Further, there are no substantial distinctions as to the enforceability or validity of non-solicitation clauses in reference to customers compared to those for employees.

4. Data Privacy Law

4.1 General Overview

Republic Act No 10173, otherwise known as the Data Privacy Act, and its Implementing Rules and Regulations generally apply to employment relationships. An employee may be considered as a data subject, whose personal, sensitive personal, or privileged information may be processed by their employer in accordance with and under the circumstances provided under Sections 12 and 13 of the Data Privacy Act.

Pursuant to Section 20 of the Data Privacy Act, employers, being personal information controllers of their employees' personal information, are required to implement reasonable and appropriate organisational, physical and technical measures to protect the personal information in their custody. These measures must be comprehensive enough to protect the personal data from both natural dangers (eg, accidental loss or destruction) and human dangers (eg, unlawful access, fraudulent misuse, unlawful destruction, alteration and contamination).

5. Foreign Workers

5.1 Limitations on the Use of Foreign Workers

Article 40 of the Labor Code provides that a non-resident foreign national may only be engaged to perform services in the Philippines under an employment arrangement if there is no person in the country who is competent, able and willing at the time of application to perform the services for which the said foreign worker is desired.

5.2 Registration Requirements

Article 40 of the Labor Code also provides that any foreign national seeking admission to the Philippines for employment purposes and any domestic employer who desires to engage them for employment in the Philippines shall obtain an employment permit from the DOLE. According to DOLE Department Order No 221, Series of 2021, the permit required is otherwise known as the AEP, which is valid for one year, unless the employment contract or other modes of engagement provide otherwise, which in no case shall exceed three years.

Conversely, under Joint Guidelines No 1, series of 2019, issued by the DOLE, Department of Justice, Bureau of Immigration (BI), and Bureau of Internal Revenue, as amended by BI Operations Order No. JHM-2020-003, a foreign national who intends to perform activities or render services in the Philippines outside of an employment arrangement must, instead of an AEP, secure a Special Work Permit (SWP) from the BI. An SWP may be secured for an initial period of three months and is renewable for the same period thereafter.

6. Collective Relations

6.1 Status/Role of Unions

The right to self-organisation guaranteed under the Philippine Constitution covers the right to form, join, or assist labour organisations or unions for the purpose of collective bargaining or for dealing with employers concerning terms and conditions of employment.

Jurisprudence provides that a union obtains the right to bargain collectively with the employer upon registration and after being recognised

as the exclusive bargaining representative of a group of employees, otherwise known as a bargaining unit. Conversely, dealing with the employer concerning terms and conditions of employment is a generic description for interacting with the employer concerning grievances, wages, working hours, and other terms and conditions of employment.

6.2 Employee Representative Bodies

While the right to self-organisation, more often than not, connotes unionism, the said right may likewise pertain to other employee representative bodies. Workers may also form or join workers' associations as well as labour management councils.

A workers' association refers to an organisation of workers formed for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining. The existence of an employer-employee relationship is not mandatory in the formation of a workers' association. What the law simply requires is that the members of the workers' association, at the very least, share the same interest.

A labour management council is a body composed of representatives from both the employer and the employees. The employees' representatives shall be elected by at least a majority of all employees in the establishment. The purpose of a labour management council is to allow employees to participate in policy and decision-making processes of the establishment where they are employed in so far as said processes will directly affect their rights, benefits and welfare.

6.3 Collective Bargaining Agreements

A CBA refers to the negotiated contract between the exclusive bargaining representative and the employer concerning terms and conditions of employment in a bargaining unit. Similar to ordinary contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy. A CBA serves as the law between the parties, and they are obliged to comply with its provisions.

7. Termination of Employment

7.1 Grounds for Termination

Grounds for Termination of Employment

Instead of motivation, a just or authorised cause is necessary to terminate employment. Unlike in other countries that adopt an "at-will employment" arrangement, Philippine labour law reinforces an employee's right to security of tenure, as guaranteed by the Philippine Constitution. Accordingly, before an employee could be meted the supreme penalty of termination from employment, their employer must ensure the existence of either a just or an authorised cause to justify employment termination.

Just causes are causes attributable to the employee's fault or negligence, while authorised causes are those attributable to a management decision to terminate an employee for business reasons or their affliction with a disease.

Just Causes for Termination

The just causes for termination are provided under Article 297 of the Labor Code:

- serious misconduct or wilful disobedience by the employee of the lawful orders of their employer or representative in connection with their work;
- gross and habitual neglect by the employee of their duties;
- fraud or wilful breach by the employee of the trust reposed in them by their employer or duly authorised representative;

- commission of a crime or offence by the employee against the person of their employer or any immediate member of their family or their duly authorised representative; and
- other causes analogous to the foregoing.

Authorised Causes for Termination
The authorised causes for termination are provided under Articles 298 and 299 of the Labor Code:

- installation of labour-saving devices;
- redundancy;
- retrenchment to prevent losses;
- closure or cessation of operation of the establishment or undertaking; and
- disease.

