HANDOUT 001-2026

IMPORTANT CODAL PROVISIONS
(Annotated)

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Art. 4

> **Art. 4. Construction in Favor of Labor. – All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.**

1.1. **Liberal Interpretation Rule (LIR)** and the **Full Protection Clause (FPC)** require that doubts arising from evidence in labor proceedings be resolved in favor of labor.

1.2. **Full Extent of LIR.** All doubts and ambiguities shall be resolved in favor of the workingman if they arise from: PD 442 provisions (*Art. 4, P.D. 442*); ORILC provisions (*id.);* labor contracts (*Art. 1702, NCC*) ; and evidence in labor proceedings (*Hocheng Phils. Corp. v. Farrales, G.R. No. 211497, 18 March 2015*).

1.3. **Principle of Equipoise**. When the evidence in labor cases is in equipoise, the balance must be disturbed in favor of the employee (*Hubilla v. HSY Marketing Ltd, G.R. No. 207354, 10 Jan. 2018*).

1.4. **Double Recovery Rule**. Since the CBA provision, which guarantees indemnification of the medical expenses of the covered workers' dependents, requires payment of premiums thru salary deductions then it is an insurance policy. As such, it is governed by insurance principles, *e.g.,* rule against double recovery. Therefore, since the dependents used separate health insurance cards, the company cannot be required to pay

full medical expenses as it would result in double recovery. (*Mitsubishi Motors Phils. Salaried Employees Union v. Mitsubishi Motors Phils. Corp., G.R. No. 175773, 17 June 2013).*

1.5. **Pull Out Certification**. "This is to certify that X was employed by this agency from 20 Nov. 1996 to 7 May 2003 as SG assigned at NPC. He was terminated from his employment on 7 May 2003 per client' request." This is a "pull out" certification, not an "employment termination" certification; hence, there is no dismissal (*Canedo v. Kampilan Security & Detective Agency, 31 July 2013*).

1.6. **Utmost Liberality Rule.** This is the equivalent of the Liberal Interpretation Rule. It is the rule to apply in employee compensation cases under the GSIS and AREC. It is based on the policy that the purpose of social legislation is to give and not to withhold compensation. (*Marlene L. Rodrin vs GSIS, et al., G.R. No. 162837, 28 July 2008*).

1.7. **Clear Nexus Rule.** The disputable presumption that unlisted diseases are work-connected is not a magic wand that, when waved, will automatically justify compensation. A seafarer must still prove that his working conditions have reasonable nexus (connection) to his disability allegedly arising from his unlisted disease. Hence, he must prove that his work involves the risk factors of said disease; the period of his exposure thereto was sufficient for him to contract the disease; and he did not contract it by reason of his notorious negligence. Hence, it is imperative that the risk factors be identified and connected to his work. (*Doroteo vs Philimare, Inc. G.R. No. 184917, 13 March 2017*).

1.8. **Evidence on Appeal.** Art. 4 is for the invocation of the workingman to the exclusion of his employer, unless the ends of substantial justice would be frustrated by the strict application of procedural rules in which case an employer can ask for liberal interpretation. The bank cannot invoke liberal interpretation of the 2011 NLRC Rules of Procedure to be allowed to submit evidence on appeal. (*Reyes vs Rural Bank of San Rafael (Bulacan), G.R. No. 230597, 23 March 2022*)

1.9. **2025 NLRC Rules of Procedure**. The 2025 Rules that took effect of 13 January 2026 broaden the concept of "workplace" to reflect modern work arrangements, including telecommuting and flexible setups. Significantly, labor complaints may now, at the worker's option, be filed in the RAB having jurisdiction over the complainant's residence to promote accessibility and worker convenience.

2
Art. 5

> **Art. 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.

2.1. The power granted the DOLE is quasi-legislative power only, *i.e.,* the power to implement PD 442 and other labor statutes.

Note: Can the Migrant Workers Department, which is separate from the DOLE which is the department authorized by Art. 5, co-implement provisions of PD 442? Note that Book IV is being co-implemented by the ECC; hence, there should be no legal impediment.

2.3. Despite the letter of Art. 272 (formerly Art. 259) which allows appeal by both employer and union, D.O. 40-03 limits right of appeal to the union if the establishment is unorganized. If the Med-Arbiter automatically granted the CE petition, it means that the hotel is unorganized because he could only do that if the establishment was unorganized. In such case, the hotel could not appeal the CE order (*The Heritage Hotel Manila, et al v. SOLE, et al., G.R. No. 172132, 23 July 2014*).

2.2. D.O. 119-12, which redefines "night worker", amends R.A. 10151 (from "mn - 5 a.m" to "10 p.m - 6:00 a.m"). However, it is valid and should be allowed to produce legal effects until nullified pursuant to the ***Operative Fact Doctrine***.

3
Art. 6

> **Art. 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.**
>
> **An agricultural employee renders personal services and is paid wage therefor; whereas, an agricultural tenant renders personal cultivation and is paid with a share in the harvest. The first enjoys protection under P.D. 442; whereas, the second enjoys protection under agrarian law.**

3.1. Agricultural employees are protected by PD 442. Agricultural employment is tested with the Four-fold Test.

3.2. Agricultural tenants are protected by agrarian law. Agricultural tenancy relationship is tested with LACAPH (L – Lessor-Lessee; A – Agricultural land; C – Consent; A – Agricultural production; P – Personal cultivation; and H – Harvest sharing).

3.3. There is no successor employee because employer-employee relationship is *in personam*, but there can be a successor tenant.

4
Art. 13

> **Art. 13. Definitions. – (a) "Worker" means any member of the labor force, whether employed or unemployed.**
>
> **(b) "Recruitment and placement" refers to any act of <u>canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad,</u> <u>whether for profit or not</u>: <u>Provided, That any person or entity which, in any manner, offers or promises for a fee,</u>**

employment to two or more persons shall be deemed engaged in recruitment and placement. This and other articles in the immediately succeeding Title should be read in correlation with R.A. No. 8042 (1995), as amended by R.A. No. 10022 (2010), or the "Migrant Workers and Overseas Filipinos Act." 4 (c) "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. (d) "License" means a document issued by the Department of Labor authorizing a person or entity to operate a private employment agency. (e) "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. (f) "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. (g) "Seaman" means any person employed in a vessel engaged in maritime navigation. (h) "Overseas employment" means employment of a worker outside the Philippines. (i) "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.

4.1. Worker is a generic term, while employee is a specific term. If a worker is employed, he attains the status of an employee. *Sec. 3, Art. XIII* of the *Constitution* guarantees right to self-organization to workers, not employees. For this reason, *Art. 253* of the *Labor Code* covers non-employees, *viz*., **AIRWIS workers** (Ambulant, Intermittent, Rural, Workers without Definite Employers, Itinerant and Self-employed). The first group of covered workers are **CIA-CREM employees** (Commercial, Industrial and Agricultural establishments – Charitable, Religious, Educational and Medical institutions).

4.2. Whether for profit or not, one commits illegal recruitment if he commites an act of recruitment under Art. 13(b) without a license. Hence, passing on a job applicant to an employer, agency or employment bureau after an initial interview (*Rodolfo v. People*) which is an act of "referring", and "transporting" people to undergo medical examination in contemplation of job placement (*Pp. v. Comila*) require a license.

Acts of Recruitment: **CUTE CPA**s **H**ave **C**ute **R**ed **P**ens (**C** - Canvassing; **U** – Utilizing; **T** –Transporting; **E** – Enlisting; **C** – Contracts; **P** – Procuring; **A** - Advertizing; **H** – Hiring; **R** – Referring; **P** – Promising employment).

4.3. Since the definition of recruitment includes the phrase "**whether for profit or not**", the prosecutor does not have to present the receipts issued by the accused to cover the placement fees paid (*Pp v. Jamilosa*). Likewise, the remittance of money collected by a non-licensee to a licensed recruiter does not justify her acquittal (*Rodolfo v. People*).

4.4. Non-Defenses: Lack of knowledge that husband's passengers were his wife's recruits amounts to defense of good faith which cannot be invoked in criminal

prosecutions involving acts *mala prohibita* (*Pp. v. Comila*); a recruitment license is prospective; hence, it cannot be retroacted to legalize an act of recruitment committed without a license (*Pp. v. Chua*); 2 accused (not a syndicate) cannot evade the penalty of life imprisonment if they recruited six (6), it being large scale; hence, the crime is still economic sabotage (*Pp. v. Navarra*); prosecution by a solo complainant is not a ground for acquittal because the phrase "two or more" is not an element of IR but a rule of evidence only (*Pp. v. Panis*); the "employee defense" will fail if the supposed employee had active participation in recruitment activity as when she interviewed job applicants, collected placement fees from them, and did not remit the fees to the employer (*Pp v, Nogra*).

4.5. **Double Jeopardy.** No double jeopardy if a person is prosecuted for illegal recruitment and *estafa* based on the same act. The basis of criminal liability for illegal recruitment under PD 442 or RA 10022 is commission of an act of recruitment which only the government can do without prior state authorization in the form of a recruitment license, or engagement by any person in a prohibited practice; whereas, the basis of criminal liability for *estafa* under the RPC is the act of causing damage by reason of the victim's reliance on the false pretenses of the accused. (Ref: *Imperio Case* and *Masalang Case*)

4.6. **New Definition of Seafarer (RA 11641)**

> Seafarer – refers to an OFW who is engaged in employment in any capacity on board a merchant marine vessel plying international waters or other sea-based craft of similar category. For purposes of this Act, it shall include fishers onboard commercial fishing vessels on international waters or as defined under relevant maritime conventions, cruise ship personnel, yacht crew, those serving on mobile offshore and drilling units in the high seas, and other persons similarly situated. (Sec. 3 (f))

4.7. **V People Manpower Phils., Inc. vs Buquid,** G.R. No. 222311, February 10, 2021 . The claim for disability compensation under the POEA-SEC was denied because the claimant was not a seafarer owing to the fact that his workplace was a permanent sea structure; hence, it was not engaged in maritime navigation.

Note: RA 11641 has redefined "OFW".

Old Definition: (Sec. 2, RA 10022): "Overseas Filipino worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for miliatry or non-commercial purposes or on an installation located offshore or on the high seas; to be used interchangeably with migrant worker."

New Definition (Sec. 3, RA 11641): Overseas Filipino Worker (OFW) – refers to a Filipino who is to be engaged, is engaged, or has been engaged in remunerated activity in a

country of which he or she is not an immigrant, citizen, or permanent resident or is not awaiting naturalization, recognition, or admission, whether land-based or sea-based regardless of status; excluding a Filipino engaged under a government-recognized exchange visitor program for cultural and educational purposes. For purposes of this provision, a person engaged in remunerated activity covers a person who has been contracted for overseas employment but has yet to leave the Philippines, regardless of status, and includes "Overseas Contract Workers". The term "OFW" is synonymous to "Migrant Worker";

The Change: The first element (engaged in remunerated activity) has been retained. The second element (not a citizen) has been expanded to include: not an immigrant, not a permanent resident and not awaiting naturalization, admission or recognition.

Significance of the Change: *La Madrid vs Cathay Pacific Airways Ltd.* was decided under the *RA 10022* definition. The Supreme Court ruled that La Madrid was an OFW who could litigate before the Labor Arbiter to seek relief under Sec. 7 because she was engaged in remunerated activity in Hong Kong where she was not a citizen. The argument of the airline company was that she was not an OFW because she was a permanent resident of Hong Kong where she was renting an apartment. Under the new definition, she will not qualify as an OFW because of her residency.

5
Art. 34

Art. 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.

Note: A THIEF Reports OCI (**A** – Amount; **T** – Travel documents; **H - Harmful;** **I** –Induce; **E** –Engage; **F** – False; **R** – Reports; **O** –Obstruct; **C** – Contracts; **I** – Influence)

5.1. **R.A. 10022** (additional prohibited practices)

SEC. 6. ***Definition.*** - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

x x x

(l) Failure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment;

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault.

Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage; and

(n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

(1) Grant a loan to an overseas Filipino worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;

(2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons;

(3) Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter's employment contract has been prematurely terminated through no fault of his or her own;

(4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;

(5) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;

(6) For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers' applications; and

(7) For a recruitment/manning agency or a foreign principal/employer to pass on the overseas Filipino worker or deduct from his or her salary the

payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker's insurance coverage.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents thereof shall be liable.

In the filing of cases for illegal recruitment or any of the prohibited acts under this section, the Secretary of Labor and Employment, the POEA Administrator or their duly authorized representatives, or any aggrieved person may initiate the corresponding criminal action with the appropriate office. For this purpose, the affidavits and testimonies of operatives or personnel from the Department of Labor and Employment, POEA and other law enforcement agencies who witnessed the acts constituting the offense shall be sufficient to prosecute the accused.

In the prosecution of offenses punishable under this section, the public prosecutors of the Department of Justice shall collaborate with the anti-illegal recruitment branch of the POEA and, in certain cases, allow the POEA lawyers to take the lead in the prosecution. The POEA lawyers who act as prosecutors in such cases shall be entitled to receive additional allowances as may be determined by the POEA Administrator.

The filing of an offense punishable under this Act shall be without prejudice to the filing of cases punishable under other existing laws, rules or regulations.

5.2. In a criminal prosecution for illegal recruitment based on failure to reimburse, the prosecutor does not have to present a DMW certification that the accused is not licensed to recruit. The *gravamen* of the offense is the commission by any person (licensed or not) of a prohibited act (*Pp. v. Ocden, G.R. No. 173198, 1 June 2011*).

6

Arts. 40-41

> **Art. 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.**
>
> **Art. 41. Prohibition Against Transfer of Employment. – (a) 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.**
>
> **(b) 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.44 In addition, the alien worker shall be subject to deportation after service of his sentence.**

6.1. Sec. 10, Art. XII, 1987 Constitution reserves Filipino labor to Filipino workers. As an exception, non-resident aliens can be employed subject to the alien employment permit (AEP) requirement. If the purpose of the non-resident alien is not gainful employment, he is not required to get an AEP.

6.2. **Exempt Aliens (D.O. 186-17)**:

(a) **Section 2**

(i) All members of the diplomatic service and foreign government officials accredited by and with reciprocity arrangement with the Ph government;

(ii) Officers and staff of international organizations of which the Ph is a member, and their legitimate spouses desiring to work in the Ph;

(iii) Owners and representatives of foreign principals whose companies are accredited by the POEA who come to the Ph for a limited period and solely for the purpose of interviewing Filipino applicants for overseas employment;

(iv) Foreign nationals who come to the Ph 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 Ph and foreign universities or colleges; or between the Ph government and foreign governments; provided that the exemption is on reciprocal basis;

(v) Permanent resident foreign nationals and probationary or temporary resident visa holders under Sec. 13 (a-f) of the Ph Immigration Act of 1940 and Sec. 3 of the Alien Social Integration Act of 1995 (R.A. 79170);

(vi) Refugees and stateless persons recognized by the DOJ pursuant to Art. 17 of the UN convention and Protocol Relating to the Status of Refugees and Stateless Persons; and

(b) **Section 3**

(i) Members of the governing board with voting rights only and who do not intervene in the management of the corporation or in the day-to-day operation of the enterprise;

(ii) President and Treasurer who are part-owners of the company;

(iii) Those providing consultancy services who do not have employers in the Ph;

(iv) Intra-corporate transferee who is a manager, executive or specialist as defined below in accordance with trade agreements and who is an employee of the foreign service supplier for at least 1 continuous year employment prior to deployment to a branch, subsidiary, affiliate or representative office in the Ph;

> (iv.i) *Executive.* A natural person within the organization who primarily directs the management of the organization and exercises wide latitude in decision-making and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business; and he does not directly perform tasks related to the actual provision of the service/s of the organization;
>
> (iv.ii) *Manager.* A natural person within the organization who primarily directs the organization/department/subdivision and exercises supervisory and control functions over other supervisory, managerial or professional staff. It does not include first line supervisors unless the employees supervised are professionals. It does not include employees who primarily perform tasks necessary for the provision of the service;

(iv.iii) *Specialist.* A natural person within the organization who possesses knowledge on an advanced level of expertise essential to the establishment/provision of the service and/or possesses proprietary knowledge of the organization's service, research equipment, technique or management. It may include, but is not limited to, members of the licensed profession.

6.3. No AEP, no reinstatement and backwages even of illegally dismissed (*WPP Marketing vs Galera, G.R. No. 169207, 26 March 2010*).

6.4. **Updates**

(a) **D.O. 221-21** removes two classifications of aliens from the AEP requirement, *viz*., exempt aliens and excluded aliens, *infra*. AEP issuance is subject to the Labor Market Test (LMT) to determine that there are no Filipinos who are competent, able and willing to perform the jobs applied for by aliens. AEPs are good for 1 year, unless extended to coincide with the period of employment but in no case shall exceed 3 years.

Exempt Aliens:

i. Dependent spouses of members of the diplomatic corps, subject to reciprocity;
ii. Accredited officials and personnel of international organizations with which the Philippines has an agreement and their spouses;
iii. Embassy personnel (Extra-territoriality Principle);
iv. Peace-keeping personnel;
v. Visiting, exchange or adjunct teachers/professors covered by agreements between universities and colleges;
vi. Permanent foreign nationals and probationary or temporary resident visa holders;
vii. Other aliens exempted by law.

Excluded Aliens: If they have no employer-employee relationship with local employers, and if they are employees of foreign employers.

(b) **D.O. 248-25** requires the use of the Economic Need Test (ENT) to determine the necessity of hiring aliens based on non-availability of qualified Filipino workers. It restores the requirement on skills transfer and knowledge-sharing between aliens and their local counterparts via Understudy Training Programs (UTP) and Skills Development Programs (SDP) to be implemented by the hiring local employers.

7

Arts. 73-81

7.1. **Learner v. Apprentice (PONDACA)**: Period of employment; Obligation to regularize; Nature of work; effect of illegal Dismissal; Approval by TESDA; filing of Complaint; Appeal.

7.2. **Learner** must file his complaint with the LA, subjet to SEnA; while **apprentice** must file his complaint with the RD, subject to prior use of PAC (plant apprenticeship committee) remedy.

7.3. If illegally dismissed on the 3rd month, a learner must be reinstated and paid backwages as a regular employee; hence, the expiration of 3 months will not bar such reliefs. In contrast, an apprentice is bound to the 6 months.

7.4. After a successful learnership, it is the obligation of the employer to regularize. In contrast, the employer of an apprentice is not imposed such duty.

8
Arts. 82, 94-95 & P.D. 851

Art. 82

> **ART. 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.**

Art. 94

> **Art. 94. Right to Holiday Pay. – (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;**
>
> **(b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate; and**
>
> **c) As used in this Article, "holiday" includes: New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth**

Art. 95. Right to Service Incentive Leave. – (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b) This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor and Employment after considering the viability or financial condition of such establishment.

(c) The grant of benefit in excess of that provided herein shall not be made a subject of arbitration or any court or administrative action.

8.1. **Coverage** – All employees in all establishments, whether for profit or not.

Exclusion: MOM GF WPD (**M** – Managers; **O** – Officers & Members of the Managerial Staff**; M** – Members of the employer's family dependent of him for support; **G** – Government employees; **F** – Field Personnel; **W** – Workers paid by result; **P** – Persons in the personal service of another; and **D** – Domestic workers).

Note:

(a) Supervisors. They are members of the managerial staff if they perform managerial functions.
(b) GOCC Employees. They are covered if the GOCC has no original charter (SEC-registered).
(c) Family Drivers. They are persons in the personal service of another (*Atienza v. Saluta*),
(d) Kasambahay. *RA 10361* entitles them to Service Incentive Leave.

8.2. ***Ejusdem Generis***. For workers paid on **task basis** and those paid on **purely commission basis** to be excluded from the coverage of holiday pay or HP (Art. 94) and service incentive leave or SIL (Art. 95), they must at the same time be **field personnel**. Both will not get 13th month pay because their employers are exempt.

8.3. **R&E Transport Case**. A taxi driver is a worker paid on task basis and a field personnel at the same time. Therefore, he has no HP and SIL. He has no 13th month pay also because his employer is exempt.

8.4. **David Case**. Paul Paran, a butcher paid P700 per engagement to butcher Dave's pigs, is a worker paid on task basis. Since he works inside the latter's premises, hence supervised, he is not a field personnel. Therefore, he is entitled to HP and SIL. However, he has no 13th month pay because David is exempt (*David v. Macasio, 2014*).

