SENTRO NG ALTERNATIBONG LINGAP PANLEGAL

LABOR LAWS FOR NGO WORKERS

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Labor Laws for NGO Workers

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THE NGO WORKER

Non-government organizations ("NGOs") engage workers in different capacities, whether as employees, consultants, volunteers, service providers, or project workers or in similar assignments. Labor laws in the Philippines generally govern the working conditions of workers who are in existing employer-employee relationships. Workers who are not considered employees may be protected by labor laws to a specific extent, but they may benefit from the protection of other laws such as those applicable to contracts. The nature of the working relationship is the basis for the rights and obligations between the employer and the worker.

Labor Laws for NGO Workers focuses on the provisions of the Labor Code of the Philippines ("Labor Code") and closely related labor laws that apply to employees of NGOs.

THE EMPLOYER-EMPLOYEE RELATIONSHIP

For workers to be entitled to the protection of the Labor Code, they must be in an existing employer-employee relationship.

THE FOUR-FOLD TEST

To determine the existence of an employer-employee relationship, the four-fold test is applied. An employer typically exercises the following in an employer-employee relationship:

a. the right to hire
b. the payment of wages
c. the right to fire
d. the right to control the conduct as to the means as well as to the results

The "right to control" is the most important element in determining the existence of an employer-employee relationship. If the other three elements are exercised by one person or entity but the right to control is exercised by another person or entity, then the latter is considered the true employer.

What is the "right to control"?

It is the right to control not only the end-result of a work to be done but also the means and methods to be used in achieving that end-result.

Should consultants be considered employees?

No. NGOs typically do not exercise control over how the work will be done by consultants and are concerned only with the end-result of such work. This shows the absence of the element of the "right to control."

Should volunteers be considered employees?

No. Volunteers, as they are commonly understood, are those who voluntarily offer their work or services to an organization for little or no compensation. This shows the absence of the element of "payment of wages." In addition, because their services are voluntarily offered, it is understood that their services can be withdrawn as easily. The NGO cannot compel volunteers to work if they do not want to, so the element of the "right to control" is also absent.

Who is the employer if the NGO is an attached institution of the school?
If the NGO does not have a legal personality separate from that of the school, then the school is considered the employer of the NGO worker. Even if control over the work done is exercised by the NGO's executive director, ultimate control resides in the school because the NGO's objectives and actions cannot depart from the school's goals.

I signed a document called a 'Project Service Contract' when I started working. Does this mean that I am not an employee?
Not necessarily. If the facts and circumstances surrounding your work meet the elements of an employer-employee relationship, it can be considered one by law even if the contract calls it something else or if there is no written agreement or terms of reference for the engagement.

May a worker whose job is not related or necessary to the main activities of the NGO be considered an employee?
Yes, the kind or nature of the work is not conclusive of whether the worker is employee or not.

Are there other factors that may be considered in determining the existence of an employer-employee relationship?
In addition to the four-fold test, the totality of the circumstances surrounding the work of the employee may be considered in determining the existence of an employer-employee relationship, such as the underlying economic realities of the work relationship.

KINDS OF EMPLOYMENT

Workers in an employer-employee relationship may be classified further to determine which provisions of the Labor Code and special labor laws are applicable to whom, according to factors such as tenure and rank.

BY TENURE

Tenure within the context of labor laws determines not only the length of time a worker holds a job but also the right of the worker to hold the job whether for a specific or indefinite duration. This is discussed further in the section on Termination of Employment.

The following are the kinds of employment classified on the basis of tenure:

- Regular employment: When an employee has been engaged to perform activities that are usually necessary or desirable in the usual trade or business of the employer, he or she is considered a regular employee. The emphasis here is on the job being performed in relation to the usual business or trade of the employer.
- Probationary employment: An employee may be on probationary status for a period not exceeding six (6) months from the date he or she started working. The probationary employee may be terminated for a just cause or when he or she fails to qualify as a regular employee.
- Project employment: For a project employee, employment is fixed for a specific project or undertaking. The completion or termination of this form of employment is determined at the time of the engagement of the employee.

- Fixed-term employment: An engagement with a fixed-term employee has clear starting and ending dates that are clearly stipulated in a contract. Fixed-term employment is found in the Civil Code and not the Labor Code. The Supreme Court has recognized the validity of such employment contracts provided that the following are observed: (a) parties have equal bargaining positions, (b) the contract is entered into voluntary, (c) no coercion and any other vice of consent is employed, and (d) there is no circumvention of labor laws.
- Casual employment: The work of a casual employee is not usually necessary or desirable to the usual trade or business of the employer. A casual employee becomes a regular employee after more than one year of service, whether continuous or broken.

Does regular employment mean permanent employment?
No. It is permanent only in the sense that it is not for a fixed period. A regular employee may still be terminated from employment but only for just or authorized causes under the law. This is discussed further in the Termination of Employment section.

REGULAR EMPLOYMENT
Regular employment is the general rule because the law favors the regularity of employment. This means that if an employee does not fall under any of the other classifications of employment, i.e., probationary, project, casual, fixed-term, etc., the presumption is always in favor of regular employment. The law determines whether an employee is regular or not, and any written or oral employment policy that is contrary to law is not valid or binding.

Does a regular employee lose his or her regular status if he or she is transferred to another position or is assigned a different task?
No. Once an employee attains a regular status, such status is retained until his or her employment is terminated.

PROBATIONARY EMPLOYMENT
A new employee may be asked to commence employment as a probationary employee. The employee should be informed of reasonable standards that he or she must meet at the time of his or her engagement. Before the end of the probationary period, the employee must be evaluated based on those standards made known to him or her at the beginning of the engagement.

What if a probationary employee is informed of the "reasonable standards" only verbally, with no written document?
It is valid regardless of how the standards were conveyed to the employee. However, it is always better to have something in writing for purposes of clarity and to minimize misunderstandings.

What if the probationary employee works beyond the prescribed six-month period?
If allowed to work beyond six (6) months, the employee will be deemed a regular employee by operation of law.