Procedural Requirements for Termination
The procedural requirements for just causes are different from those for authorised causes, as will be explained in **7.2 Notice Periods/Severance**. In sum, terminations due to just causes follow the twin-notice rule (involving a notice to explain, an ensuing administrative investigation, and a notice of the employer's decision). In terminations due to authorised causes, a 30-day advance notice is required to be served on the affected employees and the DOLE. Procedural requirements must be complied with before an employee can be dismissed for just or authorised cause(s). Failure to comply with the procedural requirements will not invalidate the dismissal, if based on sufficient substantive grounds, but will entitle the employee to an award of nominal damages.

Collective Redundancies
In the Philippines, there is no threshold for a redundancy to be considered as a collective redundancy.

According to jurisprudence, redundancy generally exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant where it is superfluous, and superfluity of a position may be the outcome of a number of factors, such as over-hiring of workers, decreased volume of business and dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. Redundancy may also be validly resorted to as a cost-cutting measure and to streamline operations so as to make them more viable, because the employer has no legal obligation to keep on its payroll more employees than are necessary for the operation of its business.

In the event of redundancy, the affected employees are entitled to receive separation pay of at least one month's pay or one month's pay per year of service, whichever is higher. Where there are employees similarly situated, the employer must have applied fair and reasonable selection criteria to determine who among the employees are to be made redundant. In addition, they are entitled to an advance notice of at least 30 days prior to the effective date of separation.

7.2 Notice Periods/Severance

Just Causes for Termination
For termination due to just causes, procedural due process consists of the following.

- Show cause notice or notice to explain – the employer must serve a first written notice on the erring employee, which should contain the following:
  - (a) the specific causes or grounds for termination under Article 297 of the Labor Code, and company policies, if any;
  - (b) a detailed narration of the facts and circumstances that will serve as the basis for the charge against the employee (a general description will not suffice); and
  - (c) a directive that the employee is given an

opportunity to submit a written explanation within a reasonable period, which has been construed as a period of at least five calendar days from receipt of the notice.

- Ample opportunity to be heard – after serving the first notice, the employer should afford the employee an ample opportunity to be heard and to defend themself with the assistance of their representative if they so desire. "Ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against them and submit evidence in support of their defence, within a period of at least five calendar days from receipt of the first notice. A formal hearing or conference becomes mandatory only when requested by the employee in writing, when substantial evidentiary disputes exist, when a company rule or practice requires it, or when similar circumstances justify it.
- Notice of termination – finally, if the evidence warrants termination from employment, the employer shall serve on the employee a written notice of termination indicating that:
  (a) all circumstances involving the charge against the employee have been considered; and
  (b) the grounds have been established to justify the severance of their employment.

Authorised Causes for Termination

For termination due to authorised causes, notice is a statutory and regulatory requirement. This consists of service of two separate written notices on both the affected employees and the appropriate Regional or Field Office of the DOLE at least 30 days before the termination becomes effective, specifying the ground or grounds for termination.

In the case of termination due to disease, in addition to the service of the separate written notices on the affected employees and the DOLE, there should be a certification by a competent public health authority that the disease is of such nature or at such stage that it cannot be cured within six months even with proper medical treatment. It must be noted, however, that the Supreme Court has ruled in several cases that employees who are dismissed due to disease must have also been served the notices required for termination due to just causes as stated above.

Separation Pay

In the case of termination for authorised causes, the affected employees are entitled to separation pay. The separation pay shall be in an amount equivalent to one month's pay or at least one month's pay for every year of service, whichever is higher, if the termination is due to the installation of labour-saving devices or redundancy. In cases of retrenchment to prevent losses, closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, and in cases of disease, the separation pay is one month's pay or at least half a month's pay for every year of service, whichever is higher. A fraction of at least six months shall be considered as one whole year. Monthly pay consists of the employee's monthly basic pay plus any guaranteed monthly allowances received by them regularly without any conditions. Separation pay, which forms part of an employee's final pay, must be paid within 30 days from the date of separation.

The payment of separation pay and the service of one month's notice are required by the law. Payment in lieu of notice is not allowed, although an employee may be placed on garden leave (with pay) prior to the effective date of separation.

Separation pay is not required for termination due to just causes or resignations, although the two notices mentioned above are indispensable

for purposes of complying with procedural due process in case of dismissals for just causes.

External Advice or Clearance

No other external advice or authorisation is required to carry out terminations for just or authorised causes. Similarly, no prior clearance is required from the DOLE before any termination may be effected.

7.3 Dismissal for (Serious) Cause (Summary Dismissal)

Philippine laws do not allow summary dismissal regardless of the nature or gravity of the just cause. The requirements of procedural due process must always be observed in dismissals for just causes. However, the law allows an employer to place an employee on prevent suspension for a maximum period of 30 days, if the employer finds the employee to be a serious threat to the life or property of the employer or their representatives, or of co-employees. The period of preventive suspension may exceed 30 days pending the resolution of the disciplinary proceedings, although the employee must already be paid their salary during such extension.

The procedural requirements for dismissal due to just causes are discussed in **7.2 Notice Periods/Severance**.