8.5. **Retirement Pay (Art. 302)**. If the retiree is entitled to SIL and 13th month pay, his retirement pay shall be computed based on 22.5 days. The 15 days represent ½ of his monthly salary; the 5 is SIL; and the 2.5 is 1/12 of his 13th month pay. If not entitled to 13th month pay, the computation shall be based on 20 days; and if not entitled to both SIL and 13th month pay, the computation shall be based on 15 days.

8.6. **Backwages (Art. 294; Q. 4, Bar 2001**). The economic components of the backwages of rank-and-filers and managers are the same in that they consist of salary, allowances and benefits or their monetary equivalent. As to the components of "benefits", however, rank-and-filers get SIL and 13th month pay; whereas, managers do not get these benefits as a matter of law (*Q. No. 4, 2001 Bar*).

8.7. A family driver is a person in the personal service of another, not a *kasambahay*. If illegally dismissed, he gets earned salaries and indemnity of half month salary in accordance with *Art. 1697* of the *NCC* and not reinstatement and backwages under *Art. 294* of *PD 442* (*Atienza vs Saluta, G.R. No. 233413, 17 June 2019).*

9
Art. 83

> **Art. 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, dieticians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, attendants and all other hospital or clinic personnel.**

9.1. Rendition of work for 2 hours only, instead of 8, does not rule out employer-employee relationship. 8 is the maximum, but it can be reduced *(Legend Hotel Manila vs Realuyo, G.R. No. 153511, 18 July 2012).*

9.2. Requisites of Compressed Work Week (CWW): (i) necessity; (ii) voluntariness; and (iii) temporariness. There is a cap of 6 months also for Compressed Work Week, like Reduced work Days (*Linton Commercial Co., Inc. v. Hellera, et al., G.R. No. 163147, 10 Oct. 2007*).

9.3. 8 hours is the normal hours of work of talents (*DOLE advisory 4-16*) and provincial bus drivers and conductors (*D.O. 118-12*).

9.4. **Telecommuting Act.** One who works away from his usual workplace under a telecommuting work arrangement and whose "hours worked" cannot be determined with reasonable certainty is not a field personnel.

10
Arts. 93, 94 & 95

Art. 93

Art. 93. Compensation for Rest Day, Sunday or Holiday Work. – (a) Where an employee is made or permitted to work on his scheduled rest day, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage. An employee shall be entitled to such additional compensation for work performed on Sunday only when it is his established rest day.

(b) When the nature of the work of the employee is such that he has no regular workdays and no regular rest days can be scheduled, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage for work performed on Sundays and holidays.

(c) Work performed on any special holiday77 shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee. Where such holiday work falls on the employee's scheduled rest day, he shall be entitled to an additional compensation of at least fifty per cent (50%) of his regular wage.

(d) Where the collective bargaining agreement or other applicable employment contract stipulates the payment of a higher premium pay than that prescribed under this Article, the employer shall pay such higher rate.

Art. 94

Art. 94. Right to Holiday Pay. – (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;

(b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate; and

(c) As used in this Article, "holiday" includes: New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth and thirtieth of December and the day designated by law for holding a general election.

Art. 95

Art. 95. Right to Service Incentive Leave. – (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b) This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor and Employment after considering the viability or financial condition of such establishment.

(c) The grant of benefit in excess of that provided herein shall not be made a subject of arbitration or any court or administrative action.

10.1. **Holiday Pay**

(a) Review: Art. 82 states that for an employee to be entitled to holiday pay, he/she must have worked the previous working day, or was on leave with pay the previous working day. If the employee was absent (without leave) the previous working day before the holiday, the employee will NOT be entitled to holiday pay.

Types of Holidays:

Regular Holidays. There are 12 regular holidays covered by *the No Work With Pay Rule*, i.e., even if an employee does not work he gets paid as long as he is a covered employee who has complied with the requisites.

Special Holidays. These are non-working days covered by the *No Work No Pay Rule, i.e.,* if one does not work then he does not get paid.

(b) **Computation: Regular Holidays**

i. Employee **did not work** on the regular holiday:

   i. Employee worked the previous working day: Employee is entitled to his/her daily wage

   ii. Employee was absent the previous working day: Employee is not entitled to his/her daily wage

ii. Employee **worked for 8 hours or less** during the regular holiday:

   Employee will be paid his equivalent (hourly wage + COLA) x # of hours worked x 200%

iii. Employee **worked for more than 8 hours** during the regular holiday:

For the excess hours, multiply the hourly wage x # of excess hours x 130% x 200%.

(c) **Regular Holidays that are also Restdays**

i. Employee **worked for 8 hours or less** during the regular holiday that also falls on a restday:

Employee will be paid his equivalent (hourly wage + COLA) x # of hours worked x 200% x 130%

ii. Employee **worked for more than 8 hours** during the regular holiday that also falls on a restday:

For the excess hours, multiply the hourly wage x # of hours worked x 130% x 200% x 130%.

10.2. **Special Holidays**

(a) Employee **did not work** on the special holiday

The ***no work no pay*** rule applies unless the company has a favorable policy granting payment on Special Holidays. This may still be subject to the **Holiday Pay Eligibility Rule**.

(b) Employee **worked** for **8 hours or less** during the special holiday

Employee will be paid his equivalent (hourly wage x # of hours worked x 130%) + COLA

(c) Employee **worked** for **more than 8 hours** during the special holiday

For the excess hours, multiply the hourly wage x # of excess hours x 130% x 130%.

(d) Special Holidays that are also Restdays

i. Employee worked for **8 hours or less** during the special holiday that also falls on a restday.

Employee will be paid his equivalent (hourly wage x # of hours worked x 150%) + COLA

ii. Employee worked for **more than 8 hours** during the special holiday that also falls on a restday

For the excess hours, multiply the hourly wate x # of excess hours worked x 150% x 130%.

11
Art. 96

Art 96. Service Charges. – All service charges collected by hotels, restaurants and similar establishments shall be distributed completely and equally among the covered workers except managerial employees. In the event that the minimum wage is increased by law or wage order, service charges paid to the covered employees shall not be considered in determining the employer's compliance with the increased minimum wage.

(a) **The Old SC Law (PD 442)**

i. Coverage: All employees of Lo MaNiGaS Cock Resty Ho: Lodging houses, Massage clinics, Night clubs, Gambling establishments, Cocktail lounges, Restaurants and Hotels.

ii. Rules

85%-15% Rule. 85% of SC shall be distributed to rand-and-filers; the 15% shall cover breakages and losses; any remainder shall enure to management.

Integration Rule. In the event of discontinuance of SC collection, the average share of each covered employee shall be integrated into his basic salary.

(b) **The New SC Law (R.A. 11360, as implemented by D.O. 206-19)**

i. Coverage:

All employees of establishments collecting SC such as Lo MaNiGaS Cock Resty Ho & BCS (Bars Casinos & Sports clubs).

Exception

Managers. Those with power or prerogative to laydown (top managers) and execute (middle managers) policies on management prerogatives (hiring and firing, assigning and recalling, etc.), including those who recommend such managerial actions (supervisors).

ii. Rules:

Complete and Equal Distribution Rule. All SC collected shall be completely and equally distributed to covered employees.

Non-Creditability Rule. In the event of a wage rate increase, by law or wage order, SC paid shall not be considered in determining the employer's compliance with the pay rate increase.

iii. Conflict Resolution

Thru established grievance mechanism; otherwise, by the DOLE-RD

iv. Nothing in the Act shall be construed to diminish existing benefits under present laws, company policies and CBA. Hence, the *Integration Rule* remains effective.

12
Art. 97

Art. 97. Definitions. – As used in this Title: ...

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

12.1. A stipulation that compensation shall be "talent fees" does not bar employer-employee relationship from arising. Based on the amount of the musician's pay, it is just a wage. A wage is remuneration "**however designated**" capable of being expressed in terms of money whether on fixed basis or based on time or result of work payable under a contract of employment for work done or to be done or services rendered or to be rendered, including the reasonable value of facilities customarily provided by the employer (*Legend Hotel Manila v. Realuyo, 18 July 2012*). Payment of services based on "piece trip" does not negate EER for same reason (*Felicilda v. Uy, 14 Sept. 2016*).

12.2. Only unpaid wage is subject to the ***Double Indemnity Law*** (*Sapio v. Undaloc Construction, 2008*).

12.3. Bus drivers and conductors shall be paid mixed-compensation consisting of basic salary and performance-based commission (D.O. 118-12). The D.O., including LTFRB Memo Circular 2012-001 requiring submission of Labor Standards Compliance Certificate as a condition for renewal of CPC, is constitutional being a piece of social legislation to improve

the working conditions of bus drivers and conductors and to protect the public by ensuring road safety (*Provincial Bus Operators Association of the Phils, et al. v. DOLE, et al., G.R. No. 202275, 17 July 2018, en banc*).

13
Art. 100

> **Art. 100. Prohibition Against Elimination or Diminution of Benefits. – Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.**

13.1. ***Apex Mining Ruling*.** In *Waterfront Insular Hotel Davao (G.R. No. 174040-41, 22 Sept. 2010),* the SC re-invited attention to what it earlier said in Apex Mining, i.e., Art. 100 pertains to pre-promulgation benefits. Said benefits should not be diminished or withdrawn no less than by PD 442 itself. Hence, Art. 110 addresses itself to the very Code of which it is part.

For Law Practice:

Q: Is Art. 100, or the *Principle of Non-Diminution of Benefits*, violated when a benefit granted in 1977 by an employer and enjoyed for a considerable period of time by his employee is unilaterally withdrawn by said employer?

A: Since the benefit withdrawn is a post-promulgation benefit and the taker is an employer, Art. 100 is not violated.

13.2. ***Principle of Grants***. In the example, the taking is still wrongful because the benefit has already ripened to a demandable right. However, the principle to apply is the *Principle of Grants* (Prof. Samson Alcantara).

Note: In most cases, the SC applies Art. 100 without distinction. Hence, unless the Bar question indicates otherwise, one should not bother distinguishing. E.g.: Did the LA correctly apply Art. 100? Or Is the Union's invocation of Art. 100 proper? Or Which principle on withdrawal of benefits would you apply? These questions indicate that the distinction must be made.

14

Arts. 106-109 (D.O. 18-A; D.O. 174, s. 2017; E.O. 51, 2018)

Art. 106. Contractor or Subcontractor. – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

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

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

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

workers in the same manner and extent as if the latter were directly employed by him.

Art. 107. Indirect Employer. – The provisions of the immediately preceding article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

Art. 108. Posting of Bond. – An employer or indirect employer may require the contractor or subcontractor to furnish a bond equal to the cost of labor under contract, on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fail to pay the same.

Art. 109. Solidary Liability. – The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

14.1. Job contractorship (JC) is a trilateral relationship between a principal (P), contractor (C) and workers (W). In contrast, independent contractorship (IC) is a bilateral relationship between the user of services and the supplier thereof.

14.2. Employer-employee relationship (EER) is real or **statutory only**. If C is a labor-only contractor (LoC), it is a **real** EER because the real employer is P. C is just his agent or manpower recruiter. However, if C is a legitimate job contractor (JC), the EER between P and W is a statutory EER only.

14.3. C might violate the rights of W under: (a) LSL, as when he does not pay his wages and benefits; (b) Book IV, as when he requires him to work under hazardous working conditions resulting in bodily harm; (c) LRL, as when he illegally dismisses him; and (d) SocLeg as when he does not report him for SSS coverage.

14.4. W will then sue both C and P. P's solidary liability with C will be as follows: (a) **Limited**, if C is a JC. Limited solidary liability means that P can only be ordered to pay wages and benefits illegally withheld by C (*Art. 106, Labor Code; Meralco Industrial Engineering Services, Inc. v. NLRC, 14 March 2008*). (b) **Comprehensive**, if C is an LoC. Comprehensive solidary liability means that P can be held liable for all the violations of C because he (P) is the real employer of W.

14. 5. The status of C is determined as follows: (a) JC if he has substantial capital or investment; or (b) LoC if he is EE + CE1 or EE + CE2 (*Prof. Azucena*)

14.6. Substantial capital is P5M under D.O. 174, s. 2016. Investment, owned or leased, must consist of tools, equipment, machineries or work premises.

14.7. The essential element (EE) of LoC is that C is not substantially capitalized or not possessed with investment in the form of tools, equipment, machineries or work premises. But his LoC status requires attendance of a confirming element (CE). There are 2 CEs, *viz*., CE1 (W is performing work directly related to the usual trade of P) and CE2 (C does not control W's means and methods of performance; it is P who does).

14.8. Between LoC arrangements and JC arrangements, only the second is allowed. However, there are apparent JC arrangements which are prohibited. C may be substantially capitalized or possessed with the required investment. However, the effects of the apparent JC arrangement are disadvantageous to W or the regular workers of P as follows: (a) **As to W**: Where C is just an in-house contractor, as when it has been created by P, funded by P, its policies are determined by P, and has only one client, P. Under the *Alter Ego Theory*, the arrangement has to be struck down since it actually amounts to an LoC arrangement disadvantageous to W. (b) **As to the regular employees of P**: The effects of the arrangement between P and C should be examined. The apparent JC arrangement is void in the following cases: (i) Partial Displacement - The supplied manpower (W and other workers) perform portions of the work of P's regular employees. (ii) Violation of Tenurial Right - The right to security of tenure of P's regular workers is violated, as when an overmanning results leading to the redundation of the positions of those regular employees; or (iii) Violation of Right to Self-Organization - The right to self-organization of P's regular employees is violated, as when Ws are engaged in violation of the union security clause, *e.g.,* closed shop.

Related Matters:

1. Contracting out or outsourcing of services to a legitimate job contractor is permissible. Both core and non-core (peripheral) services can be let to a provider (*2011 Alviado v. Proctor & Gamble*), except to a labor-only contractor.

2. Offshoring of services to the Philippines thru information technology (IT-enabled business outsourcing) is not covered by the rules. Likewise, if the provider is registered with the Philippine Contractors Accreditation Board (PCAB) then regulatory power shall be exercised by the board. Finally, job contracting rules do not cover canteen concessionaires under a lease contract or contract to operate (*DOLE Advisory 01-203-12*).

Example of Offshoring: An American hospital (the equivalent of a principal) offshores medical transcription services to a Philippine medical transcription company (the equivalent of a contractor). Thru IT (email, etc.), voice data consisting of recorded observations of American doctors during their rounds get transmitted to the local company for conversion to read data with the use of AI. Thru IT, the read data are returned to the hospital. Since this is an IT-enabled service outsourcing, the rights of the medical transcriptionists (the equivalent of supplied manpower/worker) are not secured by local job contracting rules.

3. D.O. 174 prohibits "endo" practice or the termination of an employee after the expiration of his short-term employment contract which is usually the last of a series . To illustrate: If the Service Agreement (SA) between the principal (P) and the contractor (C) is good for 2 years, the Employment Contract (EC) between C and the worker (W) must be for at least 2 years also, unless W is engaged for a specific stage of the project. Hence, if W's engagement has not been limited to a particular stage of the project then he cannot be engaged and re-engaged under short term employment contracts. If dissociated during the life of the SA based on expiration of contract, he shall be deemed to have been illegally dismissed. Under the rules, what controls is completion of project and not expiration of contract.

Note: *E.O. 51, s. 2018* simply echoes anti-labor-only contracting rules.

4. Within the trilateral relationship established between P, C and W, there may be violations by C of the rights of W under: (a) Labor Standards Law (remunerative type) as when he withholds the salaries and benefits due W; (b) under health and safety rules (protective LSL) as when he requires W to work under harzardous working conditions resulting in bodily injury; (c) under Labor Relations Law as when he illegally dismisses W; or (d) under Social Legislation is when he omits reporting W for SSS coverage. In light of these violations, W may take legal action against W and P.

5. Questions

5.1. Is there a need for W to implead both C and P?
5.2. Can P interpose the defense of lack of employer-employee relationship between himself and W?
5.3. What are the liabilities of P if: (a) C is a legitimate job contractor (JC)?; and (b) C is a labor-only contractor (LoC)?
5.4. What qualifies C as a legitimate JC?
5.5. What makes C an LoC?

Answers:

5.1. If C is an LoC, W need not implead W and P. In **labor-only contracting**, the legal personality of P merges with that of C. This is by force of the **Principle of Merger of Legal Personalities** (*Coca-Cola Bottlers (Phils), Inc. v. Dela Cruz, et al., G.R. No.184977, 7 December 2009*). **Reason**: C is just the agent of P, or a recruiter of manpower. However, if C is a JC then W must implead both. **Reason**: C and P are imposed solidary liability by *Art. 106* of the *Labor Code.* Significantly, solidary liability is the liability of more than one. In other words, one cannot be held solidarily liable with himself.

5.2. P can no longer interpose the defense of lack of EER. Regardless of the status of his contractor, he shall be treated as the employer of W. If C is an LoC, he is the real employer of W. On the other hand, if C is a JC then he shall be deemed as W's statutory employer.

5.3. With C, P shall be solidarily liable to W as follows: (a) **If C is an LoC**, P's solidary liability shall be "**comprehensive**" or a "top to bottom" liability. This means that he can be held answerable for all the violations of C since he is the real employer of W. (b) **If C is a JC**, P's solidary liability shall be "**limited**" only, *i.e.,* to the wages and benefits unlawfully withheld by C (*Meralco Industrial Engineering Services, Inc. v. NLRC, G.R. No. 145402, 14 March 2008*). Hence, he cannot be ordered to pay backwages, separation pay *in lieu* of reinstatement and related reliefs which are the consequences of C's violation of Labor Relations Law. In addition, P cannot be held liable for the JC's violation of SS Law,

Note: Jurisprudence overrides the letter of *Art. 109, Labor Code*, which extends P's solidary liability to violations of "other provisions" of the *Labor Code* even if C is a JC. Likewise, it corrects the implementing rules (*D.O. 18-02*) which even stretch such liability to violations of social legislation. Hence, P cannot be required to report W for SSS coverage.

5.4 **C is a JC if**:

5.4.1. It has a D.O. 174 certificate of registration (CR);
5.4.2. It carries on an independent business (*Polyfoam Ruling*);
5.4.3. It performs the outsourced service or work on its own account;
5.4.4. It is free from P's control as to the means and methods by which it executes its work;
5.4.5. It uses is capital or investment directly and actually in performing or completing its work.

5.5. **When C is an LoC**:

5.5.1. Disputably presumed an LoC if it has no *D.O. 174* CR;
5.5.2. Absolutely an LoC if it is an EE + CEone or EE + CEtwo:
(a) EE — Essential Element (No substantial capital or investment); and
(b)CE — Confirming Element CEone (W is performing work directly related to the trade of P); or CEtwo (C does not control W's means and methods or performance).

6. *Manila Memorial Park Cemetery v. Lluz, et al. G.R. No. 208451, 3 February 2016*:

6.1. P (owner of the memorial park); C (engaged to bury the dead, exhume them, etc.)

6.2. The service agreement (SA) provided as follows: 6.2.1. C shall buy Php1.4M worth of equipment from P for its use in the cemetery; 6.2.2. C must store the equipment inside P's premises; 6.2.3. C shall hold office inside P's premises; 6.2.4. C's employees shall be supervised by P's personnel; and 6.2.5. P can take over the work if not satisfied with C's performance.

6.3. C is an LoC because: 6.3.1. It is not substantially capitalized. Its reported profit was P50K only; hence, it could not have paid for equipment worth Php1.4M. Besides, there was no proof that the sale was actually carried out; 6.3.2. It had no investment in the form of equipment and no work premises; 6.3.3. It was not independent of P whose personnel supervised its employees; and 6.3.4. P reserved the right to perform the outsourced work.

Note:

1. **Apparent (looks like) JC Arrangement: When Void and Treated as LoC Arrangement -** "C" may be substantially capitalized or possessed with investment as to qualify as a JC. However, the consequences of the SA it has with P will make the contracting arrangement an LoC arrangement – hence, prohibited – in the following instances:

(1) C, which is a JC on the surface, is an "in-house" contractor. It was organized by P; it is funded by P; its policies are determined by P; and it has one client only, viz., P. In this situation, the supposed JC arrangement is a circumvention of law.

