

**Primary Reference:**

LABOR STANDARDS LAW WITH NOTES AND COMMENTS (Volume 1), by Dean S.A. Poquiz

GENERAL PRINCIPLES AND CONCEPT**Introduction****Labor**

- Refers to physical or mental exertion necessary to produce goods.
- In a broader concept, it may include labor force who are employed or those who are able and willing to work but are temporarily or involuntarily unemployed.

Manpower

- Portion of the nation's population which has actual or potential capability to contribute to the production of goods and services.

Labor Law

- Includes all the rules of law governing the conditions under which persons may work under the control of other person called employers.

Labor Standards

- It prescribes the terms and conditions of employment as affecting wages or monetary benefits, hours of work, cost of living allowances, and occupational health, safety and welfare of the workers.

Labor Relations

- Used to denote all matters arising out of employer-employee relationship involving the concerted action on the part of the workers which is usually related with the right to self-organization, collective bargaining and negotiation purposes.

Social Legislation

- A law governing employer-employee relationship while the latter is not "at work" due to hazards beyond his control arising from employment which immobilize him from working.
(Ex. Retirement law, agrarian reform)

Taxonomy/ Classification of Labor Laws

- Protective legislations** (protection against discrimination of women and child labor)
- Welfare or social legislations** (life membership in health cards, retirement laws, agrarian reform law)
- Diplomatic legislations** (designed to settle disputes through peaceful modes)
- Administrative legislations** (creating local bodies, ex. NLRC, POEA, TESDA)
- Labor relations legislations** (more on worker's rights to self-organization)
- Labor standards legislations** (minimum requirements as to wages, hours of work and other monetary or welfare benefits)

Labor Law	Social Legislation
More direct in application as it affects directly actual employment such as wages	Governs the effects of employment such as compensation for injuries and death
Designed to meet the daily needs of a worker	Involves long term benefits
Covers employment for profit or gain	Covers employment for gain or non-profit
Affects the work of the employee	Affects the life of the employee
Benefits are paid by the worker's employer	Paid by government agencies administering such program

Purpose of Labor Legislation

- To protect the worker from the mighty and to correct the injustices that are inherent in employer-employee relationship.
- To provide set of restrictions upon the worker in his relationship with the employer and *vice versa* to maintain industrial peace and harmony; thereby promoting industrial democracy.

Sources of Labor Laws**1. Primary**

- Philippine Constitution
- Legislations passed by Congress
- Decisions of the Supreme Court
- Implementing Rules and Regulations of DOLE
- Decisions of quasi-judicial bodies such as NLRC
- ILO conventions



2. Auxiliary

- a. Opinions of the Secretary of Labor and employment
- b. Opinions of the secretary of Justice
- c. Reports, debates, hearings made and conducted by Congress
- d. Labor law reviews
- e. Labor law and social legislation textbooks
- f. Opinions of legal luminaries
- g. Foreign laws and decisions

[S]ocial justice — or any justice for that matter — is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are called upon to tilt the balance in favor of the poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.
Gelos v. CA, G.R. No. 86186, May 8, 1992

Legal Bases for Labor and Social Legislation

- Police power of the state
- Social justice clause
- Protection to labor clause
- Doctrine of Incorporation clause
- Social service clause
- Full employment clause
- Freedom from poverty clause
- Freedom of association clause
- Due process and equal protection clauses

Police power of the state

Salus populi est suprema lex - the welfare of the people is the supreme law

Sic utere tuo ut alienum non laedas – so use your own as not to injure another's property

Social Justice Clause

Section 10, Article II of the 1987 Constitution

"The State shall promote social justice in all phases of national development."

"Social justice is 'neither communism, nor despotism, nor atomism nor anarchy,' but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the component elements of society, through the maintenance of a proper economic and social equilibrium in the inter-relations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex.*" *Calalang v. Williams, 70 Phil. 726 (1940)*

Protection to labor clause

Section 3, Article XIII of the 1987 Constitution

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

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

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

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

Full employment

- Those who want to work at the prevailing rates of pay are able to find work without undue difficulty
- More job openings than there are job applicants
- It does not mean that everybody is working

Significance of full employment

1. Ushers economic gains
2. Promotes social and economic security
3. Promotes human dignity
4. An antidote against revolutionary ideologies
5. Regulates employer's discriminatory practices



Constitutional Rights of Workers

1. Right to self-organization
2. Right to collective bargaining
3. Right to security of tenure
4. Right to just an humane conditions of work
5. Right to collective negotiations
6. Right to peaceful concerted activities
7. Right to strike
8. Right to a living wage
9. Right to participate in policy and decision making
10. Right to just share in the fruits of production

Limitations of Labor Legislation

1. Non-impairment of contracts
2. Non-delegation of legislative power
3. Constitutional provision against involuntary servitude
4. Equal protection of the law

Constitutional and Statutory Basis

Protective Service Clause

Section 5, Article II of the 1987 Constitution

“The maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.”

Freedom from Poverty

Section 9, Article II of the 1987 Constitution

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

Poverty

- Low status, with little to lose, little respect, little to be proud of, little to sustain efforts to improve.
- It means bad housing conditions, lack of sanitation in the vicinity, and lack of attractive community institutions

<u>Standard of living</u>	<u>Cost of living</u>
Deals with WHAT facilities are needed by an employee to assure himself and his family a life worthy of human dignity	Deals with HOW MUCH facilities that an employee could cost in order to maintain his standard of living worthy of human dignity

Due process – a law which hears before it condemn, which proceeds from inquiry and renders judgment only after trial.

Equal protection of the law – civil rights must be enjoyed by the same persons of the same class. (not available to aliens)

Government employees not similarly situated with private sector employees

<u>Government Employees</u>	<u>Private Sector Employees</u>
Objective is to promote common good	Objective is to gain profit
Terms and conditions are fixed by law and governed by civil service	Governed by labor law and determined through machinery of collective bargaining
Salaries are from public funds appropriated pursuant to law	Salaries are from funds contributed by private individuals or institutions
Doctrine of state sovereignty applies	No such sovereignty is applicable

Common Forms of Involuntary Servitude

1. Servitude – condition of voluntary or compulsory subjection of a person to a master
2. Slavery – or bondage is the entire subjection to one another
3. Peonage – is service of the peon to another on account of an enforced indebtedness, usually arising from advances made by employee in the form of food, clothing, housing or transportation
4. Padrone system – where workers are employed through their leader known as the *padroni* who advances transportation charges and supplies food and clothing for them. In return for these services, the worker agrees to serve any employer with whom the *padroni* had contracted to sell a worker's labor.



**Presidential Decree No. 442, AS AMENDED
May 1, 1974**

A DECREE INSTITUTING A LABOR CODE THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE

**Chapter I
PRELIMINARY TITLE**

GENERAL PROVISIONS

Article 1. Name of Decree.

This Decree shall be known as the "Labor Code of the Philippines".

The Labor Code is defined as the "charter of human rights and bill of obligations" for every worker.

Article 2. Date of effectivity.

This Code shall take effect six (6) months after its promulgation.

The Labor Code took effect on November 1, 1974 after the lapse of 6-month transition period.

Article 3. Declaration of basic policy.

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

Article 4. Construction in favor of labor.

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

Article 5. Rules and regulations.