Should an employee be summarily dismissed – ie, the requirements of procedural due process are not observed – the dismissal per se is not invalid should the same be based on sufficient grounds. However, this may entitle the employee to an award of nominal damages.

7.4 Termination Agreements

Termination Agreements

In the Philippines, termination agreements are permissible but imply a voluntary resignation on the part of the employee. In this regard, while there is nothing to prohibit the employer and employee from agreeing upon the conditions of an employee's resignation, the employer must ensure that such an agreement may be proved as having been freely and voluntarily entered into by the parties. This is because once an employee questions the validity of such termination agreements before the labour courts, the same may be construed as a forced resignation and, consequently, constructive dismissal. These agreements are typical in cases where an employee is allowed a graceful exit as an alternative to dismissal from employment due to just causes.

Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits. Constructive dismissal may likewise exist if an act of clear discrimination, insensibility or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by them except to forgo their continued employment. Once found to have been constructively dismissed, an employee will be adjudged to be entitled to reinstatement, backwages and even moral or exemplary damages.

Releases and Quitclaims

There are no statutory requirements for releases. While law and jurisprudence look with disfavour upon releases and quitclaims by employees who are merely pressured into signing them, a legitimate waiver representing a voluntary settlement of an employee's claim should be respected by the courts as an agreement between the parties. Jurisprudence provides the following requisites for a valid (release waiver and) quitclaim:

- there was no fraud or deceit on the part of any of the parties;
- the consideration for the quitclaim is credible and reasonable; and

- the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognised by law.

7.5 Protected Employees

Protection for Certain Categories of Employees

No particular category of employees is immune from employment termination if, based on the circumstances, their acts warrant the imposition of the supreme penalty of dismissal. To impose upon an employer the retention of an employee when the latter does not deserve continued employment is to violate the employer's management rights or prerogative. An employer, however, may not dismiss an employee solely on the basis of their gender, age, illness, or religion.

Implications for Employee Representatives

Officers of a union that has been certified as the exclusive bargaining representative are not particularly immune from dismissal and/or disciplinary action. However, if found to be unjustified under the circumstances, the dismissal of a union officer may be considered as union-busting. This, in turn, may be considered as an unfair labour practice, which is a ground for the conduct of a strike and even criminal prosecution.

8. Employment Disputes

8.1 Wrongful Dismissal Claims

An employee may file a wrongful dismissal claim before the National Labor Relations Commission (NLRC) if their dismissal was not due to either a just or authorised cause, or the dismissal is otherwise contrary to law.

If a wrongful dismissal claim is found to be meritorious, by virtue of Article 294 of the Labor Code, the employee may be awarded with reinstatement without loss of seniority rights and other privileges, or payment of separation pay in lieu thereof, plus full back wages, inclusive of allowances, and other benefits or their monetary equivalent. If the dismissal is carried out in malice or bad faith, the employer may also be held liable for moral or exemplary damages. Attorney's fees may likewise be awarded constituting 10% of the total judgment award.

8.2 Anti-discrimination Issues

Grounds for a Claim of Discrimination

Pursuant to the state's policy under Article 3 of the Labor Code, all employers are enjoined to prevent discrimination in the workplace on account of sex, race or creed. Providing lesser compensation to a particular employee as against another for work of equal value or favouring one employee over another with respect to promotion, training opportunities, study and scholarship grants solely on account of a difference in sex, race, or creed are examples of such acts of discrimination.

The following Labor Code provisions and statutes likewise aim to curb discrimination in the workplace:

- Articles 133-135 of the Labor Code and Republic Act No 9710, or the Magna Carta for Women, on discrimination against women;
- Section 32 of Republic Act No 7277, or the Magna Carta for Disabled Persons, on discrimination against disabled persons;
- Republic Act No 10911, or the Anti-Age Discrimination in Employment Act, on discrimination on account of age;
- DOLE Department Order No 5, series of 2010, on discrimination against persons afflicted with Hepatitis B;
- Republic Act No 8504 or the Philippine AIDS Prevention and Control Act of 1988, in relation to DO No 102, series of 2010, on discrimination against persons afflicted with HIV or AIDS;

- DOLE Department Order No 73, series of 2005, on discrimination against persons afflicted with tuberculosis;
- Section 7 of Republic Act No 11861, or the Expanded Solo Parents Welfare Act, on discrimination against solo parents; and
- Republic Act No 11036, or the Mental Health Act, on discrimination against persons with mental health conditions.

Burden of Proof in Discrimination Cases

There are no laws, rules or regulations that categorically establish the burden of proof in discrimination cases. Thus, the general rule that "the party who alleges a fact has the burden of proving it" should be followed. However, if the discrimination issue is raised in a case for illegal dismissal, it would be incumbent upon the employer to prove by substantial evidence that the dismissal was based on valid grounds, in accordance with Articles 297 and 298 of the Labor Code. Thus, in these cases, the burden of proof is on the employer.

Penalties and Relief in Discrimination Cases

Discrimination against women

Under Article 303 of the Labor Code, employers who are found to have wilfully discriminated against women may be penalised with a fine ranging from PHP1,000 to PHP10,000, or imprisonment for between three months and three years, or both, at the discretion of the court.