Can a probationary period be shorter than six (6) months?
Yes, for as long as the parties agree on the shorter period.

How is the six-month probationary period counted?
According to cases decided by the Supreme Court, the probationary period is counted using calendar days, i.e., 180 days, or on the basis of the same calendar date of the sixth month.

Can a probationary period last more than six (6) months?
As a general rule, no. The law clearly stipulates that the probationary period cannot exceed six (6) months. In specific situations, however, a longer probationary period has been found to be justified because of the nature of work involved and the length of time that may be needed to evaluate a worker's conduct or performance.

For example, teachers are allowed probationary periods lasting three (3) years, and telephone directory salesmen have been allowed probationary periods of eighteen (18) months.

Also, a probationary employee who ends up failing his or her evaluation may request for or an extension of the probationary period so that he or she may be given an opportunity to improve his or her performance.

What if the employee was informed about his or her probationary status and reasonable standards only during the second or subsequent days of his or her employment?
The law requires that the reasonable standards be made known at the time of engagement, so such information should be conveyed on the first day of employment. The first week of employment may still be considered a reasonable period within which to inform the employee of the standards required of him or her.

What if the supposed evaluation at the end of six (6) months is delayed for some reason?
If the evaluation is delayed for whatever reason and the employee is allowed to work beyond the six- month probationary period, he or she becomes a regular employee by operation of law.

What if a probationary employee is ordered to stop working at the end of six (6) months and told to return one week later for the evaluation?
Returning for the evaluation qualifies as work. If allowed to work beyond six (6) months, the probationary employee achieves regular status by operation of law.

Is a formal memo necessary to make a probationary employee regular?
No, a probationary employee allowed to work beyond six months automatically becomes a regular employee without need for formalities like memos or appointment papers.

Can an employee contest the evaluation if he or she is given a poor rating?
Yes, the employer should be able to support their evaluation of a probationary employee.

A new employee is made to undergo a two-week immersion and then a six-month on-the-job training as part of his or her evaluation. What is covered by the probationary period?
The two-week immersion period will have to be considered part of the probationary period, and the training period should be shortened to five and a half (5 ½) months. The law clearly states that probationary employment should not exceed six (6) months.

Can a project employee be made to undergo a probationary period?
As a general rule, no. Probationary employment leads to regular employment, so probationary employment is inconsistent with project employment. However, in cases where the project runs for a period of three (3) years, for example, it may be possible to have a probationary period within the duration of the project employment considering the length of the project.

Can the probationary period be called an "evaluation period"?
Yes, it can be called an "evaluation period," but the effects and consequences will be the same if the intention is for the employee to undergo a probationary period.

PROJECT EMPLOYMENT

Project employees are those assigned to carry out a specific project or task, the duration and scope of which are determined at the time of their engagement.

What does the term "project" in project employment mean?
When the law talks about project employment, the term "project" refers to a specific work or job to be done. It does not refer to the source of funds as commonly understood in NGO circles.

Can the services of a project employee be terminated when his or her performance is unsatisfactory?
Yes, a project employee can be terminated for failing to fulfill the standards made known to him or her at the time of engagement.

If the agreement to commence the project employment was made only verbally, will the employee involved be considered a regular employee?
Without a written contract stipulating the conditions required of the project employment, an employee can always argue that he or she was employed as a regular employee. Although verbal agreements are in themselves valid, they are nowhere as clear as written ones.

If the project for which the project employment was commenced is terminated, is the project employee entitled to separation pay?
No, the project employee who completes a project is not entitled to separation pay unless there is an agreement that such payment will be made.

A project employee has gained "regular" status, but upon the completion of the project assigned to the said employee, there is no longer any work to be given to him or her. May the employer terminate his or her employment?
A regular employee may be terminated only after due notice and for just or authorized causes. The employer may proceed with the termination if these requirements are met. This is discussed further in the Termination of Employment section.

Can a project employee be given work that is outside the scope of the project, even if it was done only once?
Yes, and the project employee is deemed a regular employee because he or she has ceased to be employed only for a specific project/undertaking. For as long as the work done is outside the scope of the project, he or she is deemed a regular employee.

If such work was done without the knowledge of his or her employer or superior, would it make him or her a regular employee?
Prior knowledge of the superior is necessary for an employee to be considered regular.

What if the project employee is made to work beyond the duration of the project?
The project employee then becomes a regular employee by operation of law. If the project is in need of an extension, then another contract should be drawn up saying that the work is for the same project or undertaking for a determinable period of time.

Can a project employee who is rehired be deemed regular?
If the specific projects and tasks for which the project employee is rehired are different, any number of repeated rehiring will not convert the project employee into a regular employee.

However, in cases where the project employee is repeatedly rehired to do the same task, then he or she may argue that the subsequent rehiring has converted him or her into a regular employee. The repeated rehiring of a project employee for the performance of the same task tends to show that the task being performed is usually necessary and desirable to the usual business or trade of the employer, which is indicative of regular employment.

In the same case, what if there is a time gap between periods during which he or she is engaged?
Time gaps between periods of being rehired as a project employee are irrelevant. Repeatedly rehiring the same person for the same task is proof that such work is usually necessary and desirable to the usual business or trade of the employer.

What if the employment involves the same person and the same task but a different project?
Project employment under the Labor Code refers to a specific job or task to be done. It does not distinguish among sources of funds in the way projects are undertaken by NGOs.

What about project employees who are assigned multiple tasks? Are they deemed regular?
It depends on whether such tasks are still within the scope of the project or undertaking to be done. If yes, then he or she is still a project employee. If outside the scope of the project or undertaking, then he or she will be considered a regular employee.

What if, for instance, a project is not yet completed within the period contemplated for the project?
Project employment may be extended through a new contract. It has to be clearly stipulated, however, that such employment is coterminous with the completion of the project. In such cases, the employee has to be compensated for the extension.