(2) Apparent JC arrangement will introduce Ws into the manpower of P. Where P has regular employees (REs), the effects of the entry of Ws are:

(a) Ws will start performing portions of the work being performed by REs;
(b) Entry of Ws will result in the violation of RE's right to security of tenure, as when the apparent JC arrangement results in over-manning as to justify the redundation of positions. However, REs are dismissed instead of Ws;
(c) Entry of Ws will violate RE's right to selforganization, as when the entry of Ws will render a strike ineffective.

2. Job Contracting Agreement (JCA) v. Distributorship Agreement (DA)

Case: *Nestle Philippines, Inc. v. Benny Puedan, Jr., et al G.R. No. 220617, 30 January 2017*.

<u>Distinctions</u>:

1.1 **As to Legal Tie** - In JCA, the primary parties are the principal (P) and the contractor (C); in DA, the primary parties are the Manufacturer/Vendor (M/V) and the Distributor/ Vendee (D/V);
1.2. **As to Business** - In JCA, P outsources services to C; in DA, M/V sells goods to D/V to be sold to the public.
1.3. **As to Manpower** - In JCA, C provides manpower to perform the service outsourced by P to it; in DA, D/V's workers sell the goods it purchased from M/V.
1.4. **As to Regulatory Law** - JCA is regulated by Labor Law; DA is regulated by Civil Law.

1.5. **As to Rights of Workers -** In JCA, the workers are the statutory employees of P; hence, they can seek relief from him for wages and benefits not paid by C. In DA, they are the employees of D/V; hence, generally they have no recourse against M/V.

Update:

In *San Miguel Foods, Inc. vs Ronaldo Martinez, et al., G.R. No. 231636, 16 June 2021,* it was ruled that possession of a D.O. 174 certificate of registration (CR) meant that the contractor was a legitimate job contractor based on the presumption of regularity, *i.e.,* that the Regional Director validly qualified the registrant as possessed with substantial capital or investment. In contrast, in *Nozomi Fortune Services, Inc. vs Celestino Naredo, G.R. No. 221043, 31 July 2024*, the Court stuck to the rule that the CR simply barred the presumption that the contractor was a labor-only contractor from arising.

Comment: To harmonize these conflicting rulings, the 2021 decision should be understood to mean that the CR creates the disputable presumption that the contractor is a legitimate job contractor. After all, the JC status contemplated is based on the presumptions of regularity and validity which are both disputable. The spring should not be allowed to rise above its source.

Since the presumption of JC status can only be a disputable one, it can be overcome with evidence that the contractor does not carry on an independent business; it does not use its capital or investment actually and directly in performing its work; it is not independent of its principal as to the means and methods of performing its work; it does not carry out its contract on its own account; the tools and equipment used belong to the principal; the workers supplied are supervised by personnel of the principal; and the service agreement has no protective provisions in favor of the workers utilized.

If above decisions were harmonized in this manner, the unresolved issue of whether the contractor with a *DO 174 CR* should still prove that it carries on an independent business, *etc.,* would see final resolution. It should now be the burden of whoever is after establishing that the contracting arrangement is a labor-only contracting arrangement to overcome the disputable presumption accordingly.

15
Art. 110

Art. 110. Worker Preference in Case of Bankruptcy. – In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their wages and other monetary claims, any provisions of law to the contrary notwithstanding. Such unpaid wages and monetary claims.

15.1. *Art. 110* does not mean what it says. Proof: The mortgagee bank is the first to be paid (*DBP Case*).

15.2. *Republic v. Hon. Peralta (G.R. No. L-56568, 20 May 1987)*

(a) **Minority Opinion**. *Art. 110* of *PD 442* is a provision of a special law; whereas, *Arts. 2241, 2242* and *2244* of the *NCC* (concurrence and preference of credits) are provisions of a general law. Since they conflict with one another, *Art. 110* must have preferential application. Hence, the unpaid worker must be the first to be paid from the remaining funds or property of his bankrupt or insolvent employer.

(b) **Majority Opinion**. In the event of conflict between laws, the first thing to do is to harmonize them. The reconciliation between *Art. 110* and the *3 NCC* provisions lies in the recognition of the nature of the credits listed under said *NCC* provisions. Under *Arts. 2241* and *2242*, the credits above an unpaid worker (who is No. 6) are special preferred credits (SPCs). They are in the nature of encumbrances or liens. And the special character of a lien is that it attaches to a specific property. E.g.: in a mortgage lien, the mortgaged property is encumbered and reserved for the mortgagee; hence, it cannot be delivered to an unpaid worker by applying *Art. 110*. On other other hand, credits under *Art. 2244* are ordinary preferred credits (OPCs) , i.e., they are not liens; hence the order of preference established therein can be affected by *Art. 110*.

15.3. Old Rulings

(a) *Art. 110* has no application to managers. Hence, between a rank-and-filer and corporate officer (equivalent to a manager) the former has preference because the latter belongs to management.

(b) Bankruptcy, insolvency and proceedings of similar import. Proceedings of similar import include judicial settlement of the diseased employer's estate. Extrajudicial foreclosure is not of similar import because there is no adjudication of credits.

(c) If an unpaid worker's wage claim is brought to an insolvency or bankruptcy court for adjudication pending appeal of a money judgment before the NLRC, the NLRC cannot refuse to transmit the records of the case to the court for the reason that since it has acquired appellate jurisdiction, it must be allowed to exercise it until it resolves the appeal. The NLRC must transmit.

Hypothetical Problem:

ABC Manufacturing Corporation was declared insolvent by the Regional Trial Court. At the time of insolvency, the company owed ₱5 million in unpaid wages to its rank-and-file employees. However, the company's main factory building had earlier been mortgaged to Solid Bank to secure a ₱20 million loan.

During the insolvency proceedings, the employees invoked *Art. 110* of the *Labor Code* and argued that they should be paid first from the proceeds of the sale of the mortgaged factory building. Solid Bank opposed, claiming that as mortgagee, it had priority right over the property.

Who has the superior right to the proceeds of the mortgaged factory building?

Answer:

Solid Bank has the superior right to the proceeds of the mortgaged property.

Although *Art. 110* grants workers preference in case of insolvency, jurisprudence harmonizes it with *Arts 2241* and *2242* of the *New Civil Code*, which recognize special preferred credits in the nature of liens. In *Republic v. Hon. Peralta*, *G.R. No. L-56568, 20 May 1987*, the Supreme Court held that mortgage liens attach to specific properties and must first be satisfied before workers' claims. *Art. 110* does not defeat secured creditors with valid liens.

Here, the factory building was previously mortgaged to Solid Bank. As mortgagee, the bank has a lien over the specific property, giving it priority over the proceeds of its sale. The employees' wage claims may be satisfied only from remaining unencumbered assets, if any.

Accordingly, Solid Bank must be paid first from the proceeds of the mortgaged factory building.

16
Art. 111

Art. 111

Art. 111. Attorney's Fees.– (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery

16.1. Extraordinary attorney's fees cannot exceed 10%; whereas, ordinary attorney's fees are subject to stipulation and are governed by *quantum meruit* absent agreement. However, seafarers and lawyers cannot stipulate more than 10% ordinary attorney's fees (*Seafarers Protection Act*).

16.2. Under the PAO Law (*R.A.9406*), PAO gets the 10% extraordinary attorney's fees as trust fund for disbursement as special allowances of authorized officials and lawyers. Free representation by PAO does not prevent award of 10% attorney's fees (*Alva v. High Capacity Security Force, Inc., G.R. No. 203328, 8 Nov. 2017*).

Update:

Pacific Ocean Manning, Inc. vs. Bobiles
G,R. No. 259982, 28 October 2024

Art. 111 applies only to cases of unlawful withholding of wages. *Art. 2208*, *NCC*, applies in employment compensation cases. *Art. 2208 (2)* applies only in litigation or incurrence of expense in relation to third persons, and *Art. 2208(8)* applies only in actions for indemnity under workmen's compensation and employer's liability laws, not contract, as in seafarers under the *POEA-SEC*. A seafarer is not entitled to attorney's fees as there was no factual , legal or equitable justification for the same other than the bare statement that he was forced to litigate to enforce his rights; the agency covered all of his treatment costs, as well as full sickness allowances.

Hypothetical Problem: Incorporating the *2025 NLRC Rules of Procedure*

Rogelio, a Filipino seafarer, was deployed by OceanBridge Manning Agency, Inc. under the POEA-Standard Employment Contract (POEA-SEC) as an engine fitter aboard a foreign vessel. After six months at sea, he complained of persistent back pain. Upon repatriation, the company-designated physician diagnosed him with lumbar strain and declared him fit to work after 90 days.

OceanBridge paid Rogelio his full sickness allowances and shouldered all medical expenses during treatment.

Dissatisfied with the fit-to-work assessment, Rogelio consulted a private physician who issued a Grade 8 disability rating. Without referring the

conflicting medical findings to a third physician jointly agreed upon by the parties, Rogelio immediately filed a complaint before the NLRC seeking permanent disability benefits and attorney's fees equivalent to ten percent (10%) of any monetary award.

OceanBridge argues that:

1. Rogelio prematurely filed the complaint because the *2025 NLRC Rules of Procedure* require referral to a third physician before filing suit when there is a conflict between the opinions of the company-designated physician and the seafarer's chosen physician; and
2. Rogelio is not entitled to attorney's fees because there was no unlawful withholding of wages or bad faith.

Rogelio contends that he was forced to litigate to enforce his rights and is thus entitled to attorney's fees.

Resolve.

Answer:

Rogelio is not entitled to attorney's fees, and his filing of the complaint was premature for failure to comply with the mandatory third-physician referral under the *2025 NLRC Rules of Procedure*. In fact, the new rules require selection before filing of complaints.

Under the *POEA-SEC*, when there is a conflict between the assessment of the company-designated physician and that of the seafarer's chosen physician, the matter must be referred to a third physician jointly agreed upon by the parties, whose decision shall be final and binding. The *2025 NLRC Rules of Procedure* reinforce this requirement by mandating referral to a third physician before the filing of a complaint in cases involving conflicting medical assessments.

As to attorney's fees, *Art. 111* of the *Labor Code* applies only to cases involving unlawful withholding of wages. *Art. 2208* of the *Civil Code* allows attorney's fees only in specific instances, such as litigation involving third persons or indemnity under workmen's compensation and employer's liability laws. Jurisprudence holds that disability claims under the *POEA-SEC* are contractual in nature and do not automatically fall under *Art. 2208(8).* Attorney's fees require factual, legal, or equitable justification, such as bad faith or unjustified refusal

In this case, there was a clear conflict between the assessment of the company-designated physician and that of Rogelio's private physician. Instead of submitting the dispute to a mutually agreed third physician, Rogelio immediately filed his complaint. Under the *POEA-SEC* and the *2025 NLRC Rules*, such referral is a mandatory procedural step. His failure to comply renders the filing premature.

Moreover, OceanBridge paid Rogelio's full sickness allowances and shouldered all medical expenses. There is no showing of unlawful withholding of wages or bad faith. The claim for disability benefits arises from contractual obligations under the *POEA-SEC*, not from an indemnity action under workmen's compensation laws. The bare assertion that Rogelio was compelled to litigate does not constitute sufficient basis for attorney's fees.

Accordingly, Rogelio's complaint was prematurely filed for failure to comply with the mandatory third-physician referral, and he is not entitled to attorney's fees.

Note: This is an ALAC answer in substance, but not in form. Reform it when you are tired reading.

Example:

Rogelio is not entitled to attorney's fees. His complaint was prematurely filed.

Under the *POEA-SEC*, when there is a conflict between the assessment of the company-designated physician and that of the seafarer's chosen physician, the matter must be referred to a third physician jointly agreed upon by the parties, whose decision shall be final and binding. The *2025 NLRC Rules of Procedure* require such referral prior to the filing of a complaint. *Art. 111* of the *Labor Code* applies only to cases of unlawful withholding of wages, while *Art. 2208* of the *Civil Code* permits attorney's fees only in specific instances, such as indemnity under workmen's compensation and employer's liability laws. A disability claim under the *POEA-SEC* is contractual in nature.

Here, there was a clear conflict between medical assessments, yet Rogelio did not seek referral to a third physician and instead immediately filed his complaint. This failure rendered the action premature. Moreover, OceanBridge paid his full sickness allowance and shouldered all medical expenses. There was neither unlawful withholding of wages nor bad faith.

Accordingly, the complaint was prematurely filed, and attorney's fees are not recoverable.

17
Arts. 112-123

Art. 112. Non-Interference in Disposal of Wages. – No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages. He shall not in any manner force, compel, or oblige his employees to purchase merchandise, commodities or other property from

any other person, or otherwise make use of any store or services of such employer or any other person.

Art. 113. Wage Deduction. – No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except: (a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and (c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.

Art. 114. Deposits for Loss or Damage. – No employer shall require his worker to make deposits from which deductions shall be made for the reimbursement of loss of or damage to tools, materials, or equipment supplied by the employer, except when the employer is engaged in such trades, occupations or business where the practice of making deductions or requiring deposits is a recognized one, or is necessary or desirable as determined by the Secretary of Labor and Employment in appropriate rules and regulations.

Art. 115. Limitations. – No deduction from the deposits of an employee for the actual amount of the loss or damage shall be made unless the employee has been heard thereon, and his responsibility has been clearly shown.

Art. 116. Withholding of Wages and Kickbacks Prohibited. – It shall be unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker or induce him to give up any part of his wages by force, stealth, intimidation, threat or by any other means whatsoever without the worker's consent.

Art. 117. Deduction to Ensure Employment. – It shall be unlawful to make any deduction from the wages of any employee for the benefit of the employer or his representative or intermediary as consideration of a promise of employment or retention in employment.

Art. 118. Retaliatory Measures. – It shall be unlawful for an employer to refuse to pay or reduce the wages and benefits, discharge or in any manner discriminate against any employee who has filed any complaint or instituted any proceeding under this Title or has testified or is about to testify in such proceedings.

Art. 119. False Reporting. – It shall be unlawful for any person to make any statement, report, or record filed or kept pursuant to the provisions of this Code knowing such statement, report or record to be false in any material respect.

Art. 120. Creation of National Wages and Productivity Commission. – There is hereby created a National Wages and Productivity Commission, hereinafter referred to as the Commission, which shall be attached to the Department of Labor and Employment (DOLE) for policy and program coordination.

Art. 121. Powers and Functions of the Commission. – The Commission shall have the following powers and functions: (a) To act as the national consultative and advisory body to the President of the Philippines and Congress on matters relating to wages, incomes and productivity;

(b) To formulate policies and guidelines on wages, incomes and productivity improvement at the enterprise, industry and national levels;

(c) To prescribe rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial, or industry levels;

(d) To review regional wage levels set by the Regional Tripartite Wages and Productivity Boards to determine if these are in accordance with prescribed guidelines and national development plans;

(e) To undertake studies, researches and surveys necessary for the attainment of its functions and objectives, and to collect and compile data and periodically disseminate information on wages and productivity and other related information, including, but not limited to, employment, cost-of-living, labor costs, investments and returns;

(f) To review plans and programs of the Regional Tripartite Wages and Productivity Boards to determine whether these are consistent with national development plans;

(g) To exercise technical and administrative supervision over the Regional Tripartite Wages and Productivity Boards;

(h) To call, from time to time, a national tripartite conference of representatives of government, workers and employers for the consideration of measures to promote wage rationalization and productivity; and

(i) To exercise such powers and functions as may be necessary to implement this Act. The Commission shall be composed of the Secretary of Labor and Employment as ex officio chairman, the Director-General of the National Economic and Development Authority (NEDA) as ex-officio vice-chairman, and two (2) members each from workers and employers sectors who shall be appointed by the President of the Philippines upon recommendation of the Secretary of Labor and Employment to be made on the basis of the list of nominees submitted by the workers and employers

sectors, respectively, and who shall serve for a term of five (5) years. The Executive Director of the Commission shall also be a member of the Commission. 38 The Commission shall be assisted by a Secretariat to be headed by an Executive Director and two (2) Deputy Directors, who shall be appointed by the President of the Philippines, upon the recommendation of the Secretary of Labor and Employment. The Executive Director shall have the same rank, salary, benefits and other emoluments as that of a Department Assistant Secretary, while the Deputy Directors shall have the same rank, salary, benefits and other emoluments as that of a Bureau Director. The members of the Commission representing labor and management shall have the same rank, emoluments, allowances and other benefits as those prescribed by law for labor and management representatives in the Employees' Compensation Commission.

Art. 122. Creation of Regional Tripartite Wages and Productivity Boards. – There is hereby created Regional Tripartite Wages and Productivity Boards, hereinafter referred to as Regional Boards, in all regions, including autonomous regions as may be established by law. The Commission shall determine the offices/headquarters of the respective Regional Boards. The Regional Boards shall have the following powers and functions in their respective territorial jurisdictions: (a) To develop plans, programs and projects relative to wages, incomes and productivity improvement for their respective regions; (b) To determine and fix minimum wage rates applicable in their regions, provinces or industries therein and to issue the corresponding wage orders, subject to guidelines issued by the Commission; (c) To undertake studies, researches, and surveys necessary for the attainment of their functions, objectives and programs, and to collect and compile data on wages, incomes, productivity and other related information and periodically disseminate the same; (d) To coordinate with the other Regional Boards as may be necessary to attain the policy and intention of this Code; (e) To receive, process and act on applications for exemption from prescribed wage rates as may be provided by law or any Wage Order;96 and (f) To exercise such other powers and functions as may be necessary to carry out their mandate under this Code. Implementation of the plans, programs, and projects of the Regional Boards referred to in the second paragraph, letter (a) of this Article, shall be through the respective regional offices of the Department of Labor and Employment within their territorial jurisdiction; 96 Section 8 of R.A. No. 9178 (2002), Barangay Micro Business Enterprises (BMBEs) Act, exempts BMBEs from the coverage of the Minimum Wage Law. Under Section 5 (b) of R.A. No. 10644 (2014), Go Negosyo Act, the Department of Trade and Industry (DTI), through the Negosyo Center in the city or municipal level, shall have the sole power to issue the Certificate of Authority for BMBEs to avail of the benefits provided by R.A. No. 9178. 39 Provided, however, That the Regional Boards shall have technical

supervision over the regional office of the Department of Labor and Employment with respect to the implementation of said plans, programs and projects. Each Regional Board shall be composed of the Regional Director of the Department of Labor and Employment as chairman, the Regional Directors of the National Economic and Development Authority and the Department of Trade and Industry as vice-chairmen and two (2) members each from workers' and employers' sectors who shall be appointed by the President of the Philippines, upon the recommendation of the Secretary of Labor and Employment, to be made on the basis of the list of nominees submitted by the workers' and employers' sectors, respectively, and who shall serve for a term of five (5) years. Each Regional Board to be headed by its chairman shall be assisted by a Secretariat.

Art. 123. Wage Order. – Whenever conditions in the region so warrant, the Regional Board shall investigate and study all pertinent facts; and based on the standards and criteria herein prescribed, shall proceed to determine whether a Wage Order should be issued. Any such Wage Order shall take effect after fifteen (15) days from its complete publication in at least one (1) newspaper of general circulation in the region. In the performance of its wage-determining functions, the Regional Board shall conduct public hearings/consultations, giving notices to employees' and employers' groups, provincial, city and municipal officials and other interested parties. Any party aggrieved by the Wage Order issued by the Regional Board may appeal such order to the Commission within ten (10) calendar days from the publication of such order. It shall be mandatory for the Commission to decide such appeal within sixty (60) calendar days from the filing thereof. The filing of the appeal does not stay the order unless the person appealing such order shall file with the Commission, an undertaking with a surety or sureties satisfactory to the Commission for the payment to the employees affected by the order of the corresponding increase, in the event such order is affirmed.

17.1. Violation of wage rules, if it places an employee in a situation that leaves him no option except to forego his employment, is constructive dismissal.

17.2. Art. 113 (Unconsented Wage Deduction). The cost of a facility can be deducted from an employee's wage if the employer has secured a facility evaluation permit from the DOLE-RD. Hence, the mere fact that the item provided would have been necessarily acquired by the employee with a portion of his wage does not excuse outright deduction.

17.3. Art. 116 (Withholding of Wage). A case occasioned by an employer's withholding of a resigned employee's last salary for the latter's failure to serve 30-day notice resulting in the filing of a recovery complaint with the LA, in which same case the employer asserts a counterclaim for damages based on Art. 300, is entirely for the LA to

resolve. Both parties' money claims have reasonable causal connection to employer-employee relationship (*Reasonable Causal Connection Rule*) and each money claim is resolvable thru the application solely of Labor Law (*Sole Reference to Labor Law Rule*). As to the employee's money claim, it is resolvable thru the application solely of Art. 116 and, as to the employer's counterclaim, it is resolvable thru the application solely of Art. 300.