Discrimination against disabled persons

Section 46 of the Magna Carta for Disabled Persons, on the other hand, provides that "any person who violates any provision of [the Magna Carta of Disabled Persons] shall suffer the following penalties: for the first violation, a fine of not less than [PHP50,000.00] but not exceeding [PHP100,000.00], or imprisonment of not less than six months but not more than two years, or both, at the discretion of the court; and for any subsequent violation, a fine of not less than [PHP100,000.00] but not exceeding [PHP200,000.00], or imprisonment for less than two years but not more than six years, or both, at the discretion of the court".

Discrimination on account of age

The Anti-Age Discrimination in Employment Act penalises any violation of the said law with a fine of PHP50,000 to PHP500,000, or imprisonment for three months to two years, or both, at the discretion of the court.

Discrimination against persons with mental health conditions

Section 44 of the Mental Health Act provides that any person who discriminates against a person with a mental health condition shall be punished by imprisonment for not less than six months, but not more than two years, or a fine of not less than PHP10,000, but not more than PHP200,000, or both, at the discretion of the court.

Foreign nationals, corporations, trusts, and other entities

Common to the above statutes are provisions stating that any foreign national found guilty may be summarily deported after serving their sentence. Likewise, if the offence is committed by a corporation, trust, firm, partnership, association or any other entity, the penalty is imposed upon the guilty officers of such corporation and/or entity.

Separate action for damages

Apart from the penal statutes, an aggrieved employee may likewise file an action for damages in a separate action before the regular courts.

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Angara Abello Concepcion Regala & Cruz

9. Dispute Resolution

9.1 Judicial Procedures

Disputes between employees and their employers involving labour standards benefits (eg, normal hours of work, meal periods, night shift differential, overtime premium pay, weekly rest period, holiday pay and service incentive leave) are cognisable by the DOLE Regional Offices.

On the other hand, the Labor Arbiters of the NLRC shall have original and exclusive jurisdiction to hear and decide the following cases:

- unfair labour practice cases;
- termination disputes;
- cases filed by workers involving wages, rates of pay, hours of work and other terms of employment, if accompanied with a claim for reinstatement;
- claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
- cases arising from any violation of the duty to collectively bargain; and
- all other claims arising from employer-employee relations, except claims for Employees Compensation, Social Security, and maternity benefits.

Decisions of the Labor Arbiters may be appealed to the NLRC within ten days from receipt upon the posting of a bond equivalent to the amount of the judgment award in favour of the employee. In the event of a judgment of illegal dismissal, the Labor Code mandates either actual or payroll reinstatement pending appeal. Decisions of the NLRC may, in turn, be reviewed on certiorari proceedings by the Court of Appeals and, eventually, in the proper case by the Supreme Court.

Employment Class-Action Claims

Since a particular employment relationship is treated differently from another despite a common cause of action, each and every employee must be considered as an individual litigant when filing claims, thus negating the possibility of a class-action suit. One employee may have a different set of entitlements and/or accountabilities from another or may have particularities in the case that would aggravate or mitigate the employer's liability to them, if any. Thus, the disposal of a class-action suit with a blanket and identical relief for all employees of an employer may not be available in labour cases.

Nonetheless, where there are two or more cases or complaints pending before different Labor Arbiters in the same Regional Arbitration Branch involving the same employer and common principal causes of action, or the same parties with different causes of action, the subsequent cases or complaints may be consolidated with the first to avoid unnecessary costs or delay. The consolidated case will then be disposed of by the Labor Arbiter to whom the first case was assigned.

Appearance/Representation before the Labour Arbiter and the NLRC

Section 6 of Rule III of the 2011 NLRC Rules of Procedure, as amended, provides that a lawyer appearing for a party is presumed to be properly authorised for that purpose.

Conversely, a non-lawyer may appear in any of the proceedings before the Labor Arbiter or the NLRC only under the following conditions:

- they represent themselves as a party to the case;
- they represent a legitimate labour organisation, which is a party to the case;
- they represent a member of a legitimate labour organisation that exists within the employer's establishment and that is a party to the case;
- they are a duly accredited member of any legal aid office recognised by the Department

of Justice or Integrated Bar of the Philippines; or
- they are the owner or president of a corporation or establishment that is a party to the case.

9.2 Alternative Dispute Resolution

Voluntary arbitration is possible, especially in a unionised setting, pursuant to the provisions of a CBA, which should provide for a grievance machinery and a voluntary arbitration procedure. This is mandated in cases where the dispute involves the interpretation, implementation or enforcement of a CBA.

Under Article 274 of the Labor Code, the parties to the CBA may resort to voluntary arbitration by DOLE-accredited arbitrators of the National Conciliation and Mediation Board (NCMB) if no settlement is achieved through a grievance machinery system provided for in the CBA. These voluntary arbitrators have original and exclusive jurisdiction over cases relating to the interpretation or implementation of CBAs, or the enforcement of an employer's personnel policies. Under Article 275 of the Labor Code, the parties may vest upon the voluntary arbitrators the jurisdiction to hear and decide all other labour disputes, including unfair labour practices and bargaining deadlocks.