On the other hand, in cases where the non-completion of the project is attributable to the project employee (e.g., failure to submit by a set deadline), then such employment may be extended without need of executing a contract or payment of compensation.

Can the NGO whose principal function is community organizing treat its community organizers as project employees?

As a rule, the project must be identifiably separate from the usual work of the organization. In this sense, community organizers in the NGO who conduct community organizing activities may be classified as regular employees because the activities are usually necessary and desirable to the usual trade or business of the NGO concerned.

FIXED-TERM EMPLOYMENT

While the Labor Code does not provide for or mention the term "fixed-term employment," this is an arrangement that has been deemed justified in specific cases, as a result of the recognition given to contracts that may be entered into between parties who knowingly and voluntarily agree on engagements with a fixed or definite period. This recognition by the law, however, is subject to the general prohibition against stipulations contrary to law, morals, good customs, public order, or public policy, including an employee's right to security of tenure. Security of tenure is discussed further in the Termination of Employment section.

What is the difference between a project employee and a fixed-term employee?

Project employment is defined by the specific undertaking or task assigned to the employee concerned. On the other hand, fixed-term employment is defined by the time element involved in the rendition of work. Project employment is terminated once the project is completed, while fixed-term employment is terminated upon the lapse of the period stipulated in the contract.

What is the classification of an employee who was hired for a specific project with a nine-month duration?

It depends on the reason for hiring the employee. If the employee was hired to work exclusively on a specific project until its completion, then such employee is classified as a project employee. However, if that same employee was hired with a stipulation that his or her employment would be terminated at the end of nine months regardless of whether or not the project is completed, then such employee is classified as a fixed-term employee.

When fixed-term employment is terminated, is the employee entitled to separation pay?

No, a fixed-term employee is not entitled to separation pay unless there is an agreement for such payment.

CASUAL EMPLOYMENT

Casual employment refers to an arrangement by which an employee is engaged to perform a task or service that is merely incidental to the business of the employer and such task or service is for a definite period made known to the employee at the time of the engagement.

What is the employee classification of a documenter hired by the NGO each time it conducts a seminar?
The documenter is a casual employee of the NGO. The documenter is a casual employee because his or her work is not necessary or desirable to the usual trade or business of the employer. The need for a documenter arises only when a seminar is conducted.

When can a casual employee gain the status of a regular employee?
If the casual employee has been employed doing the same task or rendering service for more than one year, continuous or not, he or she becomes a regular employee by operation of law.

Does that mean that when a casual employee achieves regular status, he or she will have to be employed every day?
Not necessarily. A casual employee who has gained the status of a regular employee maintains such status for as long as the work exists. This means that when such work is not available, he or she is placed on leave without pay. However, when such work becomes available again, the employer must employ the same person to do the job required.

What is the employee classification of a computer service provider (e.g., for repair services) who is usually called in case computers need to be repaired?
This is an example of job contracting. There is no employer-employee relationship in such a case because the element of control is absent. The establishment who contracted the service does not control how the service provider goes about fixing the computer, as its only concern is that the computers be fixed.

BY RANK
The discussion on the minimum working conditions mandated by law entails the classification of employees by rank. Managerial employees are not necessarily entitled to the same benefits that the law prescribes for rank-and-file employees.

Who are considered managerial employees?
Managerial employees are those whose primary duty consists of the management of the establishment in which they are employed. Included in this category are other officers or members of the managerial staff.

The duty of managerial employees consists of the management of the establishment in which they are employed. They either have the authority to hire or fire other employees of lower rank or their suggestions and recommendations as to hiring, firing, promotion, or any other change of status of the other employees are given particular weight.

Are supervisors considered managerial employees?
Supervisors are also considered managerial employees but only for the purpose of determining whether they are entitled to certain benefits or the minimum labor standards.

CONDITIONS OF WORK

Working conditions, referred to as “labor standards,” are established by law. An employer may also establish working conditions in addition to or beyond the minimum that is prescribed by law, through a contract or through established practice. Waivers or agreements that reduce the benefits to which workers are entitled are prohibited.

The Labor Code provides the minimum prescribed standards of employment that employees should enjoy, such as hours of work, rest periods, wages, and other similar terms of employment.

EXCLUDED EMPLOYEES

The labor standards under the Labor Code apply to employees of all establishments and undertakings, including NGOs, but not to the following:

- Government employees
- Managerial employees
- Field personnel
- Members of the family of the employer who are dependent on him or her for support
- Domestic helpers and persons in the personal service of the employer
- Workers paid by results

Are managerial employees not entitled to any of the conditions of employment prescribed under the Labor Code?

Managerial employees may be given benefits by the employer voluntarily and according to conditions that may be set by the employer.

Who may be categorized as field personnel?

Field personnel are non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. These usually include messengers, researchers, and community organizers. However, messengers who are required to log in and out of the office are not considered as field personnel since their work hours are easily established.

Who may be considered workers who are paid by results?

Workers who are paid by results are also known as piece-rate workers. This includes workers who are paid per task. These workers are paid by result and not on the basis of the time spent working.

HOURS OF WORK

The regular hours of work should not exceed eight (8) hours a day. This is to safeguard the health and safety of workers. The law prescribes a maximum but not a minimum number of work hours. Thus, part-time work or work of less than eight (8) hours is not prohibited.

What counts as hours worked?

The hours of work include (a) all the times during which an employee is required to be on duty or to be at a prescribed workplace and (b) all the times during which an employee is suffered or permitted to work.

Meal and rest periods of short duration, such as coffee breaks lasting fifteen (15) minutes, are counted as hours worked.

Nursing employees are entitled to lactation breaks to breastfeed or express milk, in addition to one-hour lunch breaks. These lactation breaks include the time it takes the employee to get to and from the workplace lactation station and are counted as hours worked. A lactation break cannot be less than a total of forty (40) minutes for every eight-hour working period.