The Department of Labor and other government agencies charged with the administration and enforcement of this Code or any of its parts shall promulgate the necessary implementing rules and regulations. Such rules and regulations shall become effective fifteen (15) days after

announcement of their adoption in newspapers of general circulation.

Implementing Agencies

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- Department of Labor and Employment
- National Labor Relations Commission
- Philippine Overseas Employment Administration
- National Wages and Productivity Commission
- Employees Compensation Commission
- Social Security Commission
- Overseas Workers Welfare Administration
- Government Services and Insurance System

Article 6. Applicability.

All rights and benefits granted to workers under this Code shall, except as may otherwise be provided herein, apply alike to all workers, whether agricultural or non-agricultural. (As amended by Presidential Decree No. 570-A, November 1, 1974)

Four-Fold Test/ Economic Reality Test

1. Manner of selection and engagement of the putative employee
2. Mode of payment of wages
3. Presence or absence of the power of dismissal
4. Presence or absence of power to control the putative employee's conduct

Hiring by competent persons

- a. If it is done by an agent with actual authority
- b. If it is done by an agent with apparent authority
- c. If it is done without authority, but subsequently ratified either expressly or impliedly

Most Decisive Control Test

- An employment relation obtains where work is performed or services rendered under the control and supervision of the party contracting for the service, not only as to result of the work but also the manner and details of performance.
- Power of control refers merely to the existence and not the exercise thereof.



Manner of Creation/ Original Charter Test

- If the GOCC is created under corporation law, it is covered by Labor Code
- If the GOCC is created by acts of Congress, it is governed by Civil Service Law

Chapter II EMANCIPATION OF TENANTS

Article 7. Statement of objectives.

Inasmuch as the old concept of land ownership by a few has spawned valid and legitimate grievances that gave rise to violent conflict and social tension and the redress of such legitimate grievances being one of the fundamental objectives of the New Society, it has become imperative to start reformation with the emancipation of the tiller of the soil from his bondage.

Article 8. Transfer of lands to tenant-workers.

Being a vital part of the labor force, tenant-farmers on private agricultural lands primarily devoted to rice and corn under a system of share crop or lease tenancy whether classified as landed estate or not shall be deemed owner of a portion constituting a family-size farm of five (5) hectares, if not irrigated and three (3) hectares, if irrigated.

In all cases, the land owner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it.

N.B.

→Livestock and poultry lands are not covered by R.A. No. 6657

Article 9. Determination of land value.

For the purpose of determining the cost of the land to be transferred to the tenant-farmer, the value of the land shall be equivalent to two and one-half (2-1/2) times the average harvest of three (3) normal crop years immediately preceding the promulgation of Presidential Decree No. 27 on October 21, 1972.

The total cost of the land, including interest at the rate of six percent (6%) per annum, shall be paid by the tenant in fifteen (15) years of fifteen (15) equal annual amortizations.

In case of default, the amortization due shall be paid by the farmers' cooperative in which the defaulting tenant-farmer is a member, with the cooperative having a right of recourse against him.

The government shall guarantee such amortizations with shares of stock in government-owned and government-controlled corporations.

Article 10. Conditions of ownership.

No title to the land acquired by the tenant-farmer under Presidential Decree No. 27 shall be actually issued to him unless and until he has become a full-fledged member of a duly recognized farmers' cooperative.

Title to the land acquired pursuant to Presidential Decree No. 27 or the Land Reform Program of the Government shall not be transferable except by hereditary succession or to the Government in accordance with the provisions of Presidential Decree No. 27, the Code of Agrarian Reforms and other existing laws and regulations.

Article 11. Implementing agency.

The Department of Agrarian Reform shall promulgate the necessary rules and regulations to implement the provisions of this Chapter.

BOOK ONE PRE-EMPLOYMENT

Article 12. Statement of objectives.

It is the policy of the State:

- (a) To promote and maintain a state of full employment through improved manpower training, allocation and utilization;
- (b) To protect every citizen desiring to work locally or overseas by securing for him the best possible terms and conditions of employment;
- (c) To facilitate a free choice of available employment by persons seeking work in conformity with the national interest;
- (d) To facilitate and regulate the movement of workers in conformity with the national interest;
- (e) To regulate the employment of aliens, including the establishment of a registration and/or work permit system;



- (f) To strengthen the network of public employment offices and rationalize the participation of the private sector in the recruitment and placement of workers, locally and overseas, to serve national development objectives;
- (g) To insure careful selection of Filipino workers for overseas employment in order to protect the good name of the Philippines abroad.

Title I RECRUITMENT AND PLACEMENT OF WORKERS

Chapter I GENERAL PROVISIONS

Article 13. Definitions.

"Worker" means any member of the labor force, whether employed or unemployed.

"Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee, employment to two or more persons shall be deemed engaged in recruitment and placement.

"Private fee-charging employment agency" means any person or entity engaged in recruitment and placement of workers for a fee which is charged, directly or indirectly, from the workers or employers or both.

"License" means a document issued by the Department of Labor authorizing a person or entity to operate a private employment agency.

"Private recruitment entity" means any person or association engaged in the recruitment and placement of workers, locally or overseas, without charging, directly or indirectly, any fee from the workers or employers.

"Authority" means a document issued by the Department of Labor authorizing a person or association to engage in recruitment and

placement activities as a private recruitment entity.

"Seaman" means any person employed in a vessel engaged in maritime navigation.

"Overseas employment" means employment of a worker outside the Philippines.

"Emigrant" means any person, worker or otherwise, who emigrates to a foreign country by virtue of an immigrant visa or resident permit or its equivalent in the country of destination.

N.B.

→ In recruitment and placement, the number of persons dealt with is not essential. (*People v. Panis, 142 SCRA 664*)

Article 14. Employment promotion.

The Secretary of Labor shall have the power and authority:

- (a) To organize and establish new employment offices in addition to the existing employment offices under the Department of Labor as the need arises;
- (b) To organize and establish a nationwide job clearance and information system to inform applicants registering with a particular employment office of job opportunities in other parts of the country as well as job opportunities abroad;
- (c) To develop and organize a program that will facilitate occupational, industrial and geographical mobility of labor and provide assistance in the relocation of workers from one area to another; and
- (d) To require any person, establishment, organization or institution to submit such employment information as may be prescribed by the Secretary of Labor.

Functions of Public Employment Offices

- a) Provide free placement of workers applying for both domestic and overseas employment;
- b) Provide adequate vocational guidance and testing services to persons seeking help in choosing or changing an occupation;



- c) Classify registered applicants in accordance with job titles and codes of Philippine Standard Classification;
- d) Arrange for training or retraining of unemployed applicants in occupations or trades where they are suitably qualified and have greater prospects of employment;
- e) Arrange for inter-area placements of unemployed workers through a nationwide job clearance and information system;
- f) Furnish the Bureau of Local Employment or POEA with list of registered job applicants and job openings. The BLE or POEA acts as the national job-clearing house.

Submission of Reports

At the end of each month, an employer with **at least six (6) employees** is required to submit to the nearest public employment office:

- a) List of existing job vacancies or opening
- b) List of new employees, if any
- c) Termination, lay-off or retirement
- d) Total number of employed workers for the period
- e) Request for assistance, if needed to fill vacancies or openings

Article 15. Bureau of Employment Services.