Pre-dispute arbitration agreements are enforceable. These agreements are usually embodied in CBAs, wherein the parties may agree to resort to voluntary arbitration in the event that settlement through the grievance machinery process is futile. These provisions in the CBA may be enforced.

9.3 Awarding Attorney's Fees

In labour cases, attorney's fees partake of the nature of an extraordinary award granted to the employee as an indemnity for damages. Philippine jurisprudence provides that attorney's fees may be recovered in labour cases involving the following:

- unlawful withholding of wages;
- where the defendant's act or omission has compelled the claimant to litigate, or the claimant incurred expenses to protect their interest;
- in actions for the recovery of wages of household helpers, labourers and skilled workers;
- in actions for indemnity under workmen's compensation and employer's liability laws; and
- in cases where the court or tribunal deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

Based on Article 111 of the Labor Code, the maximum amount of attorney's fees the employee may recover is set at 10% of the monetary award.

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Emerico O. De Guzman, Clarence Darrow C. Valdecantos, Joy Anne C. Leong-Pambid and Gilyen Ezra Marie L. Li-Nulud,
Angara Abello Concepcion Regala & Cruz

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Authors

Emerico O. De Guzman was the managing partner of Angara Abello Concepcion Regala & Cruz from 2014–2021 and the head of the firm's Labour and Employment department from 2008–14. He is now an of counsel with the firm. He advises top multinationals on their concerns relating to employment and related litigation. He was president of the Personnel Management Association of the Philippines in 2006 and the Philippine Bar Association from 2014–15. He was the legal counsel of the Integrated Bar of the Philippines from 2019–21. He is currently an employer representative to the National Tripartite Industrial Peace Council and the committee chair of the Human Capital Committee of the Management Association of the Philippines.

Clarence Darrow C. Valdecantos is a senior partner at Angara Abello Concepcion Regala & Cruz and the head of the firm's Labour and Employment department. He has specialised for 25 years now in the different areas of labour and employment laws, which include labour litigation involving money claims and termination disputes, collective bargaining negotiations, preventive mediation and conciliation of labour disputes, strikes and lockouts, union representation issues, certification elections and voluntary arbitration cases. Mr Valdecantos has been consistently cited by leading legal publications as an excellent labour lawyer and litigator. In a Chambers Asia (Asia's Leading Lawyers for Business) publication, he was commended for having the necessary skills to assist with labour and employment matters.

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Emerico O. De Guzman, Clarence Darrow C. Valdecantos, Joy Anne C. Leong-Pambid and Gilyen Ezra Marie L. Li-Nulud,
Angara Abello Concepcion Regala & Cruz

Joy Anne C. Leong-Pambid has been a partner at Angara Abello Concepcion Regala & Cruz since 2015 and specialises in labour and employment. She has assisted clients on matters involving termination of employment, the implementation of workforce restructuring programmes, contracting arrangements, collective bargaining negotiations, voluntary arbitration cases, and successor-employer issues in mergers and acquisitions. She has also reviewed, formulated, and audited employee manuals and codes of discipline, company policies, and employment contracts. Since 2016, Ms Leong-Pambid has been recognised as one of the leading lawyers in the field of labour and employment.

Gilyen Ezra Marie L. Li-Nulud is a senior associate in Angara Abello Concepcion Regala & Cruz's Labour and Employment department and has been with the firm since 2017. Ms Li's practice areas include labour and employment law, appellate practice and contracts. She has assisted clients on matters involving terms and conditions of employment, codes of company policies, termination of employment, collective bargaining negotiations, labour law audits and compliance. She has contributed articles on women, business and the law since 2019.

Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

22nd-26th Floors, ACCRALAW TOWER
2nd Avenue corner 30th Street
Crescent Park West
Bonifacio Global City, 1635 Taguig
Metro Manila
Philippines

Tel: +632 8830 8000
Fax: +632 8403 7007
+632 8403 7009
Email: accra@accralaw.com
Web: www.accralaw.com

Trends and Developments

Contributed by:
Neptali B. Salvanera, Erwin Jay V. Filio, Franchesca Abigail C. Gesmundo and Karenina Isabel A. Lampa
Angara Abello Concepcion Regala & Cruz **see p.26**

Employment Law in the Philippines: Dealing With the COVID-19 Pandemic and Improvements to Come

Having dealt with the ongoing COVID-19 pandemic for more than two years now, employers have had to continuously adapt to the ever-changing regulations in this jurisdiction, if only to maintain a balance between doing their part in containing the spread of the COVID-19 virus and also keeping their businesses afloat.

With this, the workplace has undergone a multitude of changes, such as experiencing sudden closures, shifting from in-person working arrangements to remote working, strengthening policies to maintain the well-being of employees, and keeping up with the "hybrid" working arrangements.

Two years in, and there seems to be a general trend among employers towards accepting that, while the workplace might not yet be able to return to the way it was before the pandemic, this does not mean that the workplace cannot move forward and improve from the practices implemented due to the pandemic.