The following are not considered hours worked:

- one-hour lunch breaks, which the employer has the duty to provide its employees. If, however, the employee cannot use the break effectively for his or her personal purposes, such when they remain on call during the break, it is counted toward hours worked.
- attendance at lectures, meetings, training programs, and similar activities if the following criteria are met:
    - attendance is outside of the employee's regular working hours;
    - attendance is in fact voluntary; and
    - the employee does not perform any productive work during such attendance

OVERTIME

Can an employee be required to work beyond the maximum eight (8) hours in a day?

No employee may be made to work beyond eight (8) hours a day against his or her will, but overtime work may be required in any of the following cases:

1. when the country is at war or when any other national or local emergency has been declared by the Congress or the Chief Executive
2. when it is necessary to prevent loss of life or property or in case of imminent danger to public safety due to an actual or impending emergency in the locality caused by serious accidents, fire, flood, typhoon, earthquake, epidemic, or other disease or calamity
3. 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 some other cause of similar nature
4. when the work is necessary to prevent loss or damage to perishable goods
5. where the completion or continuation of the work started before the eighth hour is necessary to prevent serious obstruction or prejudice to the business or operation of the employer

Any work performed beyond the maximum eight (8) hours is considered overtime work and has to be compensated. Overtime pay is the additional compensation for work rendered beyond eight (8) hours. On ordinary working days, the premium pay is equivalent to an additional twenty-five percent (25%) of the employee's hourly rate. For work performed on a scheduled rest day, special day, or regular holiday, the premium pay is equivalent to an additional thirty percent (30%) of the hourly rate on such day.

In addition, for work performed between 10:00 p.m. and 6:00 a.m., the employee is entitled to a night shift differential. The night shift differential is ten percent (10%) of an employee's regular wage for every hour worked between 10:00 p.m. and 6:00 a.m.

If the institution has insufficient funds, may it be excused from paying its employees overtime pay?
No, the payment of overtime pay is mandatory.

Should an employee who worked overtime without informing his or her supervisor be paid overtime pay?
No. As a general rule, overtime work must be done with the knowledge of the employer.

Can undertime work on one day be offset by overtime work on another day?
Under the "no offsetting rule," undertime work on any particular day shall not be offset by overtime work on any other day. Also, permission to go on leave on some other duty of the week shall not exempt the employer from paying the premium for overtime work rendered on another day.

What if the employee arrived two hours late on Monday and then rendered two hours overtime work on Tuesday, is the employee still entitled to overtime pay?
Yes. The employer cannot offset an employee's undertime work by overtime work because it would mean forfeiture by the latter of the overtime premium.

Are telecommuting employees, or employees who work from home, who work beyond eight hours also entitled to overtime pay?
Yes. This is subject to the written terms and conditions mutually agreed upon by the employer and the employee for the telecommuting arrangement, and such terms and conditions shall not be less than the minimum labor standards set by law and shall include compensable work hours, minimum number of work hours, overtime, rest days, and entitlement to leave benefits.

Can an employer implement a working arrangement reducing the number of work days but increasing the numbers of work hours in a day?
If expressly and voluntarily supported by a majority of the employees in an establishment and duly reported to the Department of Labor and Employment (DOLE) regional office, a compressed workweek arrangement may be implemented. In such cases, an employee who works beyond eight hours is not necessarily entitled to overtime pay, but in no case shall the total number of hours worked in a day exceed twelve (12) hours and in no case shall the total number of hours worked in a week exceed forty-eight (48) hours. Work performed in excess of those limits shall still be paid the overtime premium.

This arrangement should not result in the diminution of existing benefits or the denial of employees' entitlement to all the other prescribed labor standards and benefits.

REST PERIODS

Every employer, whether operating for profit or not, is required to provide each employee a rest period of not less than twenty-four (24) consecutive hours after every six (6) consecutive normal work days. The law requires a minimum of one rest day, but the employer may opt to give two (2) rest days, e.g., Saturday and Sunday. The weekly rest day shall be determined and scheduled by the employer (not necessarily Sunday), but the preference of the employees shall be respected if it is based on religious grounds.

Can an employee be required to work on his or her scheduled rest day?

No employee shall be required to work on his or her scheduled rest day, except in the following cases:

1. in case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic, or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety
2. in cases of urgent work to be performed on the machinery, equipment, or installation, to avoid serious loss which the employer would otherwise suffer
3. in the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures
4. to prevent loss or damage to perishable goods
5. where the nature of the work requires continuous operations and the stoppage of work may result in irreparable injury or loss to the employer
6. under circumstances analogous or similar to the foregoing as determined by the Secretary of Labor

An employee who works on his or her scheduled rest day is entitled to receive a rest day premium equivalent to thirty percent (30%) of his or her daily wage. If the rest day falls on a holiday, the premium is equivalent to fifty percent (50%) of the employee's daily wage.

HOLIDAYS

Holidays are opportunities for workers to rest, and these days may be either regular holidays or special non-working holidays.

REGULAR HOLIDAYS	
New Year's Day	January 1
Maundy Thursday	Movable Date
Good Friday	Movable Date
Araw ng Kagitingan	Monday nearest April 9
Labor Day	Monday nearest May 1
Independence Day	Monday nearest June 12
Eid'l Fitr	Movable Date
Eid'l Adha	Movable Date
Bonifacio Day	Monday nearest November 30
Christmas Day	December 25
Rizal Day	Monday nearest December 30

Every employer must pay employees their regular daily wages for any unworked regular holiday. This is an exception to the principle of "no work, no pay." Every employee is entitled to be paid even if he or she does not render work on a regular holiday. This is to prevent the reduction of income of the workers who are asked not to work by the government. However, this is subject to the condition that the employee is not absent without pay on the working day preceding the regular holiday. Employers should note that despite the enumeration of regular and special holidays in this section that are based on existing laws, establishments typically rely on yearly proclamations by the sitting president as to which regular and holidays shall be observed for the year.

If May 1 was a Saturday and an employee was on vacation leave on April 30, is the employee entitled to the holiday pay?

Yes. An employee does not forfeit his or her holiday pay if his or her absence on the day before the regular holiday was with pay.