18
Art. 124

Art. 124. Standards/Criteria for Minimum Wage Fixing. – The regional minimum wages to be established by the Regional Board shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the employees within the framework of the national economic and social development program. In the determination of such regional minimum wages, the Regional Board shall, among other relevant factors, consider the following:

x x x

Where the application of any prescribed wage increase by virtue of a law or wage order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration. In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it 41 remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

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

As used herein, a wage distortion shall mean a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively

obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

All workers paid by result, including those who are paid on piecework, takay, pakyaw or task basis, shall receive not less than the prescribed wage rates per eight (8) hours of work a day, or a proportion thereof for working less than eight (8) hours. All recognized learnership and apprenticeship agreements shall be considered automatically modified insofar as their wage clauses are concerned to reflect the prescribed wage rates.

18.1. A wage distortion obtains when: (a) there are 2 or more wage groups assigned different pay rates as to result in a wage gap (wage advantage); (b) the wage gap is either eliminated or seriously contracted (compressed by more than 50%); and (c) the cause of the elimination or compression is a wage law or wage order. Other causes: merger of companies & CBA, but not promotion (*NFL Case, 1984*).

18.2. **Update:**

In ***Mindanao International Container Terminal Services, Inc. vs MICTSILU-FDLO,*** *G.R. No. 245918, 28 November 2022* , the Supreme Court clarified the concept of wage distortion, defining it as a situation where wage increases eliminate distinctions in wage rates among employee groups. It noted that wage distortion under *Art. 124* of the *Labor Code* applies only to wage adjustments mandated by law or wage orders, not voluntary increases by employers. It concluded that the salary differences in this case were not legal wage distortion but rather factual wage differences based on management prerogative.

Hypothetical Problem:

PrimeCargo Logistics voluntarily granted a ₱2,000 salary increase to newly hired warehouse personnel to attract more applicants. As a result, the starting salary of new hires became almost equal to that of senior warehouse employees with five years of service.

The union filed a grievance, claiming that wage distortion occurred and demanding adjustment of the salaries of senior employees under Art. 124 of the *Labor Code*.

Did wage distortion occur?

Answer:

No, wage distortion did not occur.

Under *Art. 124* of the *Labor Code*, wage distortion arises only when a wage increase mandated by law or wage order results in the elimination or severe contraction of wage rate gaps. In *Mindanao International Container Terminal Services, Inc. v. MICTSILU-FDLO*, *G.R. No. 245918, 28 November 2022*, the Supreme Court clarified that voluntary salary increases granted by management do not constitute legal wage distortion.

Here, the ₱2,000 increase was voluntarily granted by management and was not the result of a statutory wage order. The resulting salary differences are factual wage disparities arising from management prerogative, not legal wage distortion.

Accordingly, no wage distortion exists under the Labor Code.

19
Art. 126

Art. 126. Prohibition Against Injunction. – No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against any proceedings before the Commission or the Regional Boards.

19.1. What cannot be enjoined are the proceedings of the wage boards. However, if wage orders are issued with grave abuse of discretion – as when settled principles are brazenly ignored, e.g., doing very perfunctory consultations only, then injunctive relief becomes available.

Hypothetical Problem:

The Regional Tripartite Wages and Productivity Board (RTWPB) of Region Z conducted only one brief public hearing preparatory to issuing a wage order increasing the regional minimum wage. Several employer groups filed a petition before the RTC seeking to enjoin both the wage board proceedings and the implementation of the wage order, alleging lack of meaningful consultation.

May the court grant the injunction?

Answer:

The court cannot enjoin the wage board proceedings, but the wage order may be reviewed if issued with grave abuse of discretion.

19.2. Under R.A. No. 6727 (Wage Rationalization Act), Regional Wage Boards exercise quasi-legislative power in fixing minimum wages. In *Employers Confederation of the Philippines (ECOP) v. NWPC*, *G.R. No. 96169, 24 September 1991*, the Supreme Court held

that wage boards perform delegated legislative functions and that courts generally may not restrain or interfere with quasi-legislative acts. However, such acts remain subject to judicial review when attended by grave abuse of discretion.

The RTC cannot enjoin the wage board's proceedings because wage determination is quasi-legislative. Nevertheless, if the consultation was merely perfunctory and statutory requirements were ignored, the wage order may be assailed via certiorari for grave abuse of discretion.

Accordingly, the wage board proceedings cannot be enjoined, but the wage order may be challenged upon proof of grave abuse of discretion.

20
Art. 127

Art. 127. Non-Diminution of Benefits. – No wage order issued by any regional board shall provide for wage rates lower than the statutory minimum wage rates prescribed by Congress.

20.1. From *Art. 100* comes the first non-diminution principle. The second comes from *Art. 127*. This time, it pertains to wages enjoyed before the issuance of a new wage order. Wage boards are enjoined from providing wage rates lower than statutory minimum wage rates prescribed by Congress.

20.2. Congress does not legislate wages anymore. But, if it wants to, it can. There is a move to legislate wages again.

21
Art. 128

Art. 128. Visitorial and Enforcement Power. – (a) The Secretary of Labor and Employment or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection. An order issued by the duly authorized representative of the Secretary of Labor and Employment under this Article may be appealed to the latter. In case said order involves a monetary award, an appeal by the employer may be perfected only upon

the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from.

(c) The Secretary of Labor and Employment may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace. Within twenty-four hours, a hearing shall be conducted to determine whether an order for the stoppage of work or suspension of operations shall be lifted or not. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

(d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor and Employment or his duly authorized representatives issued pursuant to the authority granted under this Article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this Article.

(e) Any government employee found guilty of violation of, or abuse of authority, under this Article shall, after appropriate administrative investigation, be subject to summary dismissal from the service.

(f) The Secretary of Labor and Employment may, by appropriate regulations, require employers to keep and maintain such employment records as may be necessary in aid of his visitorial and enforcement powers under this Code.

21.1. Mistaken referral by the DOLE-RD of a case to the LA based on the 5K jurisdictional threshold rule does not entitle the employer to belatedly assail continuing exercise of visitorial power during execution. It should have filed a Rule 65 petition against the SOLE when she reversed the RD resulting in the return of the case from the LA to the RD (*Tiger Construction & Dev't Corp. v. Abay, et al., 2010).*

21.2. Visitorial power is exercisable over establishments, not over individual workers; hence, there is no need for complaints to be filed. Neither are appeals to the SOLE required to be verified by all workers (*Catholic Vicariate of Baguio v. Sto. Tomas, 2008*).

21.3. The power to determine employer-employee relationship is co-extensive with visitorial power; hence, the RD's factual finding is not preliminary only and should not be reserved for the NLRC to finally resolve (*Bombo Radyo, 2009*).

21.4. Replacement wages can be ordered under Art. 128 based on closure of establishments or suspension of business operations for violation of health and safety rules; provided, the closure or suspension order was issued by the RD and not by the DENR (*NAMAWU v. Marcopper, 2008*).

21.5. Motions for reconsideration (MRs) and to reduce appeal bond are prohibited pleadings (D.O. 183-16). However, under DO 238, Series 2023, MRs are now allowed. Motions to reduce appeal bond continue to be prohibited pleadings. The motions to reduce appeal bond are allowed by NLRC Rules but not DOLE rules.

21.6. Appeal period under art. 128 is 10 days and appeal shall be taken to the SOLE.

21.7. Jurisdiction is acquired thru the service of a Notice of Inspection or Notice of Investigation which may be prompted by complaint (complaint inspection) or simply *motu proprio* (routine inspection). But there are decisions that say jurisdiction vests upon discovery of labor standards violations by inspectors.

21.8. There must be an express factual finding of employer-employee relationship; otherwise, the RD/SOLE's decision is void because EER is the bedrock of exercise of visitorial power and no less than Sec. 14, Art. VIII of the Constitution requires that a judgment contain facts and applicable law (*South Cotabato Communication Corp. v. Hon. Sto. Tomas, 15 June 2016*).

Reminder: Under *DO 238, Series 2023*, a motion to reduce appeal bond is not recognized as a mechanism to perfect an appeal. DOLE may not entertain appeals under a reduced bond except in accordance with its rules and the suppletory Rules of Court. However, the DO now allows motions for reconsideration.

Hypothetical Problem:

After a labor inspection, the DOLE Regional Director issued a Compliance Order under Article 128 of the Labor Code directing XYZ Corporation to pay ₱8 million in wage deficiencies. XYZ filed an appeal and simultaneously filed a motion to reduce the appeal bond, arguing financial hardship.

May the DOLE entertain the motion to reduce appeal bond?

Answer:

No, the DOLE may not entertain a motion to reduce appeal bond in appeals from compliance orders under Art. 128.

Under Art. 128 of the Labor Code and DOLE Department Order No. 238, Series of 2023, compliance orders issued pursuant to DOLE's visitorial and

enforcement powers require full posting of the appeal bond equivalent to the monetary award. Unlike the NLRC Rules, the rules governing Article 128 proceedings do not recognize a motion to reduce appeal bond.

Here, XYZ Corporation appealed a compliance order but merely filed a motion to reduce the bond instead of posting the full amount required. Since D.O. 238 does not allow reduction of the appeal bond in such cases, the motion cannot be entertained.

Therefore, the appeal cannot be perfected without full posting of the required appeal bond.

22
Art. 129

Art. 129. Recovery of Wages, Simple Money Claims and Other Benefits. – Upon complaint of any interested party, the Regional Director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or household helper under this Code, arising from employer-employee relations: Provided, That such complaint does not include a claim for reinstatement: Provided, further, That the aggregate money claims of each employee or household helper do not exceed five thousand pesos (P5,000.00). The Regional Director or hearing officer shall decide or resolve the complaint within thirty (30) calendar days from the date of the filing of the same. Any sum thus recovered on behalf of any employee or household helper pursuant to this Article shall be held in a special deposit account, and shall be paid, on order of the Secretary of Labor and Employment or the Regional Director directly to the employee or household helper concerned. Any such sum not paid to the employee or household helper, because he cannot be located after diligent and reasonable effort to locate him within a period of three (3) years, shall be held as a special fund of the Department of Labor and Employment to be used exclusively for the amelioration and benefit of workers.

Any decision or resolution of the Regional Director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 223 (Art. 229) of this Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from the submission of the last pleading required or allowed under its rules.

The Secretary of Labor and Employment or his duly authorized representative may supervise the payment of unpaid wages and other monetary claims and benefits, including legal interest, found owing to any employee or house helper under this Code.

22.1. The basis of the 5K jurisdictional threshold rule is "*aggregate individual money claims*", excluding damages and attorney's fees.

22.2. Jurisdiction is acquired thru the filing of a verified complaint.

22.3. Appeal to the NLRC must be perfected within 5 days.

22.4. There is filing of motions to reduce appeal bond because the applicable rules on appeal are those of the NLRC.

Hypothetical Problem:

After a complaint inspection, the DOLE Regional Director found that 40 employees of PrimeSteel Corp. were underpaid overtime and holiday pay amounting to ₱22,000 per employee. The employer refused compliance, arguing that the Regional Director has no jurisdiction because the amount exceeds ₱5,000 per employee and that jurisdiction belongs to the Labor Arbiter.

Separately, an employee filed before the DOLE Regional Office a complaint for ₱4,800 unpaid wages. The employer likewise questioned jurisdiction.

Resolve with reasons.

Answer (convert to ALAC):

On the ₱22,000 Deficiency Discovered During Inspection

Yes. The DOLE Regional Director validly exercises jurisdiction under Art. 128 despite the amount exceeding ₱5,000 per employee.

Art. 128 vests upon the Secretary of Labor and authorized representatives the visitorial and enforcement power to ensure compliance with labor standards laws.

Per *RA. 7730*, the previous ₱5,000 limitation was removed. The Supreme Court has consistently held that *Art. 128* proceedings are an exercise of the State's police power and are not restricted by monetary ceilings.

In *People's Broadcasting Service (Bombo Radyo Phils., Inc.) v. Secretary of Labor,* the Court ruled that the DOLE's visitorial and enforcement power under *Art. 128* is not limited by the amount of monetary claims discovered during inspection.

Similarly, in *Bay Haven, Inc. v. Abuan,* the Court emphasized that the ₱5,000 jurisdictional limit applies only to *Art. 129* and not to *Art. 128* enforcement proceedings.

The only recognized limitation is when the employer raises a *bona fide* dispute involving evidentiary matters not verifiable in the normal course of inspection**,** as explained in *Meteoro v. Creative Creatures, Inc..* or employer-employee relationship has ceased before acquisition of jurisdiction.

Here, the deficiencies were discovered during a complaint inspection. The amount of ₱22,000 per employee does not divest DOLE of jurisdiction because *Art. 128* has no monetary limitation after *RA 7730*. The employer's reliance on the ₱5,000 cap is misplaced; that limitation applies only to *Art. 129* recovery proceedings. There is no showing of a *bona fide* dispute requiring examination beyond inspection standards. Hence, DOLE retains enforcement authority.

The DOLE Regional Director may validly issue a Compliance Order under Art. 128 for the ₱22,000 deficiencies.

Exercise:

If you are using AI, like ChatGPT, copy the foregoing answer and upload it to AI. Then give this prompt: "Covert to a brief ALAC answer. Maintain content strictly, no changes. Tighten. Bar-ready only."

On the ₱4,800 Money Claim Filed by Employee

Yes. The Regional Director has jurisdiction under Art. 129.

Art. 129 grants the Regional Director authority to hear and decide money claims not exceeding ₱5,000 per employee, provided:

1. There is an existing employer-employee relationship;
2. No claim for reinstatement is involved.

This is a quasi-judicial function**,** distinct from Art. 128's enforcement power. The employee's claim is ₱4,800, which falls below the ₱5,000 threshold. The DOLE Regional Director validly exercises summary adjudicatory jurisdiction over the ₱4,800 claim.

Since there is no indication that reinstatement is sought or that employment has been terminated, jurisdiction properly lies with the DOLE Regional Director under Art. 129.

22.5. **Distinction Between Art. 128 and Art. 129**

1. **Nature of Power**

- Article 128 — Visitorial and enforcement power; administrative; exercise of police power.
- Article 129 — Adjudicatory power; quasi-judicial; complaint-driven.

2. **Monetary Limitation**

- Article 128 — No monetary limit (after RA 7730).
- Article 129 — Limited to ₱5,000 per employee.

3. **Initiation**

- Article 128 — May be initiated through inspection even without complaint.
- Article 129 — Initiated only upon employee complaint.

4. **Purpose**

- Article 128 — Ensure compliance with labor standards.
- Article 129 — Provide speedy remedy for small wage claims.

5. **Jurisprudential Characterization**

Article 128 is regulatory and preventive in character, while Article 129 is adjudicative and remedial.

2.6. **Other Points of Distinction**

- Article 128 — Seat of power is the RD and SOLE
- Article 129 — Seat of power is the RD only

- Article 128 — Extent of power is money claims and health & safety issues
- Article 129 — Limited to simple money claims

- Article 128 — Ouster of jurisdiction is available
- Article 129 — Not available

- Article 128 — Appeal is to the SOLE in 10 days
- Article 129 — Appeal is to the NLRC in 5 days

- Article 128 — MR is available
- Article 129 — MR not available

- Article 128 — Replacement wages
- Article 129 — No replacement wages

Replacment Wages

If by reason of closure of business or suspension of business operations, affected workers lose their wages, they can seek payment of replacement wages under *Art. 128*; provided, their employer is found liable for violating health and safety standards. This liability does not attach if the suspension is ordered by some other government agency, like the DENR {*NAMAWU vs Marcopper Mining Corp., G.R. No. 174641, 11 Nov. 2008*}.

Ouster of Jurisdiction

An employer may seek dismissal of a case under *Art. 128* on the ground that employer-employee relationship has already ceased prior to taking of cognizance of the case by the RD, not after (*Rizal Security & Protective Services, Inc. vs Dir. Maraan, G.R. No. 124915, February 18, 2008*). An employer may also seek its referral to the LA based on issues not resolved during summary inspection, provided said issues are based on evidence not verifiable in the course of summary inspection. If verifiable, like payroll sheets, time sheets, SSS records, BIR records, said evidence will not justify referral. A clarificatory order issued by the Wage Board that was not available during inspection may support a motion for referral because it is not verifiable during summary inspection.

Res Judicata

An order of referral is not a judgment on the merits. Hence, it does not result in *res judicata* no matter how final it may be.

23
Art. 132 (R.A. 10151)

23.1. A night worker is one required to render not less than 7 consecutive hours of work between 10:00 p.m. and 6:00 a.m. the following day (as redefined by *D.O. 119-12*) except

FAMIS workers (Fishing industry, Agriculture, Marine Industry, Inter-island Navigation & Stock raising).

23.2. No person shall be assigned to night work unless medically cleared as fit for night work. On medical grounds, it is the right of a night worker to be transferred to a similar daytime job for which he is fit.

23.3. Women Night Workers' Rights:

(a) Right to alternative work before and after childbirth for a period of at least 16 weeks – which shall be divided between the time before and after childbirth;

(b) Additional period for alternative work if medically required as necessary for the health of mother or child. During said period, she shall not be dismissed except for a just or authorized cause; and she shall not lose her status, seniority and right to promotion.

Mockbar Problem 1: (Night Workers; FAMIS Exception; Night Shift Differential)

BlueWave Aquaculture Corporation operates a large commercial fish farm in Batangas. Its fish-feeding supervisors are required to work from 9:00 p.m. to 4:00 a.m., seven days a week, due to tidal and feeding cycles. The supervisors render seven (7) consecutive hours between 10:00 p.m. and 6:00 a.m.

After the issuance of D.O. 119-12 implementing the Night Workers Act, the supervisors demanded:

1. Night shift differential under Art. 86 of the Labor Code;
2. Health assessments and mandatory facilities applicable to night workers;
3. Transfer to day work due to health risks associated with night shifts.

BlueWave refused, arguing that fish farming falls under the "Fishing Industry" excluded category and is therefore part of the FAMIS sectors exempt from D.O. 119-12 coverage.

The workers filed a complaint before DOLE.

Resolve: (any of these questions may be asked)

(1) Are the fish-feeding supervisors "night workers" under D.O. 119-12?
(2) Are they entitled to night shift differential under Article 86?
(3) Are they entitled to the special protections granted to night workers under D.O. 119-12?

ALAC Answers

I. Whether the supervisors are "Night Workers" under D.O. 119-12.

No.

D.O. 119-12 defines a night worker as one required to render not less than seven (7) consecutive hours of work between 10:00 p.m. and 6:00 a.m. the following day. However, the Order expressly excludes workers in FAMIS sectors: fishing industry; agriculture industry maritime industry; inter-island navigation; and stock raising. These sectors remain governed by pre-existing Labor Code provisions.

The fish-feeding supervisors render seven consecutive hours between 10:00 p.m. and 6:00 a.m., thus satisfying the temporal requirement. However, fish farming constitutes part of the fishing or agricultural sector. As such, they fall under the exception.

Accordingly, while they meet the technical definition of night workers, D.O. 119-12 does not apply to them because they belong to an exempt sector.

2. Whether they are entitled to Night Shift Differential

Yes.

Art. 86 of the Labor Code requires that every employee be paid a night shift differential of not less than ten percent (10%) of his regular wage for each hour of work performed between 10:00 p.m. and 6:00 a.m. Art. 82 does not exclude supervisors unless their functions indicate that they are officers or members of the managerial staff.

There being no facts to show that they belong to any of the excluded classes, the supervisors are deemed covered.

Therefore, they are entitled to the benefit.

Note:

Under Art. 82 of the Labor Code, supervisory employees are not per se excluded from labor standards on hours of work, rest periods, and overtime pay, since the law only expressly excludes managerial employees and officers or members of the managerial staff.

However, a supervisory employee may be excluded if he falls within the category of managerial staff, as determined by the nature of his functions, particularly if he:

- primarily performs work directly related to management policies,
- customarily exercises discretion and independent judgment, and
- regularly assists managerial employees.

As held in *National Sugar Refineries Corporation v. NLRC*, the controlling test is not the employee's title but the actual duties performed.