Ultimately, the recent developments in laws and regulations for the workplace seem to cover two main aspects: first, the employers' continued obligations in dealing with the COVID-19 pandemic; and second, the employers' obligations in moving forward from the pandemic and improving the workplace.

Allowing additional leave benefits due to the pandemic

As early as 2020, there had been calls for the grant of a "pandemic leave". House Bill No 7909 was filed for consideration, otherwise known as the "Paid Pandemic Leave Law of 2020". Under House Bill No 7909, employers would have been mandated to grant either 14 days of paid pandemic leave at the employee's full pay, or a maximum of 60 days of paid pandemic leave at 80% of the employee's daily full pay, depending on the eligibility of the concerned employee.

Subsequently, in 2021, Senate Bill No 2148 was likewise filed for consideration, which sought to grant paid pandemic leave of ten working days with full pay for COVID-19.

To date, however, these bills have not been enacted into law and there is no explicit mandate to grant separate pandemic leave benefits. In any case, the Department of Labor and Employment (DOLE) issued Labor Advisory No 01, Series of 2022, which tackled "Isolation and Quarantine Leaves of Employees in the Private Sector".

Under said Labor Advisory, the DOLE urged employers, in consultation with the employees or their representatives, to adopt a paid isolation and quarantine leave programme to complement any existing leave benefits.

Encouraging vaccination in the workplace

As early as March 2021, under DOLE Labor Advisory No 03, Series of 2021, the DOLE laid the down the policy that that there shall be no

discrimination against any employee who refuses or fails to be vaccinated.

However, with supplies of the COVID-19 vaccine having become more accessible compared to early 2021, and in recognition of the crucial role of vaccination in helping to limit the spread of the COVID-19 virus, there have been several regulations laid down which show a general favour toward employers encouraging employees to get vaccinated. Thus, the current trend in recent issuances from the DOLE show that there is a continuing effort to afford employees a workable arrangement in order to get vaccinated.

In the DOLE Labor Advisory No 04, Series of 2022, the DOLE encouraged employers to allow their employees to accompany their children for vaccination, without affecting their attendance record. This is subject to employees presenting proof of their children's vaccination. Similarly, in the DOLE Labor Advisory No 05, Series of 2022, and in support of the government's implementation of national COVID-19 vaccination days, the DOLE also encouraged employers to allow the workforce to get inoculated against COVID-19, or to accompany their children to do so, without being considered absent from work. These measures were clearly put in force to ensure that employees would not be constrained from getting vaccinated due to their work schedules.

Additionally, even in the DOLE Labor Advisory No 10, Series of 2022, the DOLE likewise issued guidelines for the private sector in the administration of COVID-19 vaccine booster doses. In said Labor Advisory, the DOLE expressly recognised that doses for the booster can be administered in workplaces, as long as the employer utilises its occupational health and safety services. Employers who are qualified to administer such boosters shall even be provided with available resources from the National or Regional Vaccination Operations Center (NVOC/RVOC).

Despite the clear trend in encouraging vaccination against COVID-19, it is important to note that, in this jurisdiction, employers cannot force an employee to get inoculated against COVID-19. Therefore, as opposed to a blanket requirement for employees to get vaccinated for COVID-19, the recent issuances of relevant government bodies have leaned towards imposing additional safety measures and requirements for qualified employees who have not been vaccinated.

Adopting alternative working arrangements and gradually shifting back to the office

It is true that other alternative working arrangements have already been in place in this jurisdiction, even prior to the pandemic. The DOLE has already recognised other working schemes such as telecommuting, compressed workweek, forced leave, rotation of workdays, and the like. However, due to the pandemic, employers in this jurisdiction, much like in other countries, were constrained to explore alternative working arrangements to strictly reporting for work at the office.

Two years into the pandemic, however, it would seem that, while alternative working arrangements may have opened new possibilities for the continuity of work despite the ongoing pandemic, on-site working is still often required, especially in some industries.

Therefore, the policies in this jurisdiction have recognised the shift back to working in the office and have likewise focused on ensuring the safety of employees despite the COVID-19 pandemic.

IATF Resolutions

Perhaps one of the more controversial regulations put into effect in relation to the practice of reporting back to work is seen in the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF) Resolution No 148-

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B, Series of 2021 (IATF 148-B, S 2021), supplemented by IATF Resolution No 149, Series of 2021 (IATF 149, S 2021), where the government took a bigger step in making a distinction between vaccinated and unvaccinated employees.

Under these IATF Resolutions, in areas where there are sufficient supplies of COVID-19 vaccines as determined by the NVOC, employers in both the public and private sector shall require eligible employees who do on-site work to be vaccinated against COVID-19. This does not mean that eligible unvaccinated employees can be terminated from work should they refuse to be vaccinated. In fact, IATF 148-B, S 2021 clearly states that unvaccinated employees cannot be terminated from employment solely by reason of their vaccination status.