Where there are two (2) successive regular holidays, like Maundy Thursday and Good Friday, an employee may not be paid for both holidays if he or she is absent from work without pay on Maundy Thursday. If the employee worked on Maundy Thursday, then he or she is entitled to the holiday pay for Good Friday.

SPECIAL DAYS

Non-Working Holidays

Ninoy Aquino Day	Monday nearest August 21
All Saints' Day	November 1
Last Day of the Year	December 31

Non-Working/Working Days,
as proclaimed by the President of the Philippines

Chinese New Year	Movable Date
EDSA People Power Revolution Anniversary	February 25
Black Saturday	Movable Date
Feast of the Immaculate Concepcion of Mary	December 8
Christmas Eve	December 24
EDSA People Power Revolution Anniversary	February 25

An employee is not required to work on a special non-working day. Any employee who renders work on a special non-working day is entitled to receive premium pay. For daily-paid employees, the principle of "no work, no pay" applies.

An employee who works on special working days, however, is not entitled to premium pay because it is considered an ordinary workday.

MUSLIM HOLIDAYS

Amun Jadid	Movable Date
Mawlid un-Nabi	Movable Date
Lailatul Isra Wal Mi Rai	Movable Date

These Muslim holidays should be observed by all private establishments, including NGOs, located in the provinces of Basilan, Lanao del Norte, Lanao del Sur, Maguindanao, North Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte and Zamboanga del Sur and in the cities of Cotabato, Iligan, Marawi, Pagadian, and Zamboanga.

PREMIUM PAY RATES

Regular Holiday	100% of regular daily rate 130% of regular daily rate (if also rest day)
Special Non-Working Holiday	30% of regular daily rate 50% of regular daily rate (if also rest day)

SUMMARY OF PAY RATES

Regular work day	Compensation for the first 8 hours of work: R
Regular holiday	R (if unworked) 2R (if worked)
Special non-working day	None (if unworked) R + 0.3R (if worked)
Rest day	R + 0.30R (if worked)
Rest day + regular holiday	2R + 0.3(2R) (if worked)
Rest day + special day	R + 0.5R (if worked)
Night shift differential	R/8 + 0.1(R/8) for each hour worked between 10 p.m. and 6 a.m.
Overtime	Regular day: R/8 + 0.25(R/8) Rest day/holiday/special day: Hourly rate on such day + 30%

SERVICE INCENTIVE LEAVE

Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave (SIL) of five (5) days with pay. It need not be given if the employees are already enjoying vacation leaves with pay of at least five (5) days a year. It is commutable to cash if not used or exhausted at the end of the year.,

Are part-time workers entitled to SIL?

Yes, they are also entitled to the full five (5) days.

Are there other leaves provided by law?

Apart from the legally mandated maternity leaves, paternity leaves, solo parent leaves, and leaves available to women under the Anti-VAWC Act and the Magna Carta of Women, there are no laws requiring employers to grant vacation leaves, sick leaves, birthday leaves, emergency leaves, sabbatical leaves, and other forms of leave benefits. The grant of such leaves is voluntary on the part of the employer and may be established by agreement or through company policy or practice.

The following describes the duration of the other legally mandated leaves, subject to the conditions set out in the laws granting them:

Maternity leave	Paid: 105 days + 15 days if solo parent Unpaid additional 30 days, optional
Paternity leave	7 paid days for married male employees
Allocated maternity leave	7 paid days allocated to the child's father by the mother entitled to maternity leave benefits OR to an alternate caregiver in case of the death, absence, or incapacity of the child's father
Parental leave for solo parents	7 paid days per year
Anti-VAWC Act leave	10 paid days, extendible
Magna Carta for Women leave	2 paid months following the surgery

EQUAL WORK OPPORTUNITIES

Employers should ensure that equal work opportunities are offered to employees regardless of sex, race, creed, marital status, disability, and age and that employees are protected from acts of discrimination.

Acts of Discrimination

The Labor Code prohibits discrimination against any woman employee with respect to the terms and conditions of employment solely on account of her sex. An employer may be held liable for favoring a male employee over a female employee with respect to promotion, training, opportunities, study and scholarship grants solely on account of their sexes.

The following are likewise prohibited as acts of discrimination committed by an employer:

Women

1.To require as a condition of employment or continuation of employment that a woman employee shall not get married

2. To stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated.

3. To actually dismiss, discharge, or otherwise prejudice a woman employee merely by reason of her marriage

4. To deny any woman employee any mandated benefits or to discharge her for the purpose of preventing her from enjoying the benefits

5. To discharge a woman on account of her pregnancy or while on leave or in confinement due to her pregnancy
6. To discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant

Solo Parents

7.To discriminate against any solo parent employee with respect to terms and conditions of employment on account of his or her status

Indigenous Peoples

8.To discriminate against any indigenous cultural communities/indigenous peoples (ICCs/IPs) with respect to the terms and conditions of employment on account of their descent
9.To deny any ICC/IP employee any right or benefit provided by the Indigenous Peoples' Rights Act or to discharge them for the purpose of preventing them from enjoying such right or benefit

Age Discrimination

10.To print or publish, or cause to be printed or published, in any form of media, including the internet, any notice of advertisement relating to employment suggesting preferences, limitations, specifications, and discrimination based on age
11.To require the declaration of age or birth date during the application process
12.To decline any employment application because of the individual's age
13.To discriminate against an individual in terms of compensation, terms and conditions, or privileges of employment on account of such individual's age
14. To deny any employee's or worker's promotion or opportunity for training because of age
15. To forcibly lay off an employee or worker because of old age
16. To impose early retirement on the basis of such employee's or worker's age