N.B.

→ Article 15 has been superseded by Executive Order No. 797, May 1, 1982.

Article 16. Private recruitment.

Except as provided in Chapter II of this Title, no person or entity other than the public employment offices, shall engage in the recruitment and placement of workers.

GENERAL RULE: Only public employment offices can engage in recruitment and placement of workers for local and overseas.

EXCEPTION: Private sector may be given the privilege to engage in recruitment and placement limited only to:

- 1. Employment agencies
- 2. Recruitment entities
- 3. Shipping or manning agents
- 4. Other persons as may be authorized by Secretary of Labor and Employment

Article 17. Overseas Employment Development Board.

N.B.

→ Article 17 has been superseded by Executive Order No. 797, May 1, 1982.

The OEDB was abolished and replaced by POEA.

Regulatory powers of POEA

- (a) Issuance of license
- (b) Suspension, cancellation or revocation of license
- (c) Approval of transfer of business address
- (d) Approval of establishment of executive offices outside of the registered address
- (e) Approval of appointment of representatives or agents
- (f) Accreditation of principals or projects
- (g) Revocation of accreditation
- (h) Closure of agencies engaged in illegal recruitment activities
- (i) Registration of any change in the composition of Board of Directors, officers and personnel of a recruitment agency

Quasi-Judicial powers of the POEA

- (a) Disciplinary cases involving overseas Filipino workers
- (b) Pre-employment cases which are administrative in character:
 1. involving or arising out of recruitment laws, rules and regulations
 2. including money claims arising from (b.1) above, or
 3. violation of conditions for issuance of license to recruit workers

Article 18. Ban on direct-hiring.

No employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Secretary of Labor. Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary of Labor is exempted from this provision.

GENERAL RULE: No employer may hire a Filipino worker for overseas employment.

EXCEPTION:

- a) diplomatic corps



- b) international organizations
- c) other employees allowed by Secretary of Labor and Employment

EXCEPTION TO THE EXCEPTION:

Name Hire – a worker who is able to secure contract for employment overseas without the assistance or participation of any agency. **However, he should still undergo processing by the POEA.**

Article 19. Office of Emigrant Affairs.

N.B.
→ Article 19 has been superseded by B.P. 79, June 16, 1980

Article 20. National Seamen Board.

N.B.
→ Article 15 has been superseded by Executive Order No. 797, May 1, 1982.

Article 21. Foreign service role and participation.

To provide ample protection to Filipino workers abroad, the labor attaches, the labor reporting officers duly designated by the Secretary of Labor and the Philippine diplomatic or consular officials concerned shall, even without prior instruction or advice from the home office, exercise the power and duty:

- (a) To provide all Filipino workers within their jurisdiction assistance on all matters arising out of employment;
- (b) To insure that Filipino workers are not exploited or discriminated against;
- (c) To verify and certify as requisite to authentication that the terms and conditions of employment in contracts involving Filipino workers are in accordance with the Labor Code and rules and regulations of the [POEA];
- (d) To make continuing studies or researches and recommendations on the various aspects of the employment market within their jurisdiction;

- (e) To gather and analyze information on the employment situation and its probable trends, and to make such information available; and
- (f) To perform such other duties as may be required of them from time to time.

Article 22. Mandatory remittance of foreign exchange earnings.

It shall be mandatory for all Filipino workers abroad to remit a portion of their foreign exchange earnings to their families, dependents, and/or beneficiaries in the country in accordance with rules and regulations prescribed by the Secretary of Labor.

GENERAL RULE: It is mandatory for all Filipino workers to remit a portion of their foreign exchange earnings to their families, dependents, and/or beneficiaries in the country through BSP or DOLE authorized agents

EXCEPTION:
Remittance is not mandatory in the following instance:

- (a) Where the worker's immediate family members, dependents, or beneficiaries are residing with him abroad;
- (b) Filipino servicemen working in the U.S. military installations;
- (c) Immigrants and Filipino professionals and employees working with the United Nations agencies or specialized bodies.

<i>Type of Employment</i>	<i>Amount of remittance required in % of basic salary</i>
Seamen, mariners	80%
Workers of Filipino contractors and construction companies	70%
Doctors, engineers, teachers, nurses, and other professionals with free board and lodging	70%
Professionals without free board and lodging	50%
Domestic and other service workers	50%
All other workers	50%

Article 23. Composition of the Boards.

**N.B.**

→ Article 23 has been superseded by Executive Order No. 797, May 1, 1982.

Article 24.

Boards to issue rules and collect fees.

N.B.

→ Article 24 has been superseded by Executive Order No. 797, May 1, 1982.

**Chapter II
REGULATION OF RECRUITMENT AND
PLACEMENT ACTIVITIES**

Article 25. Private sector participation in the recruitment and placement of workers.

Pursuant to national development objectives and in order to harness and maximize the use of private sector resources and initiative in the development and implementation of a comprehensive employment program, the private employment sector shall participate in the recruitment and placement of workers, locally and overseas, under such guidelines, rules and regulations as may be issued by the Secretary of Labor.

Private employment agency with a license – refers to any person or entity engaged in the recruitment and placement of workers **for a fee which is charged**, directly or indirectly, from the workers or employers or both.

Private recruitment entity with authority – refers to any person or association engaged in the recruitment and placement of workers, locally or overseas, **without charging**, directly or indirectly, **any fee** from the workers or employers.

Fees/Escrow/Bonds	Amount (PhP)
License fee	50,000
Escrow agreement	1,000,000
Surety bond	100,000

Pre-Employment Tests

Trade tests for workers for overseas employment shall be conducted only after interview and pre-qualification to the position covered by an approved job order by POEA.

N.B.

→ Medical examination shall only be conducted after trade test or pre-qualified.

Worker's Deployment

- 120 c.d. from the date of signing of employment contract, for land based workers
- 30 c.d. from date of processing by POEA of employment contract for seafarers

Mandatory benefits

- (a) Personal Accident and Life Insurance (for land based workers)
- (b) War-risk Insurance (for land based workers)
- (c) War-risk Premium Pay (for seafarers)

Serrano v. Gallant Maritime Services inc.
G.R. No. 167514. March 24, 2009

In sum, prior to R.A. No. 8042, OFWs and local workers with fixed-term employment who were illegally discharged were treated alike in terms of the computation of their money claims: they were uniformly entitled to their salaries for the entire unexpired portions of their contracts. But with the enactment of R.A. No. 8042, specifically the adoption of the subject clause, illegally dismissed OFWs with an unexpired portion of one year or more in their employment contract have since been differently treated in that their money claims are subject to a 3-month cap, whereas no such limitation is imposed on local workers with fixed-term employment.

The Court concludes that the subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a 3-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.

x x x

[T]he Court **GRANTS** the Petition. The subject clause "or for three months for every year of the unexpired term, whichever is less" in the 5th paragraph of Section 10 of Republic Act No. 8042 is **DECLARED UNCONSTITUTIONAL**; x x x

Article 26. Travel agencies prohibited to recruit. Travel agencies and sales agencies of airline companies are prohibited from engaging in the business of recruitment and placement of workers for overseas employment whether for profit or not.