However, these IATF Resolutions imposed an additional requirement before eligible unvaccinated employees may perform on-site work. Particularly, eligible unvaccinated employees must undergo RT-PCR tests at least once every two weeks at their own expense before they can perform on-site work. Under IATF 148-B, S 2021, an employee may resort to antigen tests where RT-PCR tests are insufficient or are not immediately available.

Subsequently, on 27 June 2022, the IATF issued IATF Resolution No 169, Series of 2022 (IATF 169, S 2022), through which the IATF revised IATF 148-B, S 2021 to incorporate the following changes, among others:

- eligible unvaccinated employees may now undergo weekly antigen tests for on-site work;
- employees with a recent COVID-19 infection within 90 days, and those under alternative working arrangements which do not require on-site presence, may be exempt from the aforementioned testing requirement.
- the aforementioned testing requirement shall be waived for areas under Alert Level 1 Classification (as determined by the IATF), subject to the implementation of clinically-based management and symptomatic testing.

With all these laws and regulations directly related to the COVID-19 pandemic, it is clear that this jurisdiction still puts great focus in maintaining its efforts to manage the pandemic. This is not to say, however, that current laws and regulations only focus on COVID-19 related issues. In fact, there has likewise been an increase in legislation which seeks to further protect employees and improve their benefits.

Strengthening the Occupational Safety and Health Standards

On 17 August 2018, Republic Act No 11058 (RA 11058) was passed into law. It sought to strengthen compliance with Occupational Safety and Health Standards (OSHS). Pursuant thereto, the DOLE issued its Implementing Rules and Regulations under Department Order No 198, Series of 2018. These issuances sought to improve the safety and health conditions of workers in the workplace.

On 13 May 2022, the DOLE issued Department Order No 235, Series of 2022 (DO 235, S 2022), which provided the rules on the certification of first aiders and the accreditation of first aid training providers for the workplace.

Under DO 235, S 2022, the DOLE designated the DOLE-Accredited First Aid Training Providers (FATPro), which will be in charge of providing certification courses for the designated first aiders in the workplace. DO 235, S 2022 likewise emphasised the three types of training courses which shall be the minimum certification require-

ments depending on employment size and risk level.

- Emergency First Aid Training for the employment size of nine employees or fewer, with risk levels of low, medium, and high.
- Occupational First Aid and Basic Life Supporting Training for the employment size of between ten and 50 employees, with risk level of low.
- Standard First Aid and Basic Life Support Training for:
  (a) employment size of between ten and 50 employees, with risk levels of medium and high;
  (b) employment size of 51 and above, with risk levels of low, medium, and high.

First aid certifications shall be valid for three years from the date of issuance.

Improving the rights and benefits of employees

It is also significant to note that this jurisdiction has been increasing its focus on ensuring that identified classes of employees receive further protection and benefits as warranted under the circumstances.

The Expanded Solo Parents Welfare Act

Republic Act No 11861, otherwise known as the "Expanded Solo Parents Welfare Act", was signed into law on 4 June 2022. Briefly stated, the law amends Republic Act No. 8972, otherwise referred to as the "Solo Parents' Welfare Act of 2000".

The Expanded Solo Parents Welfare Act gives a longer list of who qualifies as a "solo parent" for the purposes of being entitled to the rights and benefits under the law. Notable revisions and/or additions to the definition of a "solo parent" compared to the Solo Parents' Welfare Act of 2000 include the following.

- A parent who provides sole parental care and support of the child due to:
  (a) detention of the spouse for at least three months or service of sentence for a criminal conviction;
  (b) legal separation or de facto separation for at least six months, and the solo parent is entrusted with the sole parental care and support of the child or children;
  (c) divorce, subject to existing laws;
  (d) abandonment by the spouse for at least six months.
- Spouse or any family member of an Overseas Filipino Worker (OFW), or the guardian of the child or children of an OFW, subject to qualifications under the law.
- Any relative within the fourth civil degree of consanguinity or affinity of the parent or legal guardian who assumes parental care and support of the child, subject to further qualifications under the law.
- A pregnant woman who provides sole parental care and support to her unborn child or children.

In relation to employment, the Expanded Solo Parents Welfare Act granted improved benefits to solo parents. Under Section 6 of the Act, employers may enter into agreements with solo parent employees for telecommuting programmes and solo parents shall be given priority by the employer.

The Expanded Solo Parents Welfare Act also improved the seven-day parental leave granted to solo parents; the law emphasised that this shall be granted, regardless of employment status, to an employee who has rendered at least six months of service. Previously, the Solo Parents' Welfare Act of 2000 required service of at least one year before being entitled to such parental leave.

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Angara Abello Concepcion Regala & Cruz

To ensure compliance, the Expanded Solo Parents Welfare Act prescribes penalties of either a fine or imprisonment for a person or entity which refuses or fails to provide the benefits under said law. Further, non-compliance may also lead to the cancellation or revocation of a business permit, permit to operate, franchise, or other similar privileges granted to any business.

Proposed Workers' Rest Law under Senate Bill No 2475 and House Bill No 10717

Several bills have also been passed seeking to improve the working conditions of employees. Some of these issues have arisen due to the trend of adopting alternative working arrangements even prior to the pandemic, which may have been further emphasised due to the COVID-19 pandemic, and the efforts of both employers and employees to adapt.