Persons with Disability

17. To discriminate against a qualified disabled person by reason of disability in regard to job application procedures, the hiring, promotion, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment
18. To limit, segregate, or classify a disabled job applicant in such a manner that adversely affects his or her work opportunities
19. To use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out a disabled person unless such standards, tests, or other selection criteria are shown to be job-related for the position on question and are consistent with business necessity
20. To utilize standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability or perpetuate the discrimination of others who are subject to common administrative control
21. To provide less compensation, such as salary, wage or other forms of remuneration and fringe benefits, to a qualified disabled employee, by reason of his or her disability, than the amount to which a non-disabled person performing the same work is entitled
22. To favor a non-disabled employee over a qualified disabled employee with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability
23. To reassign or transfer a disabled employee to a job or position he or she cannot perform by reason of his or her disability

24. To dismiss or terminate the services of a disabled employee by reason of his or her disability unless the employer can prove that he or she impairs the satisfactory performance of the work involved to the prejudice of the business entities, provided that the employer first sought to provide reasonable accommodations for disabled persons
25. To fail to select or administer in the effective manner employment tests that accurately reflect the skills, aptitude, or other factor of the disabled applicant or employee that such test purports to measure, rather than the impaired sensory, manual or speaking skills of such applicant or employee, if any
26. To exclude disabled persons from membership in labor unions or similar organizations

Persons Living with HIV

27.To reject a job application, terminate an employee, or implement other discriminatory policies in hiring, providing employment and other related benefits, promoting, or assigning an individual solely or partially on the basis of actual, perceived, or suspected HIV status

Employees living with HIV

Employers have the duty to prevent or deter acts of discrimination against persons living with HIV, to provide procedures for the resolution, settlement, or prosecution of acts of discrimination. The employer shall (a) promulgate rules and regulations describing the procedure for the investigation of discrimination cases and the administrative sanctions and (b) create an ad hoc committee on the investigation of discrimination cases. The said committee shall conduct meetings to increase the members' knowledge and understanding of HIV and AIDS and to prevent incidents of discrimination. It shall also conduct the administrative investigation of cases of discrimination.

HEALTH AND SAFETY

Employees have the right to a safe and healthful workplace and the right to be protected against all hazards in the work environment.

Occupational health and safety

Every employer is required by law to do the following in relation to occupational health and safety:

1.furnish the workers a place of employment free from hazardous conditions that are causing or are likely to cause death, illness or physical harm to the workers
2.give complete job safety instructions or orientation to all the workers especially to those entering the job for the first time, including those relating to familiarization with their work environment
3.inform the workers of the hazards associated with their work health risks involved or to which they are exposed to, preventive measures to eliminate or minimize the risks, and steps to be taken in cases of emergency
4.use only approved devices and equipment for the workplace
5.comply with OSH standards including training medical examination and where necessary, provision of protective and safety devices such as personal protective equipment (PPE) and machine guards

6.allow workers and their safety and health representatives to participate actively in the process of organizing, planning, implementing and evaluating the safety and health program to improve safety and health in the workplace and
7.provide, where necessary, for measures to deal with emergencies and accidents including first-aid arrangements.

Mental health

Employers should develop and implement appropriate policies and programs on mental health issues, help correct the stigma and discrimination associated with mental conditions, and identify and provide support for individuals with mental health conditions to treatment and psychosocial support.

Sexual harassment

Employers or heads of work-related, educational, or training environments or institutions, as well as persons of authority, influence, or moral ascendancy, have the duty to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement, or prosecution of acts of sexual harassment.

An employer, head of office, or person of authority, influence, or moral ascendancy has the following duties:

1.To disseminate copies of the Anti-Sexual Harassment Act and the Safe Spaces Act to all persons in the workplace or post them in a conspicuous place.
2.To provide measures to prevent sexual harassment in the workplace, such as the conduct of anti-sexual harassment seminars.
3.To create an independent internal mechanism or a committee on decorum and investigation to investigate and address complaints of sexual harassment that shall
   a.adequately represent the management, the employees from the supervisory rank, the rank-and-file employees, and the union, if any;
   b.designate a woman as its head and not less than half of its members should be women;
   c.be composed of members who should be impartial and not connected or related to the alleged perpetrator;
   d.investigate and decide on the complaints within ten days or less upon receipt thereof;
   e.observe due process;
   f.protect the complainant from retaliation; and
   g.guarantee confidentiality to the greatest extent possible.
4.To provide and disseminate, in consultation with all persons in the workplace, a code of conduct or workplace policy that shall
   a.expressly prohibit sexual harassment;
   b.describe the procedures of the internal mechanism created in no. 3; and
   c.set administrative penalties.

DATA PRIVACY

An employer is considered a personal information controller because it is involved in the collection and processing of the personal information of its employees, who are considered data subjects. Therefore, an employer must ensure that the rules for the processing of the personal information of its employees are complied with. These rules on data privacy apply as well to the collection and processing by an NGO of the personal information of other individuals it may work with, aside from its employees.

Personal information refers to any information, whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.

Sensitive personal information refers to personal information

1. about an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;
2. about an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
3. issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and
4. specifically established by an executive order or an act of Congress to be kept classified.

WAGES AND 13TH MONTH PAY

WAGES

Wages paid to any employee refer to remuneration or compensation for work rendered or to be rendered, capable of being expressed in terms of money. For the purposes of this discussion, “wages” and “salary” shall be deemed synonymous.

Basic Wage

Basic wage refers to all the remunerations or earnings paid by an employer to a worker for services rendered on normal working days and hours.

It does not include the following:

1. cost-of-living allowance (COLA)
2. profit-sharing payments
3. premium payments
4. 13th month pay

Minimum Wage

Minimum wage refers to the lowest basic wage rate that an employer can pay its workers. The minimum wage is fixed by Congress and, as delegated by law, by the Regional Tripartite Wage and Productivity Board (RTWPB) by means of wage orders.

13TH MONTH PAY

All employees who have rendered at least one (1) month of service are entitled to receive 13th month pay. This benefit must be paid not later than December 24 of every year.

Is a resigned or terminated employee entitled to receive 13th month pay?

Yes, but the amount he or she will receive is only in proportion to the length of time he or she worked during the year, counted from the time he or she started working during the calendar year up to the time of his or her resignation or termination from service.

