



THE CONSTITUTIONAL AND LEGAL FRAMEWORK

Chapter 2





- Managing human resources is oftentimes fraught with legal implications.
- Ignoring the legal aspects of human resources can result in legal law suits.
- It is the responsibility of the management to become educated in labor laws.
- The Constitutional and statutory provisions protecting labor are derived from the police power of the state and based on the social justice.



THE CONSTITUTIONAL BASIS

- In the Declaration of Principles and State Policies the Constitution provides:
 - *The State affirms labor as a primary socio-economic force. It shall protect the right of workers and promote their welfare. (Article II, Section 18)*
- Also, pursuant to this Declaration of Principles, Article XIII, Section 3 expands its labor policy by providing that:
 - 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 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 to investments and to expansion and growth.





STATUTORY AND INTERNATIONAL BASIS OF RIGHT TO SELF-ORGANIZATION

- The Labor Code reinforces this Constitutional right to self-organization (Art. 211).
- Also, two Geneva Conventions ratified by our Senate and thus, become part of the law of the land, guarantee workers the right to self-organization:
 - ILO Convention 87 (Freedom of Association)
 - ILO Convention 98 (Right to Collective Bargaining)



THE LABOR CODE

Book One – Pre-Employment

Book Two – Human Resources Development Program

Book Three – Conditions of Employment

Book Four – Health, Safety, and Social Welfare Benefits

Book Five – Labor Relations

Book Six – Post-Employment





KINDS OF EMPLOYEES – DEFINITIONS

- Employer – includes any person acting in the interest of the employer directly or indirectly.
- Employee – includes any person in the employ of an employer.
 - Managerial Employee
 - Supervisory Employee
 - Rank and File Employee



TYPES OF EMPLOYEES IN TERMS OF TENURE

(Art. 280 of the Labor Code)

Regular

- Where the employee has been engaged to perform activities which are usually necessary in usual business

Project

- Where the employment has been fixed for a specific project or termination of which has been determined at the time of the engagement

Casual

- Some one who is not a regular employee or whose service is broken or employed less than 6 months in the company

Probationary

- Less than 6 months employment from the date the employee started working, whose services may be terminated for a just cause or when he fails to qualify as regular employee

Fixed contract employee

- Where there's a day agreed upon by the a day certain agreed upon by the parties for the commencement and termination of their employment relationship



HEALTH, SAFETY AND SOCIAL WELFARE PROVISIONS

(Art. 156 – 161 of the Labor Code)

- To keep in the employer's establishment such first-aid medicines and equipment as the nature and conditions of work may require, in accordance with such regulations at the DOLE shall provide.
- To have services of a full-time registered nurse when number of employees exceeds 50 but not more than 200.



- When the number of employees exceeds 200 but not more than 300, the employer shall get the services of a full-time registered nurse, a part-time physician and dentist and an emergency clinic.
- When the number of employees exceeds 300, the employer shall obtain the services of a full-time physician and dentist and a full-time registered nurse as well as a dental clinic and an infirmary or emergency hospital with one bed capacity for every 100 employees.
- The physicians, nurses, and dentists employed shall have the necessary training in industrial medicine and occupational safety and health.



- It shall be the duty of the employer to provide all necessary assistance to ensure the adequate and immediate medical and dental attendance and treatment to an injured or sick employee in case of emergency.



Art. 156. First-aid treatment.

Art. 157. Emergency medical and dental services

Art. 158. When emergency hospital not required

Art. 159. Health program

Art. 160. Qualifications of health personnel

Art. 161. Assistance of employer



Employee Compensation and State Insurance Fund

- The State shall promote and develop a tax-exempt employee compensation program whereby employees and their dependents, in the event of work-connected disability or death, may promptly secure adequate income benefit, and medical or related benefits.
- The State Insurance Fund is created out of monthly contributions by the employer for the employee.
 - **Social Security System (SSS)**
 - **Government Service Insurance System (GSIS)**



LABOR RELATIONS

- It is the interaction between a company's upper management and the rest of its employees.



Sources of Conflicts in Labor Relations

Manner by which hierarchical demands are made or executed

Clash between Management Prerogatives and Labor Rights

Just share in the fruits of production

Fair return in investments, expansion and growth

Most common Management Prerogatives

- The Right to Hire
- The Right to Dismiss (Fire/Terminate)
- The Right to Transfer
- The Right to Promote and Demote
- The Right to Discipline
- The Right to Lay Down Policies
- The Right to Establish Working Hours
- The right to Organize and Reorganize
- The Right to Reasonable return on investment;
- The Right to Expansion and Growth