REASONS:

- Travel agencies are under the supervision of Department of Tourism, not the DOLE



- Confusion may arise to the detriment and disadvantage of an overseas applicant-worker
- May lead to exploitation of applicant-worker who will be at mercy of the travel agency or sales agency of airline company from the time his papers are processed to the time he departs
- Illegal recruitment activities are traced from travel agencies that facilitate papers of job-seeker for overseas; promising that their tourist visa will be converted to working visa in the country of employment.

Article 27. Citizenship requirement.

Only Filipino citizens or corporations, partnerships or entities at least seventy-five percent (75%) of the authorized and voting capital stock of which is owned and controlled by Filipino citizens shall be permitted to participate in the recruitment and placement of workers, locally or overseas.

Article 28. Capitalization.

All applicants for authority to hire or renewal of license to recruit are required to have such substantial capitalization as determined by the Secretary of Labor.

Capitalization Requirement

- Minimum capitalization of P2,000,000 for single proprietorship or partnership;
- Minimum paid-up capital of P2,000,000 for corporations;

Article 29. Non-transferability of license or authority.

No license or authority shall be used directly or indirectly by any person other than the one in whose favor it was issued or at any place other than that stated in the license or authority be transferred, conveyed or assigned to any other person or entity. Any transfer of business address, appointment or designation of any agent or representative including the establishment of additional offices anywhere shall be subject to the prior approval of the Department of Labor.

Article 30. Registration fees.

The Secretary of Labor shall promulgate a schedule of fees for the registration of all applicants for license or authority.

Article 31. Bonds. All applicants for license or authority shall post such cash and surety bonds as determined by the Secretary of Labor to guarantee compliance with prescribed recruitment procedures, rules and regulations, and terms and conditions of employment as may be appropriate.

JMM Promotions & Management Inc. v. NLRC **G.R. No. 109835. November 22, 1993**

It is true that the cash and surety bonds and the money placed in escrow are supposed to guarantee the payment of all valid and legal claims against the employer, but these claims are not limited to monetary awards to employees whose contracts of employment have been violated. The POEA can go against these bonds also for violations by the recruiter of the conditions of its license, the provisions of the Labor Code and its implementing rules, E.O. 247 (reorganizing POEA) and the POEA Rules, as well as the settlement of other liabilities the recruiter may incur.

As for the escrow agreement, it was presumably intended to provide for a standing fund, as it were, to be used only as a last resort and not to be reduced with the enforcement against it of every claim of recruited workers that may be adjudged against the employer. This amount may not even be enough to cover such claims and, even if it could initially, may eventually be exhausted after satisfying other subsequent claims.

Finman General Assurance Corp. v. NLRC **G.R. No. 94588. July 2, 1992**

The petition for *certiorari* is without merit. The POEA Administrator did not exceed his jurisdiction nor act with grave abuse of discretion in impleading FINMAN as a co-respondent in (L) RRB Case No. 88-03-474 and directing it to pay jointly and severally with Pan Pacific the claims of the private respondents, Galiza and Bumanglag, on the basis of the surety bond it issued for Pan Pacific. Said surety bond guarantees the faithful compliance by Pan Pacific of all laws relating to the use of its license and its recruitment activities. The bond is conditioned upon the true and faithful performance and observance by Pan Pacific of its duties and obligations as a licensed placement agency (Art. 31, Title I, Book One, Labor Code of the Phils.). Accordingly, the nature of FINMAN's obligation under the suretyship agreement makes it privity to the proceedings against its principal, Pan Pacific. FINMAN is bound by a judgment against its principal even though it was not a party to the proceedings, for a surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.

Article 32. Fees to be paid by workers.

Any person applying with a private fee-charging employment agency for employment assistance shall not be charged any fee until he has obtained employment through its efforts or has actually commenced employment. Such fee



shall be always covered with the appropriate receipt clearly showing the amount paid. The Secretary of Labor shall promulgate a schedule of allowable fees.

Prohibition on Charging Fees

- (a) Placement fees cannot be collected from a hired worker until he has signed the employment contract and shall be covered by receipts clearly showing the amount paid;
- (b) Manning agencies shall not charge any fee from seafarer-applicants for recruitment and placement services;
- (c) No other fees or charges including processing fees shall be imposed against any worker.

Article 33. Reports on employment status.

Whenever the public interest requires, the Secretary of Labor may direct all persons or entities within the coverage of this Title to submit a report on the status of employment, including job vacancies, details of job requisitions, separation from jobs, wages, other terms and conditions and other employment data.

PURPOSE:

- Data shall serve a guidelines in the formulation of national labor policies;
- Basis for appropriate preventive or remedial legislations;
- Scarce or over labor supply could easily be determined

Article 34. Prohibited practices.

It shall be unlawful for any individual, entity, licensee, or holder of authority:

- (a) To charge or accept, directly or indirectly, any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor, or to make a worker pay any amount greater than that actually received by him as a loan or advance;
- (b) To furnish or publish any false notice or information or document in relation to recruitment or employment;
- (c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under this Code.

- (d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him to another unless the transfer is designed to liberate the worker from oppressive terms and conditions of employment;
- (e) To influence or to attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;
- (f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;
- (g) To obstruct or attempt to obstruct inspection by the Secretary of Labor or by his duly authorized representatives;
- (h) To fail to file reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor.
- (i) To substitute or alter employment contracts approved and verified by the Department of Labor from the time of actual signing thereof by the parties up to and including the periods of expiration of the same without the approval of the Secretary of Labor;
- (j) To become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency; and
- (k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under this Code and its implementing rules and regulations.

MNEMONICS:

CAFF-IndIE-OFF-SOW



CA – Charge or Acept
F – Furnish or publish
F – False notice
Ind – Induce or attempt to induce
I – Influence or attempt to influence
E – Engage
O – Obstruct or attempt to obstruct
FF – Fail to File
S – Substitute or alter
O – Officer or member
W – Withhold or deny

Article 35. Suspension and/or cancellation of license or authority.

The Minister of Labor shall have the power to suspend or cancel any license or authority to recruit employees for overseas employment for violation of rules and regulations issued by the Ministry of Labor, the Overseas Employment Development Board, or for violation of the provisions of this and other applicable laws, General Orders and Letters of Instructions.

Grounds for Suspension of License

1. Committing any of the prohibited practices under Article 34 and other pertinent provisions of the Labor Code;
2. Engaging in recruitment and deployment in violation of the license or authority and other activities without prior authorization from POEA;
3. Disregard of lawful orders, notices and other processes issued by the POEA;
4. Coercing with workers to accept prejudicial arrangements in exchange of certain benefits that rightfully belongs to workers;
5. Withholding of workers' salaries or remittances without justifiable reasons;
6. Committing other acts similar and analogous to the foregoing.

Grounds for Revocation of License

1. Violation of the conditions of license;
2. Engaging in acts of misrepresentation for the purposes of securing a license or renewal thereof, such a giving false testimonies or falsified documents;
3. Engaging in recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;
4. Incurring an accumulated three (3) counts of suspension by an agency based on final and executor orders within the validity of the license.

Chapter III MISCELLANEOUS PROVISIONS

Article 36. Regulatory power.

The Secretary of Labor shall have the power to restrict and regulate the recruitment and placement activities of all agencies within the coverage of this Title and is hereby authorized to issue orders and promulgate rules and regulations to carry out the objectives and implement the provisions of this Title.