FORMS OF PAYMENT

Wages must be paid directly to the employee except in the following cases:

1. where the employer is authorized in writing by the employee to pay his or her wages to a member of his or her family
2. where payment to another person is authorized by existing law (e.g., payment of income taxes and mandatory contributions)
3. in case of the death of the employee

Wages may be paid to the employee in the following ways:

a. Cash. The use of other forms such as tokens, promissory notes, vouchers, or coupons is prohibited even if requested by the employee.

b. Check. Such payment is allowed where all of the following conditions are met:

1. there is a bank or other facility for encashment within a radius of one (1) kilometer from the workplace;
2. the employer, or any of his or her agents or representatives, does not receive any pecuniary benefit directly or indirectly from the arrangement;
3. the employees are given reasonable time during banking hours to withdraw their wages from the bank which time shall be considered as compensable if done during working hours;
4. the payment by check is with the written consent of the employees concerned.

May payment of wages be made through automated teller machines (ATMs)?

Yes, this is allowed if all the conditions applicable to payment by check are met.

TIME & PLACE OF PAYMENT

The payment of wages must be made at least once every two (2) weeks or twice a month at intervals not exceeding 16 days. However, if the payment of wages cannot be made within the time provided due to force majeure or circumstances beyond the control of the employer, the wages shall be paid immediately after such force majeure or circumstances cease to exist.

Payment shall be made at or near the place of work or through the nearest bank.

MANDATORY CONTRIBUTIONS

Employers are required to enroll employees and remit contributions to the Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), and the Home Development Mutual Fund (Pag-IBIG) on their behalf. These contributions are deducted from the salaries of the employees and remitted to those offices, as these are meant to ensure that employees have access to social security benefits, health insurance, and affordable house financing.

PROHIBITIONS REGARDING WAGES

Non-interference in the disposal of wages

Employers cannot limit or otherwise interfere with the freedom of any employee to dispose of his or her wages. Employers also cannot oblige any of his or her employees to patronize any store or avail of services offered by any person.

Wage deductions

Employers cannot make any deduction from the wages of employees except in the following cases:

1. when authorized by law (e.g., insurance premiums advanced by the employer, SSS, Pag-IBIG)
2. with the written authorization of the employee
3. when ordered by the court

Deposits for loss or damage

Employers cannot require a deposit for loss or damages except where the employer is engaged in a trade or business where the practice of making deductions or requiring deposits is recognized, to answer for the reimbursement of loss or damage to tools, materials, or equipment supplied by the employer to the employee, subject to the following conditions:

1. that the employee concerned is clearly shown to be responsible for the loss or damage;
2. that the employee is given reasonable opportunity to show cause why the deduction should not be made;
3. that the amount of such deductions is fair and reasonable and shall not exceed the loss or damage (note: the depreciation cost is factored in the computation); and
4. that the deduction from the wages of the employee does not exceed 20% of the employees' wages in a week.

Withholding of wages

The wages of a worker cannot be withheld from him or her by anyone. A worker cannot be induced to give up any part of his or her wages by force, stealth, intimidation, threat, or by any other means whatsoever without the worker's consent.

Deduction to ensure employment

Employers cannot deduct from the wages of the employee as consideration for a promise of employment or retention in employment.

Wage discrimination

Employers are prohibited from paying lesser compensation, including wage, salary, or other form of remuneration and fringe benefits to a female employee as against a male employee for work of equal value. Likewise, employers are prohibited from paying lesser compensation to a qualified disabled employee, by reason of his or her disability, than the amount to which a non-disabled person performing the same work is entitled. Equal remuneration shall also be paid to ICC/IP and non-ICC/IP for work of equal value.

TERMINATION OF EMPLOYMENT

SECURITY OF TENURE

All workers in an employer-employee relationship have the right to security of tenure. The right to security of tenure is the right not to be dismissed from employment except for valid legal reasons and only through the proper procedure. The state protects this right to security of tenure by regulating the right of an employer to freely select or discharge employees: an employee may not be dismissed without the observance of due process.

What is "due process"?

Due process consists of two (2) aspects:

1. Substantive due process: that the employee's termination is due to a just or authorized cause
2. Procedural due process: that the notice requirement is observed prior to termination

JUST CAUSES FOR TERMINATION

An employee may be terminated for any of the following just causes:

1. Serious misconduct or willful disobedience
2. Gross and habitual neglect of duties
3. Fraud or willful breach of trust
4. Commission of a crime or offense against the person of the employer, any immediate member of their family, or their duly authorized representative
5. Other analogous cases

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

Examples of this include uttering offensive and disrespectful words against a superior, fighting in the workplace, and violating company rules and regulations.

For serious misconduct to be a just cause for dismissal, the following must be proven:

1. The misconduct must be serious, not merely trivial or unimportant; it must be grave and aggravated in character.
2. The misconduct would render the employee unfit to continue working for the employer.
3. The misconduct must be in connection with the employee's work.

For willful disobedience to be a just cause for dismissal, the employer's order or instruction that was disobeyed willfully and intentionally by the employee must show the following:

1. The order to the employee must be lawful and reasonable.
2. The order was sufficiently made known to the employee.
3. The order must be in connection with the duties that the employee has been engaged to discharge.

Gross and habitual neglect by the employee of his or her duties

Examples of this include absenteeism, tardiness, sleeping while on duty, and abandonment of work. It bears emphasizing that the neglect contemplated under this ground should, as a general rule, be both "gross and habitual" in order to justify the termination of employment. Simply stated, an isolated negligence that is not "gross and habitual" in character will not justify termination.

Gross negligence is the absence of or failure to exercise diligence or the entire absence of care. Habitual neglect points to a repeated failure to perform one's duties over a period of time.

Abandonment is a form of neglect of duty, and for it to be a just cause for dismissal, the following must be true:

1. The failure to report for work or absence is without valid or justifiable reason and
2. There is a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.