Comparison of Management Prerogatives and Labor Rights

Management Prerogatives	Labor Rights
Power to manage	Right to participate in decision-making
Power to hire	Union security rights which may include closed shop
Power to fire	Security of tenure
Power to transfer employees	Right to refuse if it is obviously to thwart unionization or any other ULP act
Power to promote/demote	Right to question if basis is unfair/discriminatory or is in violation of Collective Bargaining Agreement
Power to layoff/lockout	Right to question basis and manner of layoff/right to strike
Power to lay down policies	Right to participate in decision making/to collectively bargain
Power to discipline	Right to due process
Power to set working hours	Right to file grievance
Fair return in investments, and expansion	Right to just share in fruits of production



UNFAIR LABOR PRACTICE (ULP)

(Articles 247, 248 and 249 of the Labor Code)

- Violates constitutional right of workers to self-organization
- Is inimical to the legitimate interests of both labor and management and labor's right to bargain collectively with freedom and mutual respect
- Disrupts industrial peace
- Hinders promotion of healthy labor management relations
- Violates civil rights of the parties
- Is a criminal offense



Unfair Labor Practices

- Examples of employer conduct violating NLRA

- Threatening employees with loss of jobs or benefits if they join or support a union
- Threatening to close a plant if employees vote for unionization
- Questioning employees about union activities
- Promising benefits to employees if they do NOT support a union
- Giving employees worse assignments for participating in protected activities

- Examples of union conduct violating NLRA

- Threatening employees with loss of job if they don't support the union
- Refusing to help employees with grievances who have criticized union leaders
- Engaging in picket line misconduct, such as threatening non strikers
- Striking over issues unrelated to employment terms and conditions



STRIKES AND WORK STOPPAGES/LOCKOUTS

The right to strike is guaranteed by the Constitution and the law.

- Employees can only strike on two grounds:
 - Deadlock in Collective Bargaining Negotiations
 - Unfair Labor Practice (ULP)
- Further conditions before a strike can be staged:
 - A strike notice must be filed with the DOLE , 30 days before intended strike in case of deadlock; 15 days in case of ULP.



- Strike must be approved through secret balloting by the majority of the members in the bargaining unit.
- Short of any of these conditions, the strike can be declared illegal.

PLDT workers' group files notice of strike at DOLE

By Ferdinand Patinio **September 4, 2018, 8:00 pm**

Share

•**MANILA** -- A group of regular workers of Philippine Long Distance Telephone Company (PLDT) filed a "Notice of Strike" at the Department of Labor and Employment (DOLE) in Manila on Tuesday.

According to Gabay ng Unyon sa Telekomunikasyon ng mga Superbisor (GUTS) president Charlito Arevalo, they are filing the notice over issues of unfair labor practices - as supervisors are carrying the workload left behind by dismissed contractual workers.

"As the highest form of collection action of workers, we are planning to hold a strike in the days to come as an expression of our extreme outrage against PLDT management's move and maneuvers to circumvent the law and previous DOLE compliance order to regularize its workers and employees," Arevalo said in an interview before filing the notice of strike.

He noted that the rehiring and regularization of the dismissed PLDT workers is the solution to their problem.

"Our demand is clear enough. That PLDT and DOLE must regularize all of these workers at the soonest possible time," he added.

GUTS, which has some 3,600 members nationwide, is one of the four labor organizations of the telecommunications giant.

Last June, PLDT dismissed 12,000 contractual workers, mostly installers and repair and maintenance crew members. This contradicted DOLE's order on July 31 to regularize its workers.

In August, the Court of Appeals stopped DOLE's order directing PLDT to regularize 7,344 workers it hired from third-party contractors. **(PNA)**



REGULARIZE ALL PLDT WORKERS NOW!
IMPLEMENT DOLE COMPLIANCE ORDER
ON PLDT REGULARIZATION NOW!
POWER & ENERGY JOB PHILIPPINES
PLDT (PHILIPPINES) HOLDINGS AND SUBSIDIARIES INC. (PLDT)

Regularize all PLDT workers!
PLDT
PLDT
PLDT

ANCHD
IDOLE
Implementation of Labor and Investment
OFW ID Card



3%	MRC	-1.72%	MRP	+0.39%	MRSGI	-0.38%	MWC	-2.55%	MWIDE	-2.03%	MV
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10:19 PM

FRANCISCO: LOCAL INVESTORS SUPPORTING PH SHARES AS ECONOMIC OUTLOOK



THE LAW ON TERMINATIONS

- The security of tenure of employees is guaranteed by the Constitution and by law.
- An employee unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and his full back wages inclusive of allowances, or other benefits or their monetary equivalent computed from the time his compensation was withheld up to time of reinstatement.