Article 37. Visitorial Power. The Secretary of Labor or his duly authorized representatives may, at any time, inspect the premises, books of accounts and records of any person or entity covered by this Title, require it to submit reports regularly on prescribed forms, and act on violation of any provisions of this Title.

N.B.

→ Articles 36 and 37 are delegated exercise of police power of the state.

Procedures for inspection:

1. Inspection shall be conducted during office hours by a team of at least two (2) duly authorized inspectors, in the presence of the manager of the office or any office personnel;
2. Inspection reports shall be submitted to the POEA within 24 hours after inspection;

N.B.

→ Violations found in the course of inspection, as non-compliance with POEA rules, issuances, directives, etc. shall constitute a ground for the imposition of appropriate sanctions or for the denial of application for issuance and renewal of license.

Article 38. Illegal recruitment.

- (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority, shall be deemed illegal and punishable under Article 39 of this Code. The Department of Labor and Employment or any law enforcement officer may initiate complaints under this Article.



(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

(c) ~~The Secretary of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-licensee or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Secretary shall order the search of the office or premises and seizure of documents, paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishments and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.~~
Declared unconstitutional in Salazar v. Achacoso, 183 SCRA 145.

GENERAL RULE: Illegal recruitment including prohibited practices enumerated under Article 34 is undertaken by NON-LICENSEES or NON-HOLDERS OF AUTHORITY.

EXCEPTIONS:

- (a) School and civic, charitable organizations or employers for their own use;
- (b) Direct hiring by members of the diplomatic corps, international organizations, and other employers.

EXCEPTION TO THE EXCEPTION: Subject to rules and regulations by Secretary of Labor and Employment.

Non-licensee or non-holder of authority

[It is a] corporation or entity which has not been issued a valid license or authority to engage in recruitment and placement by the Secretary of Labor and Employment, or whose license or authority has been suspended, revoked, or cancelled by the POEA or Secretary of Labor.

Illegal Recruitment

1. **SIMPLE or LICENSEE** – illegal recruitment committed by a licensee or holder of authority against one or two persons only.
2. **NON-LICENSEE** – illegal recruitment committed by any person who is neither a licensee nor a holder of authority.
3. **SYNDICATED** – illegal recruitment committed out by a group of three (3) or more persons in conspiracy or confederation with one another;
4. **LARGE SCALE or QUALIFIED** – illegal recruitment committed against three (3) or more persons, individually or as a group despite the lack of the necessary license from the POEA.

N.B.

→ A person is guilty of illegal recruitment when he gives the impression that he has the power to send workers abroad for work such that the latter were convinced to part with their money in order to be so employed.

→ Absence of receipt evidencing payment is not fatal to prosecution's case of illegal recruitment as long as it is established through credible testimonial evidence that the accused has involved himself in an act of illegal recruitment.

→ An employee of a company or corporation engaged in illegal recruitment may be held liable as principal by direct participation together with its employer, if it is shown that he actively and consciously participated in the recruitment process.

**Article 39.
Penalties.**

N.B.

→ Article 39 repealed by Section 7 of Republic Act No. 8042.

**Penalty:**

- **Ordinary Cases**
 - Imprisonment → 6 years 1 day to 12 years
 - Fine → P200,000 – P500,000
- **Economic Sabotage**
 - life imprisonment
 - Fine → P500,000 – P1,000,000
- **Administrative**
 1. Automatic revocation of license of authority
 2. Forfeiture of cash and surety bond

Venue:

Criminal Action → Regional Trial Court (RTC) where the offense was committed or where the offended party actually resides at the time of the commission of the offense.

Prescription:

5 years for ordinary cases

20 years if constituting economic sabotage

- (b) Officers and staff of international organizations of which the Philippine government is a member, and their legitimate spouses desiring to work in the Philippines;
- (c) Foreign nationals elected as members of Governing Board who do not occupy any other position, but have only voting rights in the corporation;
- (d) All foreign nationals granted exemption by law;
- (e) Owners and representative of foreign principals, whose companies are accredited by the POEA, who come to the Philippines for a limited period solely for the purpose of interviewing Filipino applicants for employment abroad;
- (f) Foreign nationals who come to the Philippines to teach, present, and/or conduct research studies in universities and colleges as visiting, exchange or adjunct professors under formal agreements between the universities or colleges in the Philippines and foreign universities or colleges or between the Philippine government; provided that exemption is on reciprocal basis;
- (g) Resident foreign nationals.

Penalty:

P10,000 for every year or fraction thereof.

Title II EMPLOYMENT OF NON-RESIDENT ALIENS

Article 40. Employment permit of non-resident aliens.

Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor.

The employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.

For an enterprise registered in preferred areas of investments, said employment permit may be issued upon recommendation of the government agency charged with the supervision of said registered enterprise.

Aliens exempted from securing Alien Employment Permit

- (a) All members of diplomatic services and foreign government officials accredited by and with reciprocity arrangement with the Philippine government;

Article 41. Prohibition against transfer of employment.

After the issuance of an employment permit, the alien shall not transfer to another job or change his employer without prior approval of the Secretary of Labor.

Any non-resident alien who shall take up employment in violation of the provision of this Title and its implementing rules and regulations shall be punished in accordance with the provisions of Articles 289 and 290 of the Labor Code.

In addition, the alien worker shall be subject to deportation after service of his sentence.

N.B.

→ Sanctions are provided for under Articles 288 and 289 of the Labor Code.

Article 42. Submission of list. Any employer employing non-resident foreign nationals on the effective date of this Code shall submit a list of



such nationals to the Secretary of Labor within thirty (30) days after such date indicating their names, citizenship, foreign and local addresses, nature of employment and status of stay in the country. The Secretary of Labor shall then determine if they are entitled to an employment permit.

Purpose: To monitor the influx of foreign nationals into the Philippines.

**BOOK TWO
HUMAN RESOURCES DEVELOPMENT
PROGRAM**

**Title II
NATIONAL MANPOWER DEVELOPMENT
PROGRAM
Chapter I
NATIONAL POLICIES AND ADMINISTRATIVE
MACHINERY FOR THEIR IMPLEMENTATION**

Articles 43 to 56

Training – is the systematic development of the attitude/ knowledge/ skill behavior pattern required for adequate performance of a given task.

N.B.

→ Articles 43 to 56 superseded by Republic Act No. 7796 or “The TESDA Act of 1994”.

**Title II
TRAINING AND EMPLOYMENT OF SPECIAL
WORKERS**

**Chapter I
APPRENTICES**

Article 57. Statement of objectives.

This Title aims:

- (a) To help meet the demand of the economy for trained manpower;
- (b) To establish a national apprenticeship program through the participation of employers, workers and government and non-government agencies; and
- (c) To establish apprenticeship standards for the protection of apprentices.

Article 58. Definition of Terms.

As used in this Title:

- (a) **"Apprenticeship"** means practical training on the job supplemented by related theoretical instruction.
- (b) An **"apprentice"** is a worker who is covered by a written apprenticeship agreement with an individual employer or any of the entities recognized under this Chapter.
- (c) An **"apprenticeable occupation"** means any trade, form of employment or occupation which requires more than three (3) months of practical training on the job supplemented by related theoretical instruction.
- (d) **"Apprenticeship agreement"** is an employment contract wherein the employer binds himself to train the apprentice and the apprentice in turn accepts the terms of training.