Thus, supervisory employees are generally covered by Art. 82, unless they qualify as managerial staff based on their functions.

3. Whether they are entitled to special Night Worker protections

No.

D.O. 119-12, which implements the Night Workers Act, excludes FAMIS sectors from its coverage. Thus, workers in fishing, agriculture, marine industry, inter-island navigation, and stock raising are not covered by the health assessments, transfer rights, and special facilities mandated for night workers under the Order.

Since fish farming falls within the fishing/agricultural sector, the supervisors are excluded from D.O. 119-12 protections such as mandatory health assessment and transfer rights.

Therefore, they are not entitled to special protections under D.O. 119-12.

Note: Does partial FAMIS coverage exempt the entire employment?

No. FAMIS exemption is activity-specific, not employer-wide.

The exemption under D.O. 119-12 applies to workers engaged in specified sectors or activities. It does not automatically exempt all employees of a company simply because the employer operates within a FAMIS sector. Labor standards protections are determined by the nature of work performed.

Illustration:

OceanHarvest operates both fishing and processing operations. Mr. Reyes performs two distinct functions offshore fishing supervision (FAMIS-covered) and onshore processing supervision (non-FAMIS). Thus, the exemption cannot blanket the entire employment relationship.

Hence, protections must be determined based on the nature of the specific assignment because partial FAMIS coverage does not exempt the entire employment.

24
Art. 134

Art. 134. Stipulation Against Marriage. – It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

24.1. Art. 134 is violated when there is **singling out of women** which amounts to direct discrimination (**disparate treatment**); otherwise, the indirect discrimination (**disparate impact**) would be a violation of the Full Protection Cause (*Star Paper Case, 2006*). No Couples Policy is not lawful, unless it amounts to a *bona fide* occupational qualification (BFOQ).

24.2. The BFOQ character of a qualification (no marriage/no couples policy) is evaluated based on: (a) legitimacy of its business purpose; (b) connection to the position of the employee; and (c) ability to enhance the employee's productivity.

24.3. Exogamy. The Dela Cruz-Cagampan vs One Network Bank, Inc., G.R. No. 217414, 13 October 2022). There was a direct violation of Art. 134 because the woman was singled out.

MCQ SET: DISCRIMINATION & BFOQ

Question 1

ABC Bank adopts a policy stating: "If two employees in the same branch marry, the female employee shall be required to resign."

Which is the most accurate statement?

A. The policy is valid as an exercise of management prerogative.
B. The policy is valid if fraud prevention is the objective.
C. The policy constitutes direct discrimination under Article 134.
D. The policy is valid if both employees consent.

Answer: C

Explanation: Singling out women for resignation constitutes direct discrimination (disparate treatment) under Article 134 of Presidential Decree No. 442. This was condemned in Star Paper Corporation v. Simbol and reaffirmed in Dela Cruz-Cagampan v. One Network Bank, Inc..

Question 2

A company adopts a "No Couples Policy" requiring either spouse (without specifying sex) to resign if they marry and work in the same department. The rule applies equally to men and women. Which is correct?

A. The policy is automatically valid.
B. The policy is automatically void.
C. The policy is valid only if justified by a BFOQ.
D. The policy is valid because it is gender-neutral.

Answer: C

Explanation: A no-couples policy is not per se illegal, but it must pass the strict BFOQ test under Star Paper. Gender neutrality alone does not make it valid.

Question 3

Which of the following BEST describes indirect discrimination (disparate impact)?

A. A rule that explicitly burdens women.
B. A rule that appears neutral but disproportionately affects women.
C. A rule requiring women to resign upon marriage.
D. A rule expressly prohibiting women from employment.

Answer: B

Explanation: Indirect discrimination occurs when a neutral policy disproportionately affects women, violating the Full Protection Clause.

Question 4

Which of the following is NOT required to establish a valid BFOQ?

A. Legitimate business purpose
B. Reasonable connection between qualification and job
C. Proof that all or substantially all affected employees cannot perform the job

without the qualification
D. Employer convenience

Answer: D

Explanation: Employer convenience is NOT a valid basis for BFOQ. The qualification must be strictly necessary to business operation.

Question 5

A bank requires a female employee to resign upon marriage to a co-employee, but allows the male employee to remain. This is:

A. Indirect discrimination
B. Direct discrimination
C. Valid BFOQ
D. Legitimate management prerogative

Answer: B

Explanation: This is classic direct discrimination (disparate treatment) because the rule explicitly targets women, as held in Dela Cruz-Cagampan.

Question 6

Which constitutional principle reinforces Article 134 in discrimination cases?

A. Due Process Clause
B. Equal Protection Clause
C. Full Protection to Labor Clause
D. Freedom of Contract

Answer: C

Explanation: The Full Protection Clause strengthens anti-discrimination policies in employment.

Question 7

Which statement is TRUE regarding BFOQ?

A. It is liberally construed in favor of employers.
B. It may be based on stereotypes.
C. It is strictly construed against the employer.
D. It applies automatically to banks.

Answer: C

Explanation: BFOQ is strictly construed and must be proven by the employer.

Bar Tip:

If you see:

- "Female employee required to resign" → Direct discrimination.
- "Neutral rule affecting mostly women" → Indirect discrimination.
- "No marriage policy" → Analyze under BFOQ.
- "Singling out women" → Automatic violation of Article 134.

25
Art. 135; 136-152

Art. 135. Prohibited Acts. – It shall be unlawful for any employer:

(1) To deny any woman employee the benefits provided for in this Chapter or to discharge any woman employed by him for the purpose of preventing her from enjoying any of the benefits provided under this Code;
(2) To discharge such woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy;
(3) To discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant.

Absences which are pregnancy-related, even if the dates on which a pregnant employee was absent do not correspond to the dates on her explanatory medical certificates, do not amount to gross and habitual neglect of duty (*Del Monte Phils. v. Lolita Velasco, G.R. No. 153477, 6 March 2007*) .

Note: The provisions of domestic helpers have been repealed by RA 10361, Batas Kasambahay. RA 10361 governs *kasambahays* or domestic workers performing household work. However**, family drivers are excluded from its coverage.** The New Civil Code governs family drivers, particularly Articles 1689–1699 (Household Service). These provisions regulate:

- Compensation
- Termination

- Obligations of employer and household worker

Jurisprudential Clarification

In **Atienza v. Saluto**, the Supreme Court clarified that when the worker does not fall within the statutory definition of *kasambahay* under *RA 10361*, the governing law is the Civil Code, not the Labor Code or RA 10361. A family driver employed for household purposes falls under Civil Code household service provisions.

Summary Distinction

Worker	Governing Law
Kasambahay (cook, yaya, gardener, etc.)	RA 10361
Family Driver	Civil Code (Arts. 1689–1699)
Regular company driver (commercial employer)	Labor Code

Bar Rule

First determine classification:

- If domestic worker under RA 10361 → apply Kasambahay Law.
- If family driver for household → Civil Code governs.
- If driver employed by business → Labor Code governs.

Note: Special Groups of Workers will be lectured on/integrated in the Mockbar exercises.

Art. 153

Art. 153. Distribution of Homework. – For purposes of this Chapter, the "employer" of homeworkers includes any person, natural or artificial who, for his account or benefit, or on behalf of any person residing outside the country, directly or indirectly, or through an employee, agent contractor, sub-contractor or any other person: (1) Delivers, or causes to be delivered, any goods, articles or materials to be processed or fabricated in or about a home and thereafter to be returned or to be disposed of or distributed in accordance with his directions; or (2) Sells any goods, articles or materials to be processed or fabricated in or about a

home and then rebuys them after such processing or fabrication, either by himself or through some other person.

26.1. Types of Industrial Homework:

(a) Delivery Type. The principal delivers goods, articles or materials to the homeworker, who delivers back the finished products or distributes them in accordance with the instructions of the former. In either case, the latter is entitled to his wages. The principal has the right to reject the work or require that it be redone.

It is industrial homework which arises when a principal delivers goods, articles or materials to a homeworker for purpose of fabrication or processing at home or about the premises of his home; subject to the duty of the latter to deliver the finished products to the former or distribute them in accordance with his instructions – subject to the right of the worker to compensation, as well as the right of the employer to reject the work or order it to be redone.

(b) Sale Type. The principal sells goods, articles or materials to the homeworker for processing or fabrication. The latter sells his work output to the former.

It is industrial homework which arises when the principal sells goods, articles or materials to a homeworker for processing or fabrication at home or about the premises of his home - whereby the latter sells the finished products to the former.

26.2. Rights (D.O. 5, s. 1995)

(a) Security of tenure;
(b) Self-organization; and
(c) SSS coverage

Rights:

27
Art. 163

> **Art. 163. Emergency Medical and Dental Services. – It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of: (a) The services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case, the services of a graduate first-aider shall be provided for the protection of workers, where no registered nurse is available. The Secretary of Labor and Employment shall provide by appropriate regulations the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order, hazardous workplaces for purposes of this Article; (b) The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and (c) The services of a full-time physician, dentist and a full-time registered nurse as well as a dental clinic and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300).**

The employer is not required to hire nurses and doctors as regular employees to comply with the duty to provide medical services to its employees. They can be engaged on retainership basis only (*Singco, et al. v. Shangri-Las Mactan Island Resort, et al., 4 March* 2009), under fixed-term contracts, or as independent contractors. What matters is that the employer complies with its duty to provide medical attention to its employees.

28
Art. 167

> **Art. 167. Assistance of Employer. – It shall be the duty of any employer to provide all the necessary assistance to ensure the adequate and immediate medical and dental attendance and treatment to an injured or sick employee in case of emergency.**

Invocation of Art. 161 (now Art. 167) in a claim for moral and exemplary damages based on alleged commission of tortious acts amounting to violation of Art. 161 does not give the LA jurisdiction over said claims. Per material allegations and prayer for relief, the claim is for the regular court to determine (*Tolosa v. NLRC, 10 April 2003*).

Labor Arbiter vs RTC

Rule: Jurisdiction is determined by the material allegations and the principal relief sought — not by the statute cited. Memorize this. Write this. Use this "Quick Decision Tree"

Step 1: Is there an employer–employee relationship?
If NO → RTC
If YES → Proceed

Step 2: What is the MAIN cause of action?

If the case is about…	**Forum**
Illegal dismissal	Labor Arbiter
ULP	Labor Arbiter
Reinstatement	Labor Arbiter
Backwages	Labor Arbiter
Unpaid wages (Art. 116)	Labor Arbiter / DOLE
Overtime / NSD / 13th month	Labor Arbiter / DOLE
Damages due to negligence (Art. 2176)	RTC
Workplace death due to alleged fault	RTC

Article 116 (now Art. 167), LC vs Article 2176, NCC

	Art. 167, Labor Code	**Art. 2176 Civil Code**
Protects	Wages	Persons
Nature	Labor standards	Quasi-delict
Fault required?	No	Yes
Primary remedy	Payment of wages	Damages
Forum	Labor Arbiter	RTC

Tolosa Doctrine

✔Invoking a Labor Code article does NOT automatically confer LA jurisdiction.

✔If the prayer is for moral/exemplary damages based on tort → RTC.

✔Look at substance, not label.

Heirs of Andag v. DMC Construction Equipment Resources
G.R. No. 244361, 13 July 2020

The Supreme Court's resolution in the case of the Heirs of Reynaldo A. Anda g vs. DMC Construction Equipment Resources, Inc. affirmed that claims for damag es based on employer negligence leading to an employee's death, such as those in the case of Reynaldo Andag, are cognizable by regular courts and not by the Natio nal Labor Relations Commission (NLRC). This ruling clarifies the jurisdictional bo undaries of workplace torts and labor claims in the Philippines, ensuring that clai ms for damages due to employer negligence are adjudicated in civil courts rather than labor tribunals.

Note:

✔Employer-employee relationship alone is NOT enough.

✔Workplace death + negligence claim → RTC.

✔Labor tribunal jurisdiction requires labor standards or labor relations issue.

Bar Traps

Trap #1

"Violation of Labor Code provision" → Do NOT assume Labor Arbiter jurisdiction.

Trap #2

"Employer negligence caused emotional distress" → Likely Art. 2176 → RTC.

Trap #3

Damages claimed in illegal dismissal case → Still Labor Arbiter (incidental damages).

Damages Test

Ask: Are damages:

A. INCIDENTAL to labor dispute? → Labor Arbiter.

B. PRIMARY cause of action? → RTC.

10-Second Bar Memory Formula

Wages = Labor
Work relationship dispute = Labor
Wrongful damage = Civil

Model Bar Sentence (Memorize)

While the existence of an employer-employee relationship is necessary, jurisdiction ultimately depends on the nature of the cause of action and the relief sought. Where the complaint primarily seeks damages for negligence under Article 2176 of the Civil Code, jurisdiction lies with the regular courts, notwithstanding invocation of a Labor Code provision.

Final Bar Checklist

Before answering jurisdiction:

☐What is the main injury?

☐What is the main relief?

☐Is there illegal dismissal?

☐Is there wage claim?

☐Is negligence the principal allegation?

☐Are damages incidental or primary?

If negligence is primary → RTC.

29

Arts. 197-199

Art. 197. Temporary Total Disability.– (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: the daily income benefit shall not be less than Ten Pesos nor more than Ninety Pesos,163 nor paid for a continuous period longer than one hundred twenty days, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

(b) The payment of such income benefit shall be in accordance with the regulations of the Commission.

Art. 198. Permanent Total Disability. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: Provided, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

(b) The monthly income benefit shall be guaranteed for five years, and shall be suspended if the employee is gainfully employed, or recovers from his permanent total disability, or fails to present himself for examination at least once a year upon notice by the System, except as otherwise provided for in other laws, decrees, orders or Letters of Instructions.166 (c) The following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules; (2) Complete loss of sight of both eyes; (3) Loss of two limbs at or above the ankle or wrist; (4) Permanent complete paralysis of two limbs; (5) Brain injury resulting in incurable imbecility or insanity; and (6) Such cases as determined by the Medical Director of the System and approved by the Commission. (d) The number of months of paid coverage shall be defined and approximated by a formula to be approved by the Commission.

Art 199. Permanent Partial Disability. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall, for each month not exceeding the period designated herein, be paid by the System during such a disability an income benefit for permanent total disability….

Meaning of "*disability is determined based on law, contract and evidence*" under Crew Claims Law: Law is Arts. 197-198 which supply the 120/240 Day Rule; contract is the POEA-SEC; and evidence is medical opinion. Bottomline: Disability must be graded (POEA-SEC) within 120/240 days (PD 442) based on the seafarer's medical records and science.

RECONCILING LABOR CODE & POEA-SEC
(Crew Claims Disability Doctrine)

Governing authorities:

- Presidential Decree No. 442 (Arts. 197–199)
- POEA Standard Employment Contract
- Vergara v. Hammonia Maritime Services, Inc.
- Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.

The Apparent Tension : The Labor Code (Arts. 197–198) provides:

- Temporary total disability: 120 days
- Extendible to 240 days
- No final assessment within period → PTD by operation of law

The POEA-SEC provides:

- Schedule of disability grades (1–14)
- Compensation amounts based on grading
- Company doctor assessment
- Third doctor rule

So the question: If POEA-SEC allows grading, how does the 120/240 rule fit?

The Supreme Court's Reconciliation

The Court harmonized both in **Vergara**, later clarified in **Elburg**.

The key reconciliation:

The Labor Code governs the period within which disability must be assessed. The POEA-SEC governs the grading and amount of compensation.

They operate together — not in conflict.

How They Fit Together:

STEP 1 — Start with Labor Code

Upon repatriation:

✔Seafarer is temporarily totally disabled.

✔Employer has 120 days to issue final assessment.

✔May extend to 240 days if justified.

If no valid final assessment within period → Permanent Total Disability (PTD).

This is procedural and temporal control.

STEP 2 — Apply POEA-SEC

Within the 120/240 period:

✔Company doctor must issue disability grading.

✔Grading determines amount of compensation.

✔Seafarer may contest via third doctor.

This is substantive and monetary control.

THE MASTER FORMULA

What is governed?	**Source**
Duration of disability	Labor Code (120/240 rule)
Grading (1–14)	POEA-SEC
Amount payable	POEA-SEC
Medical basis	Evidence

WHEN DOES PTD ARISE?

PTD arises if:

1. No final assessment within 120 days (without valid extension);
2. No final assessment within 240 days;
3. Seafarer permanently unfit for sea duty;
4. Assessment is incomplete or not definitive.

Even if graded partial, courts may declare PTD if seafarer cannot resume sea duties.

COMMON BAR MISCONCEPTIONS

❌"POEA controls everything."

Wrong. The Labor Code supplies the 120/240 framework.

❌"After 120 days, automatic PTD always."

Not if valid extension to 240 days exists.

❌"If graded partial, cannot be PTD."

Wrong. Functional incapacity may result in PTD despite lower grade.

CLEAN BAR SYNTHESIS STATEMENT

The Labor Code and the POEA-SEC are not in conflict. The Labor Code supplies the 120/240-day period within which disability must be finally assessed, while the POEA-SEC provides the grading schedule and compensation scheme. Failure to issue a valid final medical assessment within the statutory period results in permanent total disability by operation of law.

VISUAL TIMELINE

Repatriation
⬇
Day 1–120 → TTD
⬇
If justified → extend to Day 240
⬇
Final assessment issued?

- YES → Apply POEA grade
- NO → PTD by law

BOTTOMLINE

120/240 = TIME RULE
POEA = MONEY RULE
Medicine = FACT RULE

All three must align.

Updated Crew Claims Rule

(Post-Elburg Refinements)

I. The 120/240 Rule — Now More Structured

The Court in Elburg clarified the framework:

Rule 1 — 120 Days is the Default

From repatriation:

- Seafarer is considered temporarily totally disabled (TTD).
- Company-designated physician has **120 days** to issue a final medical assessment.

If none is issued → PTD results by operation of law.

NOTE: Start of the 120 Days

The Apparent Conflict

Some Supreme Court decisions state: "within 120 days from the time the seafarer reported to the company-designated physician." This language comes from:

- Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.
- Later cases that reproduce Elburg's bullet formulation

If read literally, this suggests the clock starts from first consultation**.**

But other decisions clarify: The 120/240 days are reckoned from the date of repatriation for medical treatment, even if that does not coincide with first consultation. This clarification appears in:

- Pastrana v. Bahia Shipping Services, Inc.
- C.F. Sharp Crew Management, Inc. v. Daganato
- Mutia v. C.F. Sharp Crew Management, Inc.

What is controlling today?

The controlling rule (post-Pastrana): The 120-day period is reckoned from medical repatriation, not from a later date of consultation. The "reported to the physician" phrase must be read as part of the post-repatriation process, not as a new reckoning point.

Why repatriation controls:

Upon medical repatriation:

1. The seafarer is deemed temporarily totally disabled.
2. The employer's duty to assess disability is triggered.
3. The 120-day clock begins.

If further treatment is needed → extendible to 240 days.

Failure to issue a valid final assessment within the allowable period → Permanent Total Disability (PTD) follows by operation of law.

When can date of medical reporting matter?

Only as a factual defense**.** If delay in consultation is attributable to the seafarer (e.g., refusal to report, non-cooperation), the employer may invoke that as justification. But this does **not** change the doctrinal reckoning point.

Master Synthesis:

Although Elburg uses the phrase "from the time the seafarer reported to the company-designated physician," subsequent jurisprudence, beginning with Pastrana and reiterated in later cases, clarifies that the 120/240-day periods are reckoned from the date of medical repatriation for treatment, even if that date does not coincide with the first consultation. The employer's obligation to issue a final and definitive medical assessment is triggered upon medical repatriation.

Exam Trap

If the problem states:

- Injury onboard: March 1
- Repatriation: March 15
- First consultation: March 25

Clock starts: March 15**,** not March 25.

Final Memory Rule

Repatriation triggers the clock. Consultation implements the process.

<u>Rule 2</u> — Extension to 240 days is not automatic

Extension is allowed ONLY IF:

1. Further medical treatment is necessary;
2. The company-designated physician gives a valid justification;
3. The assessment is completed within 240 days.

If no proper justification → 120-day rule applies strictly. This prevents employers from using 240 days as an automatic buffer.

What counts as a valid final assessment?