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

Examples of this include theft of company property, falsification of the time card, and bribery. To constitute a just cause for dismissal, the fraud must be committed against the employer or representative and in connection with the employee's work.

Loss of trust and confidence as a just cause for dismissal applies to the following:

1. Cases involving employees occupying positions of trust and confidence, which include managerial employees, or
2. Cases involving employees routinely charged with the care and custody of the employer's money or property, such as cashiers, auditors, or property custodians.

The employer is required to prove not only that the employee held a position of trust but also that the employee committed an act justifying the supposed loss of trust and confidence.

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

Immediate family members include the spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, relatives by affinity in the same degrees, and relatives by consanguinity up to the fourth civil degree.

Criminal conviction or prosecution is not required.

Analogous cases

To be considered analogous to the just causes, the cause must in any case be due to the voluntary or willful act or omission of the employee.

AUTHORIZED CAUSES FOR TERMINATION

An employee may be terminated for any of the following authorized causes:

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

Installation of labor-saving devices

A reduction of the number of the employees in the organization made necessary by the introduction of labor-saving devices or machinery in the manufacture of its products is justified. The right to reduce personnel, however, cannot be abused or used to circumvent the employees' right to security of tenure.

Redundancy

Redundancy exists when the services of employees are in excess of the services that are reasonably demanded by the actual requirements of the employer. A position may become redundant as a result of a number of factors, such as the hiring of an excess number of workers, a reduction in the volume of business, or the dropping of a particular service activity previously undertaken by the employer.

The following are the requisites for a valid redundancy program:

1. The decision to terminate must be made in good faith.
2. There should be clear proof that the services of the affected employees are in excess of the reasonable demands and requirements of the enterprise.
3. There is no option available to the employer except to terminate the excess personnel.
4. There should be reasonable and fair standards or criteria in selecting who to terminate, such as the nature of the work, status of the employee (regular, casual, etc.), efficiency rating, experience, and seniority, among other considerations.
5. The notice requirement should be complied with.
6. Separation pay under the law or company policy or CBA or similar contract, when appropriate, must be paid to the affected employee.
7. Proof of losses is not material nor is required in cases of redundancy.

Retrenchment to prevent losses

Retrenchment is the only statutory ground that requires proof of losses or possible losses or justification for the termination of employment. In a retrenchment, the employer bears the burden of proving its allegation of economic or business reverses. Its failure to prove it necessarily means that the dismissal of the employee is not justified.

The following are the standards for a valid retrenchment:

1. Losses expected should be substantial and not merely de minimis in extent.
2. Substantial loss to be apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer.

3. Must be reasonably necessary and likely to effectively prevent the expected losses. Only to be used as a last resort.
4. Alleged losses, if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence.

Financial statements audited by independent external auditors constitute the best evidence of the financial condition of the company.

Closure or cessation of business

The following are the requisites for a valid closure:

1. The decision to close or cease operations should be made in food faith.
2. The purpose should not be to circumvent the provisions of the Labor Code. If the ground is serious business losses or financial reverses, there should be clear proof thereof since no separation pay to the employees is required to be paid under the law if such is the cause invoked.
3. There is no other option available to the employer except to close or cease operations. The notice requirement should be complied with.
4. Separation pay must be paid the affected employee at the rate of one month salary or ½ month salary for every year of service, whichever is higher. A fraction of 6 months is considered as one year.

Sickness

The following are the requisites for termination due to disease:

1. The employee is suffering from a disease.
2. Continued employment is either prohibited by law, prejudicial to his or her health, or prejudicial to the health of his or her co-employees.
3. There is 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 a period of six months (6) months even with proper medical treatment.
4. Notice of termination should be served to the employee
5. Separation pay should be paid at the rate of one month salary or ½ month salary for every year of service, whichever is higher. A fraction of 6 months is considered as one (1) year.

PROCEDURAL DUE PROCESS

If the ground invoked for the termination for employment is a just cause, procedural due process requires the following:

1. First notice, which informs the employee of the particular acts or omissions for which his or her dismissal is sought
2. An adequate opportunity for the employee to be heard and refute the charges against him or her
3. Second notice, which informs the employee of the decision to terminate his or her employment, stating clearly the reasons therefor

In case the ground invoked is an authorized cause, procedural due process requires the following:

1. Notice should be served on the worker and the Regional Office of the Department of Labor and Employment at least one (1) month before the intended date of dismissal.
2. Separation pay must be paid.

CONSEQUENCES OF ILLEGAL TERMINATION

An employee's dismissal may be considered illegal if any of the following are found:

1. There is no just or authorized cause for the dismissal.
2. Procedural due process was not observed.
3. There are no legal grounds to support the termination, and procedural due process was not observed.

In such cases, the employee may be entitled to one or more of the following:

1. Reinstatement: The worker is entitled to work his or her previously held position without loss of seniority rights.
2. Separation pay: In cases where reinstatement is no longer possible, i.e., the position was abolished, the company closed down, strained relations, etc., the employee is entitled to separation pay in the amount of one (1) month salary for every year of service.
3. Full backwages: The employee is paid his or her salary from the date of dismissal until reinstatement or the finality of the decision. In cases where the employee was dismissed with just or authorized cause but without observance of procedural due process, the worker is no longer entitled to reinstatement but is still entitled to nominal damages.
4. Damages: Moral or exemplary damages may be awarded if the dismissal was done in bad faith or in a wanton or malevolent manner.

RESIGNATION

An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.

An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:

1. Serious insult by the employer or a representative on the honor and person of the employee.
2. Inhuman and unbearable treatment accorded the employee by the employer or his representative.
3. Commission of a crime or offense by the employer or a representative against the person of the employee or any of the immediate members of his or her family.
4. Other causes analogous to the foregoing.

In cases of resignation, the employee is not entitled to separation pay.

RETIREMENT

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee, upon reaching the age of sixty (60) years or more but not beyond sixty-five (65 years), which is the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of six (6) months being considered as one (1) whole year.