On-the-Job Training – the practical work experience through actual participation in productive activities given to or acquired by an apprentice.

It may be undertaken:

- (a) In the plant, shop or premises of the employer or firm concerned if the apprenticeship program is organized by an individual employer or firm;
- (b) In the premises of one or several firms designated for the purpose by the organizer of the program if such organizer is an association of employers, civic group or the like;
- (c) In the DOLE Training Center (TESDA) or other public training institutions with which the TESDA has made appropriate arrangements.

Article 59. Qualifications of apprentice.

To qualify as an apprentice, a person shall:

- (a) Be at least fourteen (14) years of age;
- (b) Possess Vocational Aptitude and Capacity for Appropriate TEsts; and
- (c) Possess the ability to Comprehend and follow Oral and Written instructions.



Trade and industry associations may recommend to the Secretary of Labor appropriate educational requirements for different occupations.

MNEMONICS:

14-VACATE-COW

Aptitude test – shall be provided by employers to apprenticeship-applicants. If the employer does not have adequate facilities, the DOLE may provide for the service free of charge.

Article 60. Employment of apprentices.

Only employers in the highly technical industries may employ apprentices and only in apprenticeable occupations approved by the Secretary of Labor and Employment. (As amended by Section 1, Executive Order No. 111, December 24, 1986)

Highly technical industry – refers to a trade, business, enterprise, industry or other activity which utilizes the application of advanced technology.

N.B.

→ Only employers in highly-technical industries may enter into apprenticeship agreements

Article 61. Contents of apprenticeship agreements.

Apprenticeship agreements, including the wage rates of apprentices, shall conform to the rules issued by the Secretary of Labor and Employment. The period of apprenticeship shall not exceed six months. Apprenticeship agreements providing for wage rates below the legal minimum wage, which in no case shall start below 75 percent of the applicable minimum wage, may be entered into only in accordance with apprenticeship programs duly approved by the Secretary of Labor and Employment. The Department shall develop standard model programs of apprenticeship. (As amended by Section 1, Executive Order No. 111, December 24, 1986)

GENERAL RULE: Wage rate of apprentice shall start at 75% of statutory minimum wage for the first 6-months.

EXCEPTION: May not receive compensation when the on-the-job training is required by the school curriculum as a pre-requisite for

graduation or for taking government board examination.

Apprenticeship Agreements

- Parents or guardians should sign in behalf of minors
- Copy of agreement should be submitted to DOLE-TESDA within 5 working days from execution thereof
- Doctrine of exhaustion of administrative remedies applies

Valid Causes of Termination (by employer)

- (a) Habitual absenteeism
- (b) Willful disobedience of company rules or insubordination to lawful order of a superior
- (c) Poor physical condition, physical disability or prolonged illness which incapacitates the apprentice from working
- (d) Theft or malicious destruction of company property and/or equipment
- (e) Poor efficiency despite warnings given to the apprentice, and
- (f) Engaging in violence and other forms of gross misconduct inside the employers premises.

Valid Causes of Termination (by apprentice)

- (a) Substandard or deleterious working conditions within the employer's premises
- (b) Repeated violations by the employer of the terms of apprenticeship agreement
- (c) Cruel or inhuman treatment by the employer or his subordinates
- (d) Personal problems which in the opinion of the apprentice shall prevent him from a satisfactory performance of his job, and
- (e) Bad health or continuing illness

Article 62. Signing of apprenticeship agreement.

Every apprenticeship agreement shall be signed by the employer or his agent, or by an authorized representative of any of the recognized organizations, associations or groups and by the apprentice.

An apprenticeship agreement with a minor shall be signed in his behalf by his parent or guardian, if the latter is not available, by an authorized representative of the Department of Labor, and the same shall be binding during its lifetime.



Every apprenticeship agreement entered into under this Title shall be ratified by the appropriate apprenticeship committees, if any, and a copy thereof shall be furnished both the employer and the apprentice.

N.B.

→ An apprenticeship agreement entered into by the parties should be ratified by an appropriate apprenticeship committee.

Article 63. Venue of apprenticeship programs.

Any firm, employer, group or association, industry organization or civic group wishing to organize an apprenticeship program may choose from any of the following apprenticeship schemes as the training venue for apprentice:

- (a) Apprenticeship conducted entirely by and within the sponsoring firm, establishment or entity;
- (b) Apprenticeship entirely within a Department of Labor and Employment training center or other public training institution; or
- (c) Initial training in trade fundamentals in a training center or other institution with subsequent actual work participation within the sponsoring firm or entity during the final stage of training.

N.B.

→ A certificate of meritorious service may be awarded by the Secretary of Labor and Employment or other entities which have rendered outstanding service to the cause of apprenticeship.

Article 64. Sponsoring of apprenticeship program. Any of the apprenticeship schemes recognized herein may be undertaken or sponsored by a single employer or firm or by a group or association thereof or by a civic organization. Actual training of apprentices may be undertaken:

- (a) In the premises of the sponsoring employer in the case of individual apprenticeship programs;

- (b) In the premises of one or several designated firms in the case of programs sponsored by a group or association of employers or by a civic organization; or

- (c) In a Department of Labor and Employment training center or other public training institution.

N.B.

→ Prior approval from DOLE of the proposed apprenticeship program is a condition *sine qua non* before an apprenticeship agreement can be validly entered into.

Article 65. Investigation of violation of apprenticeship agreement.

Upon complaint of any interested person or upon its own initiative, the appropriate agency of the Department of Labor and Employment or its authorized representative shall investigate any violation of an apprenticeship agreement pursuant to such rules and regulations as may be prescribed by the Secretary of Labor and Employment.

Article 66. Appeal to the Secretary of Labor and Employment.

The decision of the authorized agency of the Department of Labor and Employment may be appealed by any aggrieved person to the Secretary of Labor and Employment within five (5) days from receipt of the decision. The decision of the Secretary of Labor and Employment shall be final and executory.

N.B.

→ Investigation by DOLE or its authorized representative, upon filing of complaint or *motu proprio*

→ Appeal of decisions to Secretary of Labor and Employment

Article 67. Exhaustion of administrative remedies.

No person shall institute any action for the enforcement of any apprenticeship agreement or damages for breach of any such agreement, unless he has exhausted all available administrative remedies.

**N.B.**

→ The doctrine requires that where an administrative remedy is provided by law, relief must first be sought by exhausting such remedies before the courts will act. (*Black's Law Dictionary*)

Article 68. Aptitude testing of applicants.

Consonant with the minimum qualifications of apprentice-applicants required under this Chapter, employers or entities with duly recognized apprenticeship programs shall have primary responsibility for providing appropriate aptitude tests in the selection of apprentices. If they do not have adequate facilities for the purpose, the Department of Labor and Employment shall perform the service free of charge.

→ Also see Article 59

Article 69. Responsibility for theoretical instruction.

Supplementary theoretical instruction to apprentices in cases where the program is undertaken in the plant may be done by the employer. If the latter is not prepared to assume the responsibility, the same may be delegated to an appropriate government agency.

N.B.

→ The normal ratio is 100 hours of theoretical instructions for every 2,000 hours of practical OJT. (Ratio is 1:20)

Article 70. Voluntary organization of apprenticeship programs; exemptions.