Just Causes

(Art. 282)

Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work

Gross and habitual neglect by the employee of his duties

Fraud or willful breach by the employee of the trust reposed on him by his employer or duly authorized representative

Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative

Other causes analogous to the foregoing



Authorized Causes

(Art. 282)

- Installation of labor saving device or redundancy
- Retrenchment to prevent losses or closing or cessation of operation
- Other authorized causes:
 - When an employee has a disease wherein his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees
 - Retirement

Authorized Causes:

The authorized causes for termination of employee are enumerated under Article 283 and 284 of the Labor Code, as follows:

1. Installation of labor-saving devices.
2. Redundancy.
3. Retrenchment to prevent losses.
4. Closure or cessation of operation.
5. Disease



Retirement Pay Law (R.A. 7641)

- An employer can terminate services of employees upon reaching the age of 60 but not beyond 65 years of age provided he receives retirement pay.
- If the company has no retirement plan of its own – equivalent to 22 days pay per year of service. If the company has its own retirement plan and its benefits are below that required by law, it has to pay for the difference.
- The 22 days is the total of 15 days retirement pay plus 1/12 of 13th month pay and cash equivalent of 5 days incentive leave pay per year of service.



Due Process Requirement

- The Bill of Rights of the Constitution provides that no person shall be deprived of life, liberty or property without due process of law.
- *Due Process* means that an erring employee is entitled to a “day in court,” with the assistance of counsel if he so desires, to confront the witnesses against him.
- The “twin notice” requirement on termination due to just causes means that the employer should give the worker two written notices before terminating his employment.



SUMMARY OF THE SALIENT POINTS OF THE LABOR CODE

- Primacy of free collective bargaining and negotiations
- Free trade unionism
- Free and voluntary organization of strong and united labor movement
- Adequate machinery for expeditious settlement of disputes
- Workers' participation in decision and policy making processes



- Dynamic and just industrial peace
- Encourage free trade unionism and free collective bargaining
- Right to engage in concerted activities
- Security of tenure
- All doubts in implementation and interpretation of the Labor Code provisions including the implementing rules shall be resolved in favor of labor





THE WAGE RATIONALIZATION LAW

(R.A. 6727)

- A law passed in 1989, to rationalize wage fixing of minimum wages and to promote productivity and gain-sharing measures.
- After EDSA, wage fixing has been delegated to the Regional Tripartite Wages and Productivity Boards (RTWPB), to regionalize wage fixing to reflect the prevailing cost of living in a particular region.

A National Wages and Productivity Commission was created whose function is to exercise technical and administrative supervision over RTWPB.



Criteria for Minimum Wage Fixing

- Demand for living wages
- Wages adjustment vis-à-vis the consumer price index
- Cost of living and changes or increases therein
- Needs of workers and their families
- Need to induce industries to invest in the countryside
- Improvements in the standard of living
- Prevailing wage levels



- Fair return of the capital invested and capacity to pay of employers
- Effects on employment generation and family income
- Equitable distribution of income and wealth along the imperatives of economic and social development



DAILY MINIMUM WAGE RATES Y2019

REGION	MWR (PHP)
<u>NCR</u>	500.00 - 537.00
<u>CAR</u>	300.00 - 320.00
<u>REGION I</u>	256.00 - 310.00
<u>REGION II</u>	320.00 - 360.00
<u>REGION III</u>	274.00 - 400.00
<u>REGION IV-A</u>	303.00 - 400.00
<u>REGION IV-B</u>	283.00 - 320.00
<u>REGION V</u>	295.00 - 305.00
<u>REGION VI</u>	295.00 - 365.00
<u>REGION VII</u>	313.00 - 386.00
<u>REGION VIII</u>	275.00 - 305.00
<u>REGION IX</u>	303.00 - 316.00
<u>REGION X</u>	331.00 - 365.00
<u>REGION XI</u>	355.00 - 370.00
<u>REGION XII</u>	290.00 - 311.00
<u>REGION XIII</u>	305.00
<u>ARMM</u>	270.00 - 280.00



ANTI-SEXUAL HARASSMENT LAW

(R.A. 7877)

- Enacted on February 14, 1995
- Under this law companies could not just ignore the complaints
- Employers and heads of offices are required to promulgate appropriate rules and regulations



- Sexual harassment is defined as any work, education or training-related sexual harassment committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in the work or training or education environment, demands, requests or otherwise requires any social favor from other regardless of whether the demand, request, requirement for submission is accepted by the object of the said act.



THE NEW LABOR RELATIONS LAW

(R.A. 9481)

- The most controversial law and social legislation, passed in 2008
- Otherwise known as “An act strengthening the workers’ constitutional right to self-organization, amending the Labor Code of the Philippines
- Loudly protested not only by businessmen but by foreign chambers as well
- Salient provisions:
 - Filing of petition for certification election by a federation or national union issuing a charter



- certificate to an unregistered local participating in the certification election.
- Co-mingling of rank-and-file and supervisory unions operating within the same establishment in the same federation and national unions without qualifications/ conditions.
 - Employer as by-stander in certification election unlike before when the employer is a legitimate party in the proceedings.
 - Non-disclosure of who are officers and members of the union.