Post-Elburg jurisprudence tightened the definition. A valid assessment must be:

✔Definitive

✔Categorical

✔Supported by medical findings

✔Issued within 120/240 days

✔State fitness or specific disability grade

<u>Clue</u>: FCCD Assessment (Final, Conclusive, Categorical & Definitve)

A mere statement like:

"Continue therapy"
"Rehabilitation ongoing"
"For further evaluation"

Is NOT a final assessment.

Functional Incapacity Doctrine

Even if graded partial (e.g., Grade 10), courts may declare PTD if:

- Seafarer cannot return to sea duty;
- Work restrictions prevent sea service;
- Disability prevents performance of customary work.

Thus, disability is not purely mechanical grading.

Third Physician Rule — Now Strictly Enforced

Procedure:

1. Company-designated doctor issues assessment;
2. Seafarer consults personal doctor;
3. If conflicting → third doctor jointly chosen.

Update: Foscon Guidelines and 2025 NLRC Rules of Procedure. The 2025 NLRC Rules of procedure, which took effect of 13 January 2026, requires selection of a third physician before the filing of a complaint. This may have affected the Foscon Guidelines which contemplates post-complaint selection, *i.e.,* selection before the Labor Arbiter. Under the new rules, a case cannot reach the Labor Arbiter unless a third physician has been selected.

Failure to comply may:

- Weaken seafarer's claim;
- Or invalidate employer's assessment (if no proper final assessment exists).

But third doctor rule applies only if a valid company assessment exists.

If no final assessment within 120/240 days → PTD outright.

Possible Post Elburg Bar Pitfalls

✗Assuming 240 days always applies

Not unless justified.

✗Accepting vague medical updates

Assessment must be definite.

✗Ignoring work capability

PTD may exist even with partial grading.

✗Automatically favoring seafarer's doctor

Third doctor rule controls when properly invoked.

Updated Bar Synthesis (Memorize)

Under prevailing jurisprudence, the Labor Code supplies the 120/240-day framework within which a final medical assessment must be issued. The POEA-SEC governs the grading and compensation. A valid final assessment must be definite, categorical and conclusive. Absent such assessment within the statutory period, permanent total disability arises by operation of law.

Current Trend

Recent rulings show:

- Courts scrutinize employer compliance strictly;
- Employers lose if documentation is incomplete;
- Seafarers lose if they prematurely file case before assessment period ends (without showing unjustified delay).

Balance is now procedural compliance + medical substance.

Final Master Formula

120 days → default
240 days → justified extension
No valid assessment → PTD
Valid assessment → apply POEA grading
Functional incapacity may override grade

II. Pre-Vergara vs Post Elburg

This is a high-yield bar distinction**.** Below is a structured doctrinal comparison of:

- Pre-Vergara doctrine
- Post-Vergara framework
- Post-Elburg refinements

Anchor cases:

- Crystal Shipping, Inc. v. Natividad
- Vergara v. Hammonia Maritime Services, Inc.
- Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.

PRE-VERGARA DOCTRINE (Crystal Shipping Era)

Governing View: After 120 days of inability to work → disability becomes permanent and total**.**

Key Case: **Crystal Shipping**

The Court held: If a seafarer is unable to perform customary sea duties for more than 120 days, he is deemed permanently and totally disabled.

Characteristics:

- 120 days was treated as rigid.
- No structured 240-day extension doctrine.
- Heavy emphasis on inability to work.
- Less procedural focus on company-doctor compliance.
- Functional incapacity was dominant test.

Effect:

Pro-seafarer approach. Employers frequently lost if treatment exceeded 120 days.

VERGARA DOCTRINE (2008)

Structural Harmonization

What Vergara Did:

It reconciled:

- Labor Code, Arts. 197–198 and
- POEA-SEC grading system

It introduced the 120/240 Rule**.**

Framework Introduced:

1. Upon repatriation → seafarer is temporarily totally disabled.
2. Employer has 120 days to assess.
3. If further treatment needed → may extend to 240 days**.**
4. If no valid final assessment within allowed period → PTD by operation of law.

Major Shift:

120 days is no longer automatically PTD. 240-day extension allowed if justified. This balanced employer and seafarer interests.

POST-ELBURG REFINEMENT (2015). Elburg clarified ambiguities in Vergara.

Elburg Clarifications:

1. 240 days is NOT automatic.
   - Must be medically justified.
   - Employer must show continued treatment.
2. Assessment must be:
   - Definitive
   - Categorical
   - Within 120/240 period
3. If no valid assessment within period → PTD.
4. Third doctor rule applies only if a valid company assessment exists.

Major Emphasis: Procedural compliance became critical.

Employers lose if:

- Assessment is vague;
- Issued late;
- Unsupported by records.

SIDE-BY-SIDE COMPARISON

	Pre-Vergara	**Vergara**	**Post-Elburg**
120 Days	Automatic PTD	Initial TTD period	Initial TTD period
240 Days	Not structured	Allowed if justified	Strictly justified
Assessment requirement	Less emphasized	Required	Strictly enforced
Functional incapacity	Dominant test	Still relevant	Still relevant
Employer compliance	Minimal structure	Introduced structure	Highly scrutinized
Doctrine bias	Pro-seafarer	Balanced	Procedural rigor

CURRENT CONTROLLING DOCTRINE

We are in the Post-Elburg era**:**

✔120 days = default

✔240 days = justified extension

✔No valid assessment = PTD

✔POEA grade applies if valid

✔Functional incapacity may override grading

BAR-LEVEL SYNTHESIS STATEMENT

Prior to Vergara, disability exceeding 120 days was generally deemed permanent and total under Crystal Shipping. Vergara harmonized the Labor Code and the POEA-SEC by introducing the 120/240-day rule. Elburg later clarified that extension to 240 days is not automatic and that a valid, definite medical assessment must be issued within the allowable period; otherwise, permanent total disability arises by operation of law.

ONE-LINE MEMORY TOOL

Pre-Vergara → 120 = PTD
Vergara → 120/240 structure
Elburg → 240 must be justified + strict compliance

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Art. 218

Art. 218. [211] Declaration of Policy. – A. It is the policy of the State:

(a) To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes;

(b) To promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development;

(c) To foster the free and voluntary organization of a strong and united labor movement;

(d) To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;

(e) To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes;

(f) To ensure a stable but dynamic and just industrial peace; and

(g) To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.

B. To encourage a truly democratic method of regulating the relations between the employers and employees by means of agreements

freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or other terms and conditions of employment, except as otherwise provided under this Code.

30.1. **Question**

(a) What is the principle of co-management?
(b) Is there a legal basis for its observance in the Philippines?

Answer

(a) Co-management is codetermination, or the principle of allowing workers to determine business policy and to run the business with its owner.

(b) There is no legal basis for its observance in the Philippines. Neither Sec. 3, Art. XIII of the Constitution allows it because the participation which it guarantees is the opposite of codetermination; nor does Art. 218 of the Labor Code allow it because the participation it guarantees is no more than that guaranteed by the Constitution. 29.1. Employer includes one acting in the interest of an employer, directly or indirectly (par. e); however, the solidary liability of a corporate officer is determined with Sec. 31, Corporation Code and not with Art. 219(e).

30.2. Employee includes one whose work has ceased as a result of or in connection with a current labor dispute or ULP; however, to be able to exercise labor relations rights (e.g., to vote in a CE), he must contest his dismissal before a forum of appropriate jurisdiction (VA if there is an express stipulation in the CBA; otherwise, LA).

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Art. 219

Art. 219. [212] Definitions. – (a) "Commission" means the National Labor Relations Commission or any of its divisions, as the case may be, as provided under this Code.

(b) "Bureau" means the Bureau of Labor Relations and/or the Labor Relations Divisions in the regional offices established under Presidential Decree No. 1, in the Department of Labor.

(c) "Board" means the National Conciliation and Mediation Board established under Executive Order No. 126.

(d) "Council" means the Tripartite Voluntary Arbitration Advisory Council established under Executive Order No. 126, as amended.

(e) "<u>Employer</u>" includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

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

(g) "Labor organization" means any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment.

(h) "Legitimate labor organization" means any labor organization duly registered with the Department of Labor and Employment, and includes any branch or local thereof.

(i) "Company union" means any labor organization whose formation, function or administration has been assisted by any act defined as unfair labor practice by this Code.

(j) "Bargaining representative" means a legitimate labor organization or any officer or agent of such organization whether or not employed by the employer.

(k) "Unfair labor practice" means any unfair labor practice as expressly defined by this Code.

(l) "Labor dispute" includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(m) "Managerial employee" is one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent 76 judgment. All employees not falling within any of the above definitions are considered rank and-file employees for purposes of this Book.

(n) "Voluntary Arbitrator" means any person accredited by the Board as such, or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the Collective Bargaining Agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as Voluntary Arbitrator upon the written request and agreement of the parties to a labor dispute.

(o) "Strike" means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.

(p) "Lockout" means any temporary refusal of an employer to furnish work as a result of an industrial or labor dispute.

(q) "Internal union dispute" includes all disputes or grievances arising from any violation of or disagreement over any provision of the constitution and by laws of a union, including any violation of the rights and conditions of union membership provided for in this Code.

(r) "Strike-breaker" means any person who obstructs, impedes, or interferes with by force, violence, coercion, threats, or intimidation any peaceful picketing affecting wages, hours or conditions of work or in the exercise of the right of self-organization or collective bargaining.

(s) "Strike area" means the establishment, warehouses, depots, plants or offices, including the sites or premises used as runaway shops, of the employer struck against, as well as the immediate vicinity actually used by picketing strikers in moving to and fro before all points of entrance to and exit from said establishment.

31.1. Labor Dispute .... "regardless of whether the disputants stand in the proximate relation of employer and employee"; hence, there can be a labor dispute over which a labor tribunal has jurisdiction even outside employer-employee relationship (*e.g.,* intra-union and inter -union disputes).

Illustration:

MERALCO entered into a service contract with an independent contractor for janitorial and maintenance services. Several workers deployed by the contractor claimed that MERALCO was their true employer, alleging labor-only contracting.

After their contracts were terminated by the contractor, the workers filed a complaint before the Labor Arbiter for regularization, unpaid benefits, and damages against both the contractor and MERALCO.

While the case was pending, MERALCO filed a separate complaint before the Regional Trial Court (RTC) for damages and injunction against the workers, alleging that they staged pickets and committed acts that disrupted company operations.

MERALCO argued that:

1. There was no employer-employee relationship between it and the workers;
2. Therefore, there was no labor dispute;
3. The RTC had jurisdiction over its complaint for damages.

The workers moved to dismiss the RTC case, contending that the controversy constituted a labor dispute within the jurisdiction of labor authorities.

Resolve:

(a) Whether the absence of an employer-employee relationship negates the existence of a labor dispute;
(b) Whether the RTC has jurisdiction over MERALCO's complaint for damages and injunction.

Answer:

I. Whether the Absence of Employer-Employee Relationship Negates a Labor Dispute

No. The absence of a direct employer-employee relationship does not negate the existence of a labor dispute.

Article 219(c) of the Presidential Decree No. 442 defines a labor dispute as: Any controversy concerning terms or conditions of employment or representation of persons in negotiating employment terms, regardless of whether the disputants stand in the proximate relation of employer and employee.

The workers' complaint involved allegations of labor-only contracting and claims for regularization and unpaid benefits. These issues concern terms and conditions of employment. Thus, even if MERALCO denies being the employer, the controversy is a labor dispute.

A labor dispute exists despite MERALCO's denial of employer status.

II. Whether the RTC Has Jurisdiction

No. The RTC has no jurisdiction.

When the controversy constitutes a labor dispute, jurisdiction belongs to labor tribunals under the Labor Code. Regular courts may not assume jurisdiction over matters falling within the exclusive domain of labor authorities.

MERALCO's action for damages and injunction stemmed from the workers' assertion of employment rights and alleged labor-only contracting. The acts complained of were connected to the labor controversy. Thus, the RTC cannot assume jurisdiction.

Jurisdiction lies with labor authorities, not the RTC.

BAR DOCTRINAL TAKEAWAY

> A labor dispute may exist even if the employer denies the existence of an employer-employee relationship. What controls is whether the controversy concerns employment conditions. Civil courts cannot assume jurisdiction over disputes arising from such controversies.

31.2. Labor Organization ... "exists in whole or in part for the purpose of collective bargaining or dealing with the employer concerning terms and conditions of employment." Managers can organize for mutual aid and protection, but not for purposes of collective bargaining or dealing with the employer. AIM Faculty Association filed a CE petition; hence, AIM moved to dismiss the petition and filed a CR cancellation based on the union's all-manager membership (*AIM v. AIM Faculty Association, G.R. No. 207971, 23 Jan. 2017*).

However, the issue of WON said members are really managers is still being determined in *G.R. No. 197089* which was commenced by the cancellation case.

MCQs BASED ON ARTICLE 219 DEFINITIONS

1. Which best describes a "labor dispute" under Article 219?

A. A controversy strictly between employer and employee;
B. A dispute involving a registered labor union;
C. Any controversy concerning terms or conditions of employment, regardless of proximate EER;
D. Any strike declared by employees.

Answer: C

2. A group of workers formed an association to demand better wages but has not yet registered with DOLE. What is their status?

A. They are not a labor organization;
B. They are a labor organization but not a legitimate labor organization;
C. They are automatically a legitimate labor organization;
D. They are an independent contractor association.

Answer: B

3. Which entity may validly declare a strike?

A. Any group of employees;
B. Any labor organization;
C. A legitimate labor organization;
D. A majority of workers acting individually.

Answer: C

4. During a lawful strike, employees who stop working:

A. Automatically lose employee status;
B. Are deemed resigned;
C. Remain employees under Article 219;
D. Become independent contractors.

Answer: C

5. Which situation qualifies as a "strike"?

A. One employee refusing overtime work;
B. Employees staging a one-day work stoppage due to unfair labor practice;
C. Workers protesting a national political issue unrelated to employment;
D. Employees resigning en masse.

Answer: B

6. Under Article 219, an "employer" includes:

A. Only the corporation;
B. Only the owner of the business;
C. Any person acting in the interest of the employer;
D. Only the HR department.

Answer: C

7. A dispute between rival unions over representation rights is:

A. Not a labor dispute;
B. A civil dispute under the RTC;
C. A labor dispute under Article 219;
D. A criminal matter.

Answer: C

8. Collective bargaining refers to:

A. Mandatory agreement on wages;
B. Negotiation in good faith regarding terms and conditions of employment;
C. Automatic salary increases;
D. Any discussion between employer and employees.

Answer: B

9. Employees protest a new tax law affecting fuel prices and stage a walkout. This is:

A. A valid strike;
B. A labor dispute;
C. A political protest not covered as a strike under Article 219;
D. An unfair labor practice.

Answer: C

10. Which statement is correct regarding "employee" under Article 219?

A. Only currently working individuals are employees;
B. A dismissed worker is no longer an employee;
C. An employee includes one whose work ceased due to a labor dispute'
D. Independent contractors are employees.

Answer: C

Bar Tip

Watch for these traps:

- Labor dispute is broader than EER.
- Labor organization ≠ legitimate labor organization.
- Strikers remain employees.
- Only LLO may declare a valid strike.
- Political protest ≠ strike.

Problem 1 — Employer

Delta Manufacturing's Plant Manager issued a memorandum terminating three union officers for alleged insubordination. The union filed an unfair labor practice (ULP) case against both Delta Manufacturing and the Plant Manager personally. The Plant Manager argues that she is not the employer and cannot be held liable.

Resolve.

Answer:

The corporation is the employer; the manager may be considered its agent.

Under Article 219, "employer" includes any person acting in the interest of an employer, directly or indirectly. The Plant Manager acted on behalf of the corporation; thus, her acts are considered acts of the employer. Personal liability attaches only upon proof of bad faith or malice. Therefore, the corporation is liable. The manager may be impleaded but personal liability depends on bad faith.

Problem 2 - Employee

Workers of Omega Foods declared a strike after bargaining deadlock. The employer permanently replaced them and claimed they ceased to be employees upon striking.

Resolve.

Answer:

The strikers remain employees. Article 219 defines "employee" to include one whose work has ceased due to or in connection with a labor dispute. The workers stopped working due to a labor dispute. They retain employee status during a lawful strike. Therefore, they remain employees unless validly dismissed under law.

Problem 3 – Labor Dispute

Two rival unions in Zenith Corporation dispute representation rights. The employer files a case in the RTC arguing that there is no labor dispute because the controversy is between unions.

Resolve.

Answer:

There is a labor dispute. Article 219 defines labor dispute broadly as any controversy concerning terms or conditions of employment or representation, regardless of whether disputants stand in proximate EER. A representation dispute between unions falls squarely within the definition. Hence, jurisdiction lies with labor authorities, not the RTC.

Problem 4 – Labor Organization

Employees formed the "United Workers Alliance" to negotiate wage increases but did not register with DOLE. The employer refuses to recognize them as a union.

Are they a labor organization?

Answer:

Yes, but not a legitimate labor organization. A labor organization is any union or association of employees existing for collective bargaining or dealing with employers concerning employment terms. The group was formed for wage negotiations; thus, it qualifies as a labor organization. However, without registration, it is not a legitimate labor organization.

Problem 4 – Legitimate Labor Organization

The same "United Workers Alliance" files a notice of strike before its registration is approved by DOLE. The employer claims the strike is illegal.

Resolve.

Answer:

The strike is defective. Only a legitimate labor organization (duly registered) may declare a valid strike. At the time of filing the notice of strike, the group was not yet registered; hence, it lacked legal personality. Hence, the strike is invalid.

Bar Synthesis

Definition	Key Exam Use
Employer	Determines liability & ULP responsibility
Employee	Protects strikers and dismissed workers
Labor Dispute	Determines jurisdiction & strike legality

Definition	Key Exam Use
Labor Organization	Identifies union status
Legitimate Labor Organization	Determines who may strike or bargain

32

Art. 229 vs. Art. 230

Art. 229. Appeal.– Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
(c) If made purely on questions of law; and
(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof. The Commission shall decide all cases

within twenty (20) calendar days from receipt of the answer of the appellee.

The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties. Any law enforcement agency may be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards or orders. 191 As amended by Sec. 12 of R.A. No. 6715 (1989).

Art. 230. Execution of Decisions, Orders, or Awards. – (a) The Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or Med Arbiter or Voluntary Arbitrator may, motu proprio or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring a sheriff or a duly deputized officer to execute or enforce final decisions, orders or awards of the Secretary of Labor and Employment or Regional Director, the Commission, the Labor Arbiter or Med-Arbiter, or Voluntary Arbitrator or panel of Voluntary Arbitrators. In any case, it shall be the duty of the responsible officer to separately furnish immediately the counsels of record and the parties with copies of said decisions, orders or awards. Failure to comply with the duty prescribed herein shall subject such responsible officer to appropriate administrative sanctions.

(b) The Secretary of Labor and Employment, and the Chairman of the Commission may designate special sheriffs and take any measure under existing laws to ensure compliance with their decisions, orders or awards and those of Labor Arbiters and Voluntary Arbitrators or panel of Voluntary Arbitrators, including the imposition of administrative fines which shall not be less than Five Hundred Pesos (P500.00) nor more than Ten Thousand Pesos (P10,000.00).

32.1. ***Sugarsteel Industrial Inc., et al. v. Albina, et al.,*** *G.R. No. 168749, 6 June 2016.* The grounds for appeal under Art. 229 need not be stated word for word in the appeal memorandum. The grounds "not supported by evidence" and "contrary to the facts obtaining" are equivalent to the first (*prima facie* abuse of discretion) and last (serious errors in the findings of facts) grounds stated under the provision.

32.2. **Reinstatement.** If ordered by the LA or VA, Art. 229 does not require a writ of execution because it is immediately executory. However, if ordered on appeal, a writ of execution is required by Art. 230.

Significance: There is no refusal to reinstate if reinstatement is ordered on appeal and no writ of execution has been issued; hence, reinstatement wages cannot be ordered.

32.3. VA's reinstatement order is immediately executory also because it is based on same Art. 229 which is a Full Protection provision (*Baronda v. CA, G.R. No. 161006, 14 Oct. 2015*).