- (a) The organization of apprenticeship program shall be primarily a voluntary undertaking by employers;
- (b) When national security or particular requirements of economic development so demand, the President of the Philippines may require compulsory training of apprentices in certain trades, occupations, jobs or employment levels where shortage of trained manpower is deemed critical as determined by the Secretary of Labor and Employment. Appropriate rules in this connection shall be promulgated by the Secretary of Labor and Employment as the need arises; and

- (c) Where services of foreign technicians are utilized by private companies in apprenticeable trades, said companies are required to set up appropriate apprenticeship programs.

N.B.

→ This is design to discourage employment of aliens, which is admittedly displacing Filipino workers of their chance of employment.

Article 71. Deductibility of training costs.

An additional deduction from taxable income of one-half (1/2) of the value of labor training expenses incurred for developing the productivity and efficiency of apprentices shall be granted to the person or enterprise organizing an apprenticeship program: Provided, That such program is duly recognized by the Department of Labor and Employment: Provided, further, That such deduction shall not exceed ten (10%) percent of direct labor wage: and Provided, finally, That the person or enterprise who wishes to avail himself or itself of this incentive should pay his apprentices the minimum wage.

N.B.

→ A certificate of recognition shall be issued within 5 days from receipt of application of Article 71 of the Labor Code.

Article 72. Apprentices without compensation.

The Secretary of Labor and Employment may authorize the hiring of apprentices without compensation whose training on the job is required by the school or training program curriculum or as requisite for graduation or board examination.

→ Also see Article 61

Chapter II LEARNERS

Article 73. Learners defined.

Learners are persons hired as trainees in semi-skilled and other industrial occupations which are non-apprenticeable and which may be learned through practical training on the job in a relatively short period of time which shall not exceed three (3) months.



Apprentice	Learners
A worker who is covered by a written apprenticeship agreement	Semi-skilled and other industrial application which are non-apprenticeable
Terms is more than three (3) months	Maximum term is only three (3) months
Practical training supplemented by theoretical instruction	Practical training NEED NOT be supplemented by theoretical instruction
Generally, minimum age of apprenticeship is 14 years old	Generally, minimum age of learnership is 18 years old
Wage rate is at least 75% of statutory minimum wage, but after 6 months shall be paid the full minimum wage after the training period	Wage rate is at least 75% of statutory minimum wage, but when working on piece or incentive-rate jobs is entitled of full pay for work during training period

Article 74. When learners may be hired.

Learners may be employed when no experienced workers are available, the employment of learners is necessary to prevent curtailment of employment opportunities, and the employment does not create unfair competition in terms of labor costs or impair or lower working standards.

Article 75. Learnership agreement.

Any employer desiring to employ learners shall enter into a learnership agreement with them, which agreement shall include:

- (a) The names and addresses of the learners;
- (b) The duration of the learnership period, which shall not exceed three (3) months;
- (c) The wages or salary rates of the learners which shall begin at not less than seventy-five percent (75%) of the applicable minimum wage; and
- (d) A commitment to employ the learners if they so desire, as regular employees upon completion of the learnership. All learners who have been allowed or suffered to work during the first two (2) months shall be deemed regular employees if training is terminated by the employer before the end of the stipulated period through no fault of the learners.

The learnership agreement shall be subject to inspection by the Secretary of Labor and Employment or his duly authorized representative.

Article 76. Learners in piecework.

Learners employed in piece or incentive-rate jobs during the training period shall be paid in full for the work done.

→ Also see Article 73

Article 77. Penalty clause.

Any violation of this Chapter or its implementing rules and regulations shall be subject to the general penalty clause provided for in this Code.

- Fine of not less than P1,000 nor more than P10,000 or imprisonment of not less than 3 months nor more than three years at the discretion of the court.

Chapter III HANDICAPPED WORKERS

Article 78. Definition.

Handicapped workers are those whose earning capacity is impaired by age or physical or mental deficiency or injury.

N.B.

→ Difference between a handicapped worker and a disabled worker is that the latter is one whose earning capacity is impaired by mental, physical or sensory deficiency or injury.

Article 79. When employable.

N.B.

→ Article 79 superseded by Republic Act No. 7277 or the "Magna Carta for Disabled Persons".

Article 80. Employment agreement.

Any employer who employs handicapped workers shall enter into an employment agreement with them, which agreement shall include:

- (a) The names and addresses of the handicapped workers to be employed;



- (b) The rate to be paid the handicapped workers which shall not be less than seventy five (75%) percent of the applicable legal minimum wage;
- (c) The duration of employment period; and
- (d) The work to be performed by handicapped workers.

The employment agreement shall be subject to inspection by the Secretary of Labor or his duly authorized representative.

N.B.

→ Sec.5 Chapter I, Title II of Republic Act No. 7277 or the "Magna Carta for Disabled Persons" provides that persons with disability (PWD) are entitled to equal opportunity for employment (full wage and benefits).

Article 81. Eligibility for apprenticeship.

Subject to the appropriate provisions of this Code, handicapped workers may be hired as apprentices or learners if their handicap is not such as to effectively impede the performance of job operations in the particular occupations for which they are hired.

N.B.

→ Handicapped workers are eligible for employment as apprentices or learners if their handicap is such that it does not impede the performance of job operations in the particular trade or occupation which is the subject of apprenticeship or learnership contract.

**BOOK THREE
CONDITIONS OF EMPLOYMENT**

**Title I
WORKING CONDITIONS AND REST
PERIODS**

**Chapter I
HOURS OF WORK**

Article 82. Coverage.

The provisions of this Title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal

service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

As used herein, "**managerial employees**" refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

"**Field personnel**" shall refer to 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.

Exceptions in Applying Book Three Title I

- a) **G**overnment employee
- b) **M**anagerial employees
- c) **O**fficers and members of the managerial staff
- d) **F**ield personnel
- e) **M**embers of the family of the employer who are dependent on him for support
- f) **D**omestic helpers¹
- g) **P**ersons in the personal service of another, and
- h) **W**orkers paid by results

MNEMONICS:

GMO-FM-DPW

GENERAL RULE: Government employees are governed by Civil Service rules and not by the Labor Code.

EXCEPTION: GOCCs with charters created under the Corporation Code. (Also see Article 6)

Managerial positions are by virtue of their special training or expertise, experience and knowledge and for positions which require the exercise of independent judgment and discretion. They are not subject to rigid observance of office hours.

Persons in personal service of another, field personnel and members of the family are

¹ **Domestic helpers/servants** now covered by implication of Republic Act No. 10361 otherwise known as Domestic Worker's Act or "Batas Kasambahay" (enacted January 22, 2013)



similarly situated with **persons paid by results** in as far as exclusion to Labor Code is concerned.

N.B.

→ Enumerated above are NOT entitled to overtime pay, premium pay for rest days and holidays, night shift differential pay, holiday pay service incentive leave and service charges.

Article 83. Normal hours of work.

The normal hours of work of any employee shall not exceed eight (8) hours a day.

Health personnel in cities and municipalities with a population of at least one million (1,000,000) or in hospitals and clinics with a bed capacity of at least one hundred (100) shall hold regular office hours for eight (8) hours a day, for five (5) days a week, exclusive of time for meals, except where the exigencies of the service require that such personnel work for six (6) days or forty-eight (48) hours, in which case, they shall be entitled to an additional compensation of at least thirty percent (30%) of their regular wage for work on the sixth day. For purposes of this Article, "health personnel" shall include resident physicians, nurses, nutritionists, dietitians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, attendants and all other hospital or clinic personnel.