Perhaps, the lawmakers saw the need to put in place a law which would seek to ensure that employees are guaranteed their rest hours, which may have become less well-protected due to the adoption of various alternative working arrangements such as telecommuting and the like.

Senate Bill No 2475, which was filed on 17 January 2022, prohibits employers from committing the following during the rest hours of an employee:

- requiring the employee to work;
- requiring the employee to be on duty, to travel, or be at a prescribed place for work or related activities; and
- contacting the employee for work through various means of communication, unless the purpose is to inform the employee of the necessity of rendering emergency or urgent work as defined under the Labour Code.

House Bill No 10717, which was filed on 27 January 2022, essentially contains the same prohibitions as those prescribed in Senate Bill No 2475.

Recommended penalties include payment of PHP1,000 to the employee per hour of work rendered in violation of the said proposed law, or the charge of grave coercion under Article 286 of the Revised Penal Code with a higher penalty and possible imprisonment or fine.

Proposed Family and Medical Leave Act of 2022

Although congress has just opened as of the time of writing, several legislators have already filed bills to be taken up. One to note is the proposed Family and Medical Leave Act of 2022 which seems to seek additional paid family and medical leave of up to 15 days in cases where immediate family members suffer from serious illness. The proposed law, however, provides for certain qualifications, such as a minimum period of service and an accumulated total of working hours prior to being able to avail of the said benefit.

Addressing outsourcing issues

Finally, the issue on outsourcing in this jurisdiction has yet to reach a conclusion. For context, the Security of Tenure Bill, which sought to further impose prohibitions on labour-only contracting or outsourcing, was vetoed by the former President of the Philippines in 2019.

However, a "priority bill" recently submitted by one of the country's senators includes the Security of Tenure Bill. It remains to be seen whether the bill will be significantly different from the previously vetoed bill and whether it will pass into law.

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Neptali B. Salvanera, Erwin Jay V. Filio, Franchesca Abigail C. Gesmundo and Karenina Isabel A. Lampa,
Angara Abello Concepcion Regala & Cruz

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Authors

Neptali B. Salvanera specialises in a range of employment matters, including labour law litigation, illegal dismissal, unfair labour practice, strikes, union organisation and representation issues, the labour aspect of M&A, manpower reduction programmes, and data privacy. He is extensively involved in legal audits on contracting arrangements of companies and is part of the team that institutionalised the conduct of legal audits. Mr Salvanera has been a partner of Angara Abello Concepcion Regala & Cruz since 2010 and is currently the monitor of its Labour and Employment department. He has co-authored various articles on outsourcing, including the Philippine chapter of "Chambers Global Practice Guide: Outsourcing" (2021), published by Chambers and Partners.

Erwin Jay V. Filio is a partner of Angara Abello Concepcion Regala & Cruz. He has extensive experience in handling employment termination disputes and money claims, labour inspections and audits, outsourcing concerns, the labour aspect of M&A, rightsizing and downsizing programmes, collective bargaining negotiations, union organisation issues, and strikes. He also handles labour-related criminal litigation work, which includes criminal prosecutions for unfair labor practice acts, violations of the Revised Penal Code and other special laws. He has co-authored several articles on outsourcing. He was also cited as a Band 3 Lawyer in the field of Employment by Chambers Asia-Pacific in 2022.

Contributed by:
Neptali B. Salvanera, Erwin Jay V. Filio, Franchesca Abigail C. Gesmundo and Karenina Isabel A. Lampa,
Angara Abello Concepcion Regala & Cruz

Franchesca Abigail C. Gesmundo has assisted clients on various aspects of labour litigation and advisory including termination and suspension of employment, employment benefits, union disputes, collective bargaining negotiations, labour compliance and audits, and corporate restructuring. She has been a senior associate of Angara Abello Concepcion Regala & Cruz's Labor and Employment department since 2018 and is a member of the Integrated Bar of the Philippines, having obtained her Juris Doctor degree from the Ateneo de Manila University School of Law in 2013. Ms Gesmundo has been consistently cited as a next-generation lawyer in the field of labour and employment.

Karenina Isabel A. Lampa has assisted clients on numerous employment matters, such as labor standards, outsourcing issues, union-related disputes, and the labour aspect of M&A. She also handles labour litigation on illegal termination and suspension and other employment-related money claims. Ms Lampa has been a senior associate of Angara Abello Concepcion Regala & Cruz's Labor and Employment department since 2022 and is a member of the Integrated Bar of the Philippines. She obtained his Juris Doctor degree from the Ateneo de Manila University School of Law in 2017.

Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)

22nd Floor, ACCRALAW TOWER
2nd Avenue corner 30th Street
Crescent Park West
Bonifacio Global City, 1635 Taguig
Metro Manila, PHILIPPINES

Tel: +632 8830 8000
Fax: +632 8403 7007
+632 8403 7009
Email: accra@accralaw.com
Web: www.accralaw.com