Note: Portions of the decision not contested on appeal may be enforced (*2025 NLRC Rules of Procedure)*

Arts. 259 & 260

Art 259. Unfair Labor Practices of Employers. – It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self organization;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;

(e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: Provided, That the individual authorization required under Article 242, paragraph (o) of this Code222 shall not apply to the non-members of the recognized collective bargaining agent;

(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

Art. 260. Unfair Labor Practices of Labor Organizations. – It shall be unfair labor practice for a labor organization, its officers, agents or representatives:

(a) To restrain or coerce employees in the exercise of their right to self-organization. However, a labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership;

(b) To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or to terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members;

(c) To violate the duty, or refuse to bargain collectively with the employer, provided it is the representative of the employees;

(d) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of value, in the nature of an exaction, for services which are not performed or not to be performed, including the demand for fee for union negotiations;

(e) To ask for or accept negotiation or attorney's fees from employers as part of the settlement of any issue in collective bargaining or any other dispute; or

(f) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers, members of governing boards, representatives or agents or members of labor associations or organizations who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

33.1. The nature of ULP is that it is a violation of organizational right (**Eastern Telecommunications**).

33.2. **Violation of CBA,** *infra.*

33.3. **EER is an element of ULP** except under Art. 260 when the victim is a worker or union membership. The reason is the violator is a labor organization, not the employer.

(a) To be a ULP, the violation must be of the economic provisions; hence, if what is violated is the Grievance Machinery provision or Union Security Clause (political provisions), there is no ULP.

(b) For the LA to have jurisdiction, the violation of the economic provision/s must be gross or flagrant.

33.4. Important ULP Notes

ULPs Relating to the Right to Self-Organization. An employer commits ULP under Art. 259 when it:

1. Interferes, restrains, or coerces employees

    - Threatening dismissal if employees join a union
    - Surveillance of union meetings
    - Promising benefits to discourage unionization

2. Dominates or assists a labor organization

    - Creating a "company union"
    - Financing or controlling union activities

3. Discriminates to encourage or discourage union membership

    - Dismissing union officers
    - Refusing promotion due to union activity

4. Dismisses or prejudices an employee for filing ULP charges

ULPs Relating to the Duty to Collectively Bargain. An employer commits ULP when it:

1. Refuses to bargain collectively

    - Ignoring request for CBA negotiations
    - Refusing to meet in good faith

2. Engages in surface bargaining

    - Going through motions without intent to reach agreement

3. Violates the CBA

But note: Not all CBA violations are ULP**.** Under the law. only gross violations of the economic provisions of the CBA constitute ULP. A gross violation means:

✔Flagrant

✔Malicious refusal to comply

✔Bad faith

Ordinary CBA disputes → grievance machinery, not ULP.

ULPs Relating to Violation of CBA. Under Article 274 (formerly 261), CBA violations are generally resolved through grievance machinery and voluntary arbitration. Only gross violations become ULP.

Thus:

Ordinary violation goes to Grievance machinery
Gross violation is ULP case (LA or VA)

ULPs Relating to Labor Organizations. Labor organizations commit ULP under Art. 260 when they:

1. Restrain or coerce employees

   - Forcing membership
   - Threatening employees who refuse to join

2. Cause employer to discriminate

   - Demanding dismissal of non-union employees (outside union security clause)

3. Refuse to bargain collectively
4. Violate the CBA (grossly)
5. Demand excessive or illegal fees

QUICK CLASSIFICATION TABLE

Category	Employer ULP	Union ULP
Violation of Right to Organize	Yes	Yes
Duty to Bargain Violation	Yes	Yes
CBA violation (Economic)	Only if gross	Only if gross
Organizational Interference	Yes	Yes

Bar Traps

✕ Not every CBA violation is ULP. Must be gross and malicious violation of economic provision.

✕ Illegal dismissal ≠ automatically ULP. Must be motivated by anti-union animus.

✕ Refusal to sign CBA ≠ automatically ULP. Must show bad faith.

34
Art. 266 (No Injunction)

> **Art. 266. Injunction Prohibited. – No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Articles 218 and 264 of this Code.**

34.1. *Principle of the Strong Arm of Equity*. Injunction represents the strong arm of equity; hence, it should not be issued as a matter of course but on compelling grounds only, i.e., when there is a clear violation of a right *in esse,* and only when the courts have no means of protecting it except by issuing an injunctive order.

34.2. Rule XII, 2011 NLRC Rules of Procedure. The NLRC has three types of injunctive powers: (a) ordinary; (b) extraordinary (Rule XII); and (c) ancillary.
32.3. Art. 278 (*Doctrine of Great Breadth of Discretion; Incidental Jurisdiction*). In assumed cases, the SOLE can decide all issues between the parties arising from the same dispute.

34.3. **2025 NLRC Rules of Procedure**

Under the *2025 NLRC Rules of Procedure,* a party aggrieved by any act or resolution in a labor dispute may seek injunctive relief (TRO, preliminary injunction, or permanent injunction) by filing a verified application with supporting affidavits and documents and posting a cash bond as fixed by the NLRC. The injunctive relief is available to prevent

irreparable harm or preserve rights pending final adjudication, but it does not automatically suspend the underlying labor proceedings.

35
Art. 267

> **Art. 267. Exclusive Bargaining Representation and Workers' Participation in Policy and Decision-Making. – The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their employer.231 Any provision of law to the contrary notwithstanding, workers shall have the right, subject to such rules and regulations as the Secretary of Labor and Employment may promulgate, to participate in policy and decision-making processes of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare. For this purpose, workers and employers may form labor-management councils: Provided, That the representatives of the workers in such labor-management councils shall be elected by at least the majority of all employees in said establishment.**

For purpose of collective bargaining, the workers shall be represented by the EBR/SEBA. However, a group of workers can directly bring grievances to the employer. It does not follow, however, that any union (group of workers) can serve a notice to arbitrate on the employer. This is the exclusive right of the EBR/SEBA (*Tabigue v. Interco, G.R. No. 183335, 23 Dec. 2009).*

Illustration:

Harbor Operations Corporation (HOC) has a certified bargaining agent, the Harbor Workers Union (HWU), which is the duly recognized Sole and Exclusive Bargaining Agent (SEBA) of the rank-and-file employees. A Collective Bargaining Agreement (CBA) between HOC and HWU provides for a grievance machinery culminating in voluntary arbitration.

A minority union, Progressive Harbor Employees Association (PHEA), composed of 40 rank-and-file workers within the same bargaining unit, objected to HOC's implementation of a new productivity scheme allegedly inconsistent with the CBA. Without coursing the matter through HWU, PHEA directly served a Notice to Arbitrate upon HOC and filed a request for voluntary arbitration before the National Conciliation and Mediation Board (NCMB).

HOC moved to dismiss, arguing that PHEA had no legal standing to invoke arbitration.

PHEA countered that:

1. Workers have the right to present grievances directly to the employer;
2. The right to self-organization includes the right to protect members' interests;
3. The productivity scheme affects their terms and conditions of employment.

Resolve:

(a) Whether PHEA may validly invoke voluntary arbitration;
(b) Whether the workers may directly raise grievances with the employer;
(c) What is the proper procedure under the Labor Code.

Answer:

(a) No. PHEA, being a minority union and not the certified exclusive bargaining agent, cannot validly invoke voluntary arbitration.

Under the Presidential Decree No. 442, the duly certified Sole and Exclusive Bargaining Agent (SEBA) has the exclusive authority to represent the bargaining unit for purposes of collective bargaining and CBA enforcement. In **Tabigue v. International Container Terminal Services, Inc.**, the Supreme Court ruled that while employees may present grievances directly to the employer, only the certified bargaining agent may invoke the grievance machinery and submit disputes to voluntary arbitration, since arbitration arises from the CBA — a contract between the employer and the SEBA.

PHEA is not the certified bargaining agent. The CBA grievance machinery and arbitration clause bind HOC and HWU. Arbitration is a contractual mechanism arising from the CBA. Since PHEA is not a party to the CBA, it lacks legal standing to serve a notice to arbitrate.

PHEA cannot validly invoke voluntary arbitration.

(b) Yes, workers may present grievances directly to the employer.

The Labor Code recognizes the right of employees to present grievances directly to the employer, even if they are members of a bargaining unit, provided such presentation does not contravene the CBA and is consistent with its grievance procedure. However, this right does not include the authority to bypass the SEBA in invoking arbitration.

The workers may bring their objections regarding the productivity scheme directly to HOC. However, if the dispute requires resort to grievance machinery and arbitration under the CBA, it must be coursed through HWU as the SEBA.

Direct grievance presentation is allowed, but arbitration must be invoked by the SEBA.

(b) The dispute should be referred to the SEBA and processed through the CBA grievance machinery.

Under the Labor Code, CBA violations and disputes arising from interpretation or implementation of the CBA must first undergo grievance machinery and, if unresolved, be submitted to voluntary arbitration. Only the SEBA may activate this process.

PHEA should raise the issue before HWU. If HWU determines that the productivity scheme violates the CBA, it may invoke the grievance machinery and, if necessary, file notice to arbitrate.

The proper course is for the SEBA to initiate the grievance and arbitration process.

Bar Synthesis

While employees or minority unions may directly present grievances to the employer, the authority to invoke grievance machinery and voluntary arbitration belongs exclusively to the certified bargaining agent, as arbitration arises from the CBA binding the employer and the SEBA. A minority union has no standing to serve notice to arbitrate.

36.1. A CE is valid if (i) it is not barred; and (ii) majority of the eligible voters cast their votes.

36.2. The CE winner is the union (including No Union) which garners majority vote based on the valid votes.

36.3. Run-off Election shall be conducted if the CE fails to produce an EBR based on these conditions:

36.4. Re-run election is one conducted when there is failure of CE as when less than majority cast their votes; or when the CE is attended by irregularities.

(a) The CE is valid;
(b) 3/more participants (including No Union);
(c) None got majority vote based on the valid votes;
(d) Total votes garnered by the unions (excluding No Union) is at least 50% of the votes cast; and
(e) There is no election contest that can materially alter the CE result.

Illustration:

TransNational Manufacturing Corporation has 300 eligible rank-and-file employees in an appropriate bargaining unit.

A certification election was conducted with the following results:

- Union Alpha – 80 votes
- Union Beta – 70 votes
- Union Gamma – 40 votes
- No Union – 20 votes
- Spoiled ballots – 10
- Total ballots cast – 220

After the canvass, Union Gamma filed an election protest alleging irregularities affecting 15 votes. The protest is pending resolution.

TransNational argues that:

1. No union obtained majority vote; hence, "No Union" should be declared winner;
2. A re-run election must be conducted because no union obtained majority;
3. The pending protest automatically prevents any further election proceedings.

Resolve:

(a) Is the certification election valid?
(b) Is there a winner?
(c) Should a run-off or re-run election be conducted?
(d) Does the election protest prevent the conduct of a run-off?

Answer:

(a) Yes, the certification election is valid.

A certification election is valid if:

1. It is not barred; and
2. Majority of the eligible voters cast their votes.

There are 300 eligible voters. Majority of eligible voters = 151. Total ballots cast = 220. Since 220 exceeds 151, majority turnout is satisfied.

The certification election is valid.

(b) No, there is no winner.

The winner must obtain majority of the valid votes cast. Spoiled ballots are excluded from valid votes.

Valid votes cast:

220 total ballots
Minus 10 spoiled
= 210 valid votes

Majority required = 106 votes.

Union Alpha received 80 votes.
Union Beta received 70 votes.
Union Gamma received 40 votes.
No Union received 20 votes.

No choice obtained 106 votes.

There is no winner.

(c) A run-off election should be conducted.

A run-off election is proper if:

1. CE is valid;
2. There are 3 or more choices (including No Union);
3. No choice obtained majority of valid votes cast;
4. Total union votes (excluding No Union) is at least 50% of votes cast;
5. No election protest that can materially alter the results.

Re-run applies only when turnout is below majority or when CE is void due to irregularities.

Union votes:

Alpha (80) + Beta (70) + Gamma (40) = 190.
Votes cast = 220.
50% of votes cast = 110.

190 exceeds 110.

Thus, union votes satisfy the 50% requirement. Since the CE is valid and no majority winner emerged, run-off between Union Alpha and Union Beta is proper.

A run-off election must be conducted between the top two unions.

(d) The protest prevents run-off only if it can materially alter the results.

Run-off shall not proceed if there is an election protest that may materially affect the outcome. The protest involves 15 votes. Even if all 15 votes are deducted from Union Alpha (80 – 15 = 65), the ranking remains:

Alpha (65), Beta (70), Gamma (40).
The top two remain Alpha and Beta.

Thus, the protest does not materially alter the outcome for purposes of determining run-off participants.

The pending protest does not bar the conduct of the run-off.

Bar Takeaways

✔Majority turnout determines validity.

✔Majority of valid votes determines winner.

✔Run-off applies when no majority winner but turnout valid.

✔Re-run applies when turnout insufficient or election void.

✔Protest bars run-off only if it materially affects result.

Note: CE Bars

CONTRACT BAR vs ELECTION BAR vs NEGOTIATION BAR

I. Contract Bar Rule

What it is:

A valid and registered CBA bars the filing of a petition for certification election during its 5-year representation term, except within the 60-day freedom period before expiration.

Period Covered

5 years (representation aspect only)

Exception

60-day freedom period immediately before expiration of the 5th year.

Purpose

Promote industrial stability and respect the bargaining representative chosen by the majority.

II. Election Year Bar Rule

What it is:

No petition for certification election may be filed within **one (1) year** from the date of a valid certification election.

Period Covered

1 year from date of valid CE (last EBR selction)

Applies Even If

- No union won (including "No Union" winning)
- Petition dismissed after election conducted

Purpose

Prevent repeated elections and harassment through successive petitions.

III. Negotiation Bar Rule

What it is:

When a duly recognized union has commenced and is actively engaged in collective bargaining negotiations, a petition for CE is barred.

Period Covered

While genuine bargaining negotiations are ongoing.

Requirements

- Valid recognition
- Actual negotiations commenced
- Not merely preliminary talks

Purpose

Allow bargaining process to proceed without disruption.

SIDE-BY-SIDE COMPARISON

Rule	What Bars CE?	Duration	Trigger
Contract Bar	Existing valid CBA	5 years (except last 60 days)	Registration of CBA
Election Bar	Prior valid CE	1 year	Conduct of CE
Negotiation Bar	Ongoing bargaining	During active negotiations	Commencement of bargaining

CRITICAL DISTINCTIONS

1. Contract Bar is the Strongest

It protects representation status for 5 years.

2. Election Bar Applies Even if No Union Wins

If "No Union" wins → still 1-year bar.

3. Negotiation Bar Requires Good Faith Negotiation

Mere intent to negotiate is insufficient.

Bar Traps

✗Petition filed in 3rd year of CBA

Barred (not within 60-day freedom period).

✗Petition filed 6 months after CE where No Union won

Barred (Election Bar applies).

✗Petition filed during bargaining talks but no formal sessions yet

May not qualify as negotiation bar.

Bar-Ready Synthesis

The Contract Bar Rule bars certification election petitions during the 5-year representation term of a valid CBA except within the 60-day freedom period; the Election Year Bar Rule bars petitions within one year from a valid EBR election; and the Negotiation Bar Rule bars petitions while a duly recognized union is actively engaged in good faith collective bargaining negotiations.

Illustration: CE Bar Defenses

Pacific Industrial Corporation (PIC) has 500 rank-and-file employees.

Timeline:

- March 1, 2020 – A certification election was conducted. Union Alpha won and was certified as SEBA.
- April 15, 2020 – PIC and Union Alpha executed a CBA for a term of five (5) years, duly registered with DOLE.
- June 2022 – Parties renegotiated economic provisions.
- January 10, 2024 – Union Beta filed a petition for certification election, alleging loss of majority status of Union Alpha.
- January 20, 2024 – PIC and Union Alpha began negotiations for another CBA, although the existing CBA had not yet expired.
- February 15, 2024 – Union Beta amended its petition, arguing that the renegotiation and alleged minority status remove any bar.

PIC and Union Alpha move to dismiss the petition, invoking:

1. Contract Bar Rule
2. Election Bar Rule
3. Negotiation Bar Rule

Resolve:

(a) Which bar defenses apply?
(b) Is the petition for certification election valid?
(c) Does renegotiation of economic provisions affect the contract bar?
(d) Does alleged loss of majority status lift the bar?

Answer:

(a) The Election Bar does NOT apply.

The **Election Bar Rule** prohibits filing of a CE petition within one (1) year from a valid certification election. The certification election occurred on March 1, 2020. The petition was filed on January 10, 2024 — nearly four years later. Thus, the one-year election bar has long expired. Election Bar does not apply.

II. Contract Bar Rule

A — Answer

The Contract Bar Rule applies and bars the petition.

L — Law

A valid and registered CBA bars certification election petitions during its 5-year representation term, except within the 60-day freedom period immediately preceding expiration.

A — Application

The CBA was executed April 15, 2020, with a 5-year term expiring April 15, 2025.

The freedom period runs from February 14 to April 15, 2025.

The petition was filed January 10, 2024 — outside the freedom period.

Thus, the petition is barred.

C — Conclusion

The petition is barred by the Contract Bar Rule.

III. Negotiation Bar Rule

A — Answer

Negotiation Bar does not materially affect the outcome.

L — Law

The Negotiation Bar applies when a duly recognized union and employer are actively engaged in collective bargaining negotiations.

However, it presupposes absence of a contract bar.

A — Application

Even assuming negotiations began January 20, 2024, the Contract Bar Rule already operates independently to bar the petition.

Negotiation Bar is therefore unnecessary to resolve the issue.

C — Conclusion

Negotiation Bar need not be applied since Contract Bar already bars the petition.

IV. Effect of Economic Renegotiation

A — Answer

Renegotiation does not lift the contract bar.

L — Law

While economic provisions may be renegotiated after three years, the representation status of the bargaining agent remains protected for the full 5-year term.

A — Application

The 2022 renegotiation of economic provisions did not terminate or reset the 5-year representation term.

Thus, Contract Bar remains in effect until April 15, 2025.

C — Conclusion

Renegotiation does not affect the contract bar.

V. Alleged Loss of Majority Status

A — Answer

Alleged loss of majority status does not lift the contract bar.

L — Law

Majority status is conclusively presumed during the 5-year representation term of a valid CBA, except during the freedom period.

A — Application

Union Beta's allegation of minority status cannot overcome the statutory stability granted by the contract bar.

C — Conclusion

Loss of majority claim does not defeat the contract bar.

□ FINAL BAR SYNTHESIS

The Election Bar Rule does not apply because more than one year has elapsed since the last certification election. However, the Contract Bar Rule bars the petition because a valid and registered CBA remains within its 5-year representation term and the petition was filed outside the 60-day freedom period. Renegotiation of economic provisions does not affect the representation term, and alleged loss of majority status does not lift the contract bar.

37
Art. 272

> **Art. 272. Appeal from Certification Election Orders. – Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days.**

37.1. Art. 272 allows both employer and EBR to appeal a CE order; however, D.O. 40-03 distinguishes between organized establishment (OE) and unorganized establishment (UE). If OE, both can appeal; if UE, only the EBR can appeal.

37.2. In the *Manila Legend Hotel*, J Bersamin ruled that an employer could not move to dismiss a CE petition (*Standby Rule*) and could not appeal. Why? This was because the hotel was a UE as implied by the fact that the Med-Arbiter automatically granted the CE petition. This he could do only if the establishment is UE.

<u>Unorganized Establishment</u>

Problem:

Sunrise Grand Hotel has no existing certified bargaining agent among its rank-and-file employees.

Union X filed a petition for certification election. The Med-Arbiter, finding the petition sufficient in form and substance, issued an Order directing the conduct of a certification election.

Sunrise Grand Hotel filed a Motion to Dismiss the petition, arguing that:

1. The union lacks majority support;
2. The bargaining unit is allegedly inappropriate;
3. The hotel should be allowed to appeal the Order granting the certification election.

Rule on the hotel's motion and appeal.

Answer:

The hotel's motion and appeal should be denied for lack of standing.

In an unorganized establishment, the employer has no legal personality to oppose, move to dismiss, or appeal the grant of a certification election. The employer's role is limited to neutrality, consistent with the Standby Rule, as clarified in Manila Hotel Corporation v. Manila Hotel Employees Association.

Sunrise Grand Hotel has no certified bargaining agent; hence, it is an unorganized establishment. In such case, the Med-Arbiter properly ordered the conduct of certification election upon finding the petition sufficient. The employer cannot question union majority status nor move to dismiss or appeal the Order.

Therefore, the hotel's Motion to Dismiss and appeal must be denied. The employer must remain neutral and allow the certification election to proceed.