Article 83 of the Labor Code provides that the normal working hours of work shall not exceed eight (8) hours a day:

- If by nature of employment, an employee is required to on the job for only six (6) hours daily, then such period shall be regarded as full working day
- It is a **management prerogative** whenever the exigencies of the service require, to change the working hours of its employees as long as such prerogative is exercised in good faith (*Union Carbide Labor Union v. Union Carbide Phils. Inc., 215 SCRA 554*)
- Compressed Work Week (CWW) may be adopted by the employer so that less than 6 days a week may be attained without reducing the 48 hours per work week.

Article 84. Hours worked.

Hours worked shall include (a) all time during which an employee is required to be on duty or to be at a prescribed workplace; and (b) all time during which an employee is suffered or permitted to work.

Rest periods of short duration during working hours shall be counted as hours worked.

Instances of working time

- Serving coffee to visitors
- Messenger playing chess while not yet summoned by superior
- Travel time in connection with work
- *Idle-time pay*
- Waiting time if integral part of work
- Sleeping time, when it is not prejudicial to performance of work
- Time spent by Union in collective bargaining if provided in the CBA
- Attendance in lectures, meetings and trainings when required by employer
- Preliminary and postliminary activities for benefit of the employer
- Rest periods, including coffee breaks, from 5-20 minutes
- Semestral break of those in the academe (teachers)

Article 85. Meal periods.

Subject to such regulations as the Secretary of Labor may prescribe, it shall be the duty of every employer to give his employees not less than sixty (60) minutes time-off for their regular meals.

GENERAL RULE: Not less than 60 minutes time-off for regular meals.

EXCEPTION: At least 20 minutes time-off for meals in the following instances:

- (a) Where the work is non-manual in nature or does not involve strenuous physical exertion;
- (b) Where the establishment regularly operates not less than 16 hours a day;
- (c) In cases of actual or impending emergencies or there is urgent work to be performed on machineries, equipment or installation to avoid serious loss which the employer would otherwise suffer, and
- (d) Where the work is necessary to prevent serious loss of perishable goods.

**Article 86. Night shift differential.**

Every employee shall be paid a night shift differential of not less than ten percent (10%) of his regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning.

Exceptions to the application of Art. 86

- (a) Those specifically excluded under Art. 82 of the Labor Code
- (b) Employees of retail and service establishments employing not more than five (5) workers.

FORMULA:

$$\frac{[\text{Daily Basic Pay}]}{8} \times 110\% \text{ for each hour}^*$$

*between 10PM to 6AM the other day

Article 87. Overtime work.

Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, an additional compensation equivalent to his regular wage plus at least twenty-five percent (25%) thereof. Work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus at least thirty percent (30%) thereof.

FORMULA:

Overtime, regular work day

$$\frac{[\text{Daily Basic Pay}]}{8} \times 125\% \text{ for each hour}$$

FORMULA:

Premium, non-work holiday or rest day

$$\frac{[\text{Daily Basic Pay}]}{8} \times 130\% \text{ for each hour}$$

Premium – resulting pay on regular work hours excluding application of night differentials and overtime pay.

FORMULA:

Overtime, non-work holiday or rest day

$$\frac{[\text{Daily Basic Pay}]}{8} \times 169\% \text{ for each hour}$$

PAL Employees and Loan Savings, Inc. (PESALA) v. NLRC
G.R. No. 105963. August 22, 1996

[T]he main question raised before the labor tribunals is whether the provision on wages in the contract of employment already included the overtime pay for four (4) working hours rendered six days a week in excess of the regular eight-hour work. And we hold that the tribunals below were correct in ruling that the stipulated pay did not include overtime. Hence, there can be no undue enrichment in claiming what legally belongs to private respondent.

Venn Diagram of Pay Schedules**POINTS TO REMEMBER IN OVERTIME PAY**

- Overtime pay must actually be performed
- Seamen/ tugboat engineers may claim only claim for overtime work on actual service rendered on in excess of the regular work hours
- Right to claim overtime pay is NOT waivable as it is contrary to morals and public policy
- Principle of estoppels and laches are not applicable in right to (extra) compensation of laborers
- Night differential and overtime pay are independent from each other but may be applied in a mutually inclusive manner
- Overload is different from overtime as the former is performed during the regular 8-hour normal work day and may be applied only in a mutually exclusive manner



Article 88. Undertime not offset by overtime.

Undertime work on any particular day shall not be offset by overtime work on any other day. Permission given to the employee to go on leave on some other day of the week shall not exempt the employer from paying the additional compensation required in this Chapter.

National Waterworks and Sewerage Authority v. NWSA Consolidated Unions
G.R. No. L-18939. August 31, 1964

There is merit in the decision of respondent court that the method used by petitioner in offsetting the overtime with the undertime and at the same time charging said undertime to the accrued leave of the employee is unfair, for under such method the employee is made to pay twice for his undertime because his leave is reduced to that extent while he was made to pay for it with work beyond the regular working hours. **The proper method should be to deduct the undertime from the accrued leave but pay the employee the overtime to which he is entitled.** This method also obviates the irregular schedule that would result if the overtime should be set off against the undertime for that would place the schedule for working hours dependent on the employee. (underscoring and emphasis supplied)

Article 89. Emergency overtime work.

Any employee may be required by the employer to perform overtime work in any of the following cases:

- (a) When the country is at war or when any other national or local emergency has been declared by the National Assembly or the Chief Executive;
- (b) 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 disaster or calamity;
- (c) 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;
- (d) When the work is necessary to prevent loss or damage to perishable goods; and
- (e) 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 operations of the employer.

Any employee required to render overtime work under this Article shall be paid the additional compensation required in this Chapter.

MNEMONICS:

CW-PL-UW-WN-CC

CW – country at war
PL – prevent loss (of life and property)
UW – urgent work
WN – work is necessary
CC – completion or continuation

Add'l case (under Sec.10 Rule I, Book III):

- (f) **When overtime work is necessary to avail of favorable weather or environmental conditions where performance or quality of work is dependent thereon.**

If the worker willfully refuses to perform overtime work in any of the above instances provided by law, he may legally be dismissed (*Opinion of the Secretary of Labor, 21 March 1969*). It would be an act of insubordination on the part of the worker if he unjustifiably refuses to render such work. It would be the highest form of disloyalty against the country if such work is needed to meet a national emergency.²

End of Topic for Midterm Purposes

Next...

Article 90. Computation of additional compensation.

For purposes of computing overtime and other additional remuneration as required by this Chapter, the "regular wage" of an employee shall include the cash wage only, without deduction on account of facilities provided by the employer.

NAWASA ruling above, superseded

The American ruling in NAWASA case are not controlling for the law makes the regular wages or salary or regular remuneration of employees as the basis for computing the overtime pay. The terms should be given their ordinary meaning.

They do not include cost-of-living allowance, longevity pay or other fringe benefits which items constitute extra pay or additions to the regular or basic pay.³

² Poquiz, *Labor Standards Law*, with Notes and Comments, p.191
³ *Ibid.* p.192