Organized Establishment

Problem:

Metro Packaging Corporation has a duly certified Sole and Exclusive Bargaining Agent (SEBA), Union Alpha. A Collective Bargaining Agreement (CBA) between the company and Union Alpha was executed on June 1, 2022, for a term of five (5) years and duly registered with DOLE.

On March 1, 2024, Union Beta filed a petition for certification election.

Metro Packaging filed a Motion to Dismiss the petition, invoking the Contract Bar Rule, arguing that a valid CBA is in force and that the petition was filed outside the 60-day freedom period.

Union Beta argues that the employer has no standing to oppose the petition under the Standby Rule.

Resolve:

(a) Does the Standby Rule apply?
(b) May the employer move to dismiss the petition?

Answer:

(a) No.

The Standby Rule applies only in unorganized establishments. Here, Metro Packaging has a duly certified SEBA and a registered CBA. Thus, the establishment is organized.

(b) Yes, but only on limited grounds.

Under the Labor Code and jurisprudence, while employers must generally remain neutral in representation disputes, they may raise jurisdictional or legal bars, such as the Contract Bar Rule.

Since the CBA executed on June 1, 2022 has a five-year representation term expiring June 1, 2027, the 60-day freedom period runs from April 2, 2027 to June 1, 2027.

The petition filed on March 1, 2024 is outside the freedom period.

Thus, the petition is barred by the Contract Bar Rule.

Bar Takeaway

- Unorganized establishment → Employer has no standing (Standby Rule).
- Organized establishment → Employer may raise legal bars (e.g., Contract Bar), but cannot interfere in union choice.

38
Art. 276

Art. 276. Procedures. – The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have the power to hold hearings, receive evidences and take whatever action is necessary to resolve the issue or issues subject of the dispute, including efforts to effect a voluntary settlement between parties. All parties to the dispute shall be entitled to attend the arbitration proceedings. The attendance of any third party or the exclusion of any witness from the proceedings shall be determined by the Voluntary Arbitrator or panel of Voluntary Arbitrators. Hearing may be adjourned for cause or upon agreement by the parties. Unless the

parties agree otherwise, it shall be mandatory for the Voluntary Arbitrator or panel of Voluntary Arbitrators to render an award or decision within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration. The award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties. Upon motion of any interested party, the Voluntary Arbitrator or panel of Voluntary Arbitrators or the Labor Arbiter in the region where the movant resides, in case of the absence or incapacity of the Voluntary Arbitrator or panel of Voluntary Arbitrators, for any reason, may issue a writ of execution requiring either the sheriff of the Commission or regular courts or any public official whom the parties may designate in the submission agreement to execute the final decision, order or award.

Old Rule. Period of appeal from VA to CA is 10 days (*Phil. Electric Co. v. CA, G.R. No. 16812, 10 Dec. 2014; Baronda v. CA, G.R. No. 161006, 14 Oct. 2015*).

New Rule: Period to file MR is 10 days. If MR is denied, appeal to CA shall be filed within 15 days (*Guagua National Colleges v. CA, et al., en banc, G.R. No. 188492, 28 Aug. 2018*). See Handout 02 on Labor Juris.

Problem 1:

The Collective Bargaining Agreement between Delta Manufacturing Corporation and Delta Employees Union provides that disputes shall be submitted to voluntary arbitration.

On January 5, 2023, the Voluntary Arbitrator (VA) rendered a decision ordering Delta Manufacturing to reinstate several employees with backwages.

Delta received the decision on January 10, 2023.

Instead of filing a motion for reconsideration, Delta filed a Petition for Review under Rule 43 directly with the Court of Appeals (CA) on January 25, 2023.

The union moved to dismiss, arguing that:

1. The petition was filed beyond the 10-day period to appeal;
2. Delta failed to file a motion for reconsideration before appealing.

Delta argues that under older jurisprudence, appeal from a VA decision must be filed within 10 days from receipt of decision.

Resolve:

(a) What is the correct period and procedure for appealing a VA decision?
(b) Was Delta's appeal properly filed?

Answer:

(a)Under the prevailing rule, a motion for reconsideration must first be filed within ten (10) days from receipt of the VA decision. If the motion is denied, the aggrieved party has fifteen (15) days from notice of denial within which to file a Petition for Review under Rule 43 with the Court of Appeals.

Under the old rule in Philippine Electric Company v. Court of Appeals and Baronda v. Court of Appeals, the period to appeal from a VA decision to the CA was ten (10) days.

However, the Supreme Court, sitting En Banc, clarified in Guagua National Colleges v. Court of Appeals that:

1. A motion for reconsideration must be filed within 10 days from receipt of the VA decision;
2. If denied, the party has 15 days from notice of denial to file a Rule 43 petition with the CA.

The Guagua ruling modified the prior doctrine.

Delta received the VA decision on January 10, 2023.

Under Guagua, Delta should have filed a motion for reconsideration within 10 days (until January 20, 2023). Instead, Delta filed a Rule 43 petition on January 25, 2023 without first filing a motion for reconsideration.

This violated the procedural requirement.

(b) Delta's appeal was procedurally defective for failure to file a motion for reconsideration prior to appeal. The petition may be dismissed.

Bar Synthesis

Under the current rule laid down in Guagua National Colleges (En Banc, 2018), a motion for reconsideration must first be filed within 10 days from receipt of the voluntary arbitrator's decision. Upon denial, the aggrieved party has 15 days to file a Petition for Review under Rule 43 with the Court of Appeals. The earlier 10-day direct appeal rule has been superseded.

Problem 2:

On April 1, 2024, the Voluntary Arbitrator (VA) rendered a decision ordering reinstatement with backwages.

Employer X received the decision on April 5, 2024.

Employer X filed a Motion for Reconsideration (MR) on April 16, 2024.

The VA denied the MR in a Resolution dated May 10, 2024, which Employer X received on May 15, 2024.

Employer X filed a Petition for Review under Rule 43 before the Court of Appeals on June 3, 2024.

The union moves to dismiss, arguing that the petition was filed out of time.

Resolve:

(a) Was the MR timely filed?
(b) Was the Rule 43 petition timely filed?

Answer:

(a) No. The MR was filed out of time.

Under Guagua National Colleges (En Banc, 2018): A Motion for Reconsideration must be filed within 10 days from receipt of the VA decision. The 10-day period is counted in calendar days.

Employer X received the decision on April 5, 2024. Counting 10 days:

April 6 – Day 1
April 7 – Day 2
April 8 – Day 3
April 9 – Day 4
April 10 – Day 5
April 11 – Day 6

April 12 – Day 7
April 13 – Day 8
April 14 – Day 9
April 15 – Day 10

Last day to file MR: April 15, 2024. Employer filed MR on April 16, 2024 — one day late. Therefore, the MR was filed out of time.

(b) The Rule 43 petition is likewise out of time.

If the MR is filed out of time, the VA decision becomes final and executor. The 15-day period to file a Rule 43 petition applies only if a timely MR was filed and denied. Since the MR was filed late, it did not toll the period. The VA decision became final on April 15, 2024. The Rule 43 petition filed on June 3, 2024 was therefore filed long after finality. Therefore, the Petition for Review must be dismissed.

Even assuming that the MR was timely:

Receipt of denial: May 15, 2024
15 days → May 30, 2024

Petition filed June 3 → still late.

Double fatal.

10 days to file MR.
If late → case final.
If timely → 15 days from MR denial.

Problem 4:

A Voluntary Arbitrator rendered a decision on November 20, 2024. Employer Y received the decision on November 25, 2024 (Monday). Under the Guagua doctrine, Employer Y must file a Motion for Reconsideration (MR) within 10 days from receipt. The 10th day falls on December 5, 2024 (Thursday). However, December 5 was declared a special non-working holiday. Employer Y filed its MR on December 6, 2024 (Friday). The VA denied the MR, and Employer Y received the denial on January 3, 2025 (Friday). Employer Y filed a Petition for Review under Rule 43 on January 20, 2025 (Monday).

The union moves to dismiss, arguing late filing.

Resolve:

(a) Was the MR timely filed?
(b) Was the Rule 43 petition timely filed?

Answer:

(a) Yes, the MR was timely filed.

Under Rule 22 of the Rules of Court, if the last day of the period falls on a Saturday, Sunday, or legal holiday, the filing may be done on the next working day. The period to file MR under Guagua is 10 calendar days from receipt.

Employer Y received the VA decision on November 25, 2024. Counting 10 days:

Nov 26 – Day 1
Nov 27 – Day 2
Nov 28 – Day 3
Nov 29 – Day 4
Nov 30 – Day 5
Dec 1 – Day 6
Dec 2 – Day 7
Dec 3 – Day 8
Dec 4 – Day 9
Dec 5 – Day 10

The 10th day (Dec 5) was declared a special non-working holiday. Thus, filing may be made on the next working day, December 6.

Employer Y filed on December 6. Hence, the MR was timely filed.

(b) No, the Petition for Review was filed out of time.

After denial of a timely MR, the aggrieved party has 15 days from receipt of denial to file a Petition for Review under Rule 43. Rule 22 applies to computation.

Employer Y received the MR denial on January 3, 2025 (Friday). Counting 15 days:

Jan 4 – Day 1
Jan 5 – Day 2
Jan 6 – Day 3
Jan 7 – Day 4
Jan 8 – Day 5
Jan 9 – Day 6
Jan 10 – Day 7
Jan 11 – Day 8

Jan 12 – Day 9
Jan 13 – Day 10
Jan 14 – Day 11
Jan 15 – Day 12
Jan 16 – Day 13
Jan 17 – Day 14
Jan 18 – Day 15

January 18, 2025 falls on Saturday. Thus, filing may be made on next working day, January 20, 2025 (Monday), assuming January 19 is Sunday.

Employer filed on January 20, 2025. Hence, the Petition for Review was timely filed.

Fresh period rule" confusion — Guagua governs.

39
Art. 278(g)

Art. 278. Strikes, Picketing, and Lockouts. – (a) It is the policy of the State to encourage free trade unionism and free collective bargaining.

(b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes.

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Ministry at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the Minister of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the Ministry to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the

requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Ministry the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike

or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them. The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, 106 and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.239

(h) Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.

(i) The Secretary of Labor and Employment, the Commission or the voluntary arbitrator or panel of voluntary arbitrators shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be. The decision of the President, the Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall be final and executory ten (10) calendar days after receipt thereof by the parties.

39.1. Exception to Art. 266 (*No Injunction Policy*)

39.2. Characteristics of Assumption Power

(a) Plenary. Covers all questions and controversies arising from the labor dispute.

(b) Incidental. Includes authority necessary to resolve the dispute effectively.

(c) Preemptive. Automatically enjoins strike/lockout upon assumption.

(d) Discretionary. Secretary determines whether industry is indispensable to national interest.

(e) Broad. Extends to all issues submitted or related to the dispute.

(f) Extraordinary. Invoked only in disputes affecting national interest.

39.3. Governing Principles

(a) *Doctrine of Great Breadth of Discretion*

The Secretary's determination that an industry is indispensable to national interest is accorded great respect. Courts rarely interfere absent grave abuse of discretion.

(b) Incidental Jurisdiction

Once jurisdiction is assumed, the Secretary may:

✔Rule on legality of strike

✔Decide CBA deadlock issues

✔Resolve unfair labor practice issues

✔Issue return-to-work orders

✔Modify terms and conditions

Even issues not explicitly submitted may be resolved if related.

Effect of Assumption

1. Strike automatically enjoined.
2. Ongoing strike must cease.
3. Workers must return to work immediately.
4. Employer must readmit workers.
5. Violation = illegal strike + loss of employment.

Return-to-work order is immediately executory.

Bar Traps

✖Secretary must first conduct hearing before assumption → Not required before issuance.

✖Return-to-work order can be stayed by TRO → No. It is immediately executory.

✖Assumption applies only to government employees → Applies to industries indispensable to national interest (public or private).

Problem 1:

Pacific Energy Corporation supplies electricity nationwide. A CBA deadlock led to a strike. After 3 days of power interruption affecting several provinces, the Secretary of Labor assumed jurisdiction under Art. 278(g) and issued a return-to-work order.

The union argues:

1. The No-Injunction Rule under Art. 266 prohibits the Secretary from stopping the strike.
2. The Secretary cannot rule on legality of the strike because that issue was not submitted.

Resolve.

Answer:

The Secretary's action is valid.

While Article 266 embodies the No-Injunction Policy, Article 278(g) expressly authorizes the Secretary of Labor to assume jurisdiction over labor disputes in industries indispensable to national interest and to enjoin strikes. This statutory authority constitutes an exception to the No-Injunction Rule.

The power of assumption is plenary, broad, and preemptive. Once jurisdiction is assumed, the Secretary acquires incidental jurisdiction over all questions arising from the dispute, including the legality of the strike, even if not specifically raised.

The return-to-work order is immediately executory and must be complied with.

Note: Here is a **KILLER-LEVEL MOCK BAR PROBLEM** on **Assumption of Jurisdiction**, designed to test:

- Exception to No-Injunction Policy (Art. 266)
- Plenary and incidental powers
- Defiance of Return-to-Work (RTW) Order
- Legality of strike
- Effect of compliance vs defiance
- Employer lockout angle

Statutory anchor: Art. 278[g]

Problem 2:

National Grid Power Corporation (NGPC) operates the country's primary transmission lines. A CBA deadlock led to a strike vote. The union filed a Notice of Strike based on bargaining deadlock.

Before the cooling-off period expired, several union officers led a work stoppage that caused power interruptions in multiple regions.

The Secretary of Labor immediately assumed jurisdiction under Article 278(g), citing national interest, and issued a Return-to-Work (RTW) Order directing all striking employees to resume work within 24 hours and directing NGPC to accept them under the same terms and conditions.

Despite the order:

- Several union officers publicly declared they would not comply unless the Secretary first ruled on the legality of the strike.
- Some rank-and-file members returned to work.
- NGPC refused to reinstate 25 union officers who defied the RTW order.
- The Secretary later ruled the strike illegal and ordered dismissal of union officers who defied the RTW order.

The union argues:

1. The Secretary violated the No-Injunction Policy under Article 266.
2. The Secretary had no authority to rule on legality of the strike because that issue was not part of the CBA deadlock.
3. The dismissal of union officers is void because legality of strike must first be resolved by the NLRC.

Resolve:

(a) Whether the Secretary validly enjoined the strike;
(b) Whether the Secretary could rule on legality of the strike;
(c) Whether the dismissal of union officers who defied the RTW order is valid.

Answer:

(a) Yes. The Secretary validly enjoined the strike.

While Article 266 embodies the No-Injunction Policy, Article 278(g) expressly authorizes the Secretary of Labor to assume jurisdiction over labor disputes in industries indispensable to national interest and to enjoin strikes or lockouts. This power is an exception to the No-Injunction Rule. The power is discretionary and preemptive.

NGPC operates national transmission lines. Power interruption affects public welfare and national economy. The Secretary properly assumed jurisdiction and issued a return-to-work order.

Therefore, the injunction was valid.

(b) Yes. The Secretary had authority.

The assumption power is plenary, broad, and includes incidental jurisdiction over all matters arising from the labor dispute. Under the doctrine of great breadth of discretion, once jurisdiction is assumed, the Secretary may resolve all issues related to the dispute, including legality of strike, even if not specifically submitted.

The legality of the strike is inseparable from the labor dispute affecting national interest. Thus, it falls within the Secretary's incidental jurisdiction.

Therefore, the Secretary validly ruled on the legality of the strike.

(c) Yes, the dismissal is valid.

A return-to-work order issued under Article 278(g) is immediately executory. Defiance of a lawful RTW order renders the strike illegal. Union officers who knowingly participate in or defy a return-to-work order may be dismissed. Good faith is not a defense to defiance of RTW order.

The union officers publicly refused compliance. This constitutes deliberate defiance of a lawful order. The Secretary later declared the strike illegal. Thus, dismissal of officers who defied the RTW order is valid. Rank-and-file members who merely participated but did not defy may not automatically lose employment unless they committed illegal acts.

Therefore, the dismissal of the defiant union officers is valid.

WHY THIS IS A KILLER PROBLEM

It tests:

✔Exception to No-Injunction Policy

✔Nature of assumption power

✔Immediate executory nature of RTW order

✔Incidental jurisdiction doctrine

✔Consequences of defiance

✔Distinction between officers and rank-and-file

Bar Master synthesis

The Secretary's assumption of jurisdiction under Article 278(g) is an exception to the No-Injunction Policy and is plenary, broad, and preemptive. A return-to-work order is immediately executory, and defiance thereof renders the strike illegal. Union officers who knowingly defy the order may be validly dismissed.

Problem 3:

Global Port Authority (GPA) operates the country's largest international seaport.

During CBA negotiations, the union accused GPA of bargaining in bad faith and dismissing three union officers allegedly for union activities. The union filed:

1. A Notice of Strike grounded on Unfair Labor Practice (ULP);
2. A complaint for illegal dismissal and ULP before the NLRC.

Before the 15-day cooling-off period expired, the union staged a strike.

After 48 hours of port shutdown affecting international trade, the Secretary of Labor assumed jurisdiction under Article 278(g) and issued a Return-to-Work (RTW) Order.

The union argued:

1. The strike is based on ULP; hence, it is immediately strikeable and protected;
2. Assumption of jurisdiction cannot extinguish their ULP complaint;
3. Since the strike is based on ULP, failure to comply with RTW order cannot render it illegal;
4. GPA's dismissal of union officers is void because the strike was lawful.

GPA argues that defiance of RTW order automatically makes the strike illegal.

Resolve:

(a) Does assumption of jurisdiction apply even if the strike is based on ULP?
(b) Does assumption extinguish the ULP complaint?
(c) What is the effect of defiance of the RTW order in a ULP strike?
(d) Are the dismissed union officers automatically entitled to reinstatement?

Answer:

(a) Yes.

Article 278(g) authorizes the Secretary of Labor to assume jurisdiction over any labor dispute causing or likely to cause a strike or lockout in industries

indispensable to national interest. The nature of the strike — whether based on CBA deadlock or ULP — does not limit the Secretary's authority. The assumption power is plenary and preemptive.

GPA operates the largest international seaport, affecting national trade. The Secretary validly assumed jurisdiction despite the strike being grounded on ULP.

Assumption validly applies.

(b) No.

The assumption of jurisdiction does not extinguish substantive claims such as ULP or illegal dismissal. Rather, under the doctrine of incidental jurisdiction, the Secretary acquires authority to resolve all issues arising from the labor dispute, including ULP allegations.

The pending ULP complaint does not disappear. It may be resolved by the Secretary as part of the assumed dispute.

The ULP complaint survives and may be resolved within the assumption proceedings.

(c) Defiance renders the strike illegal regardless of its original character.

A return-to-work order issued under Article 278(g) is immediately executory. Even if the strike was validly grounded on ULP, refusal to comply with a lawful RTW order constitutes illegal strike.Union officers who knowingly defy the order may be dismissed. Good faith belief in legality of strike is not a defense to defiance.

If union members refused to return to work after the RTW order, their continued strike becomes illegal.

Defiance converts the strike into an illegal strike.

(d) Not automatically.

Union officers who knowingly participate in an illegal strike or defy an RTW order may be validly dismissed. However, if their dismissal was truly

based on anti-union discrimination (ULP), they may be entitled to reinstatement. The determination depends on factual findings.

If the officers were dismissed prior to the strike due to union activity, that may constitute ULP. But if they were dismissed due to defiance of RTW order, the dismissal is valid.

Reinstatement depends on whether dismissal was due to ULP or defiance of RTW order

WHY THIS IS A KILLER PROBLEM

It tests:

✔Difference between ULP strike and deadlock strike

✔Assumption power scope

✔Incidental jurisdiction

✔Effect of RTW defiance

✔Good faith misconception

✔Separate analysis of dismissal causes

Master Bar Synthesis

The Secretary's assumption of jurisdiction under Article 278(g) applies regardless of whether the strike is grounded on ULP or CBA deadlock. While the ULP complaint survives and may be resolved by the Secretary, defiance of a return-to-work order renders the strike illegal, and union officers who knowingly refuse compliance may be validly dismissed.

40

Arts. 292, 294 & 297-299

ART. 292. Miscellaneous Provisions. – (a) All unions are authorized to collect reasonable membership fees, union dues, assessments and fines and other contributions for labor education and research, mutual death and hospitalization benefits, welfare fund, strike fund and credit and cooperative undertakings.

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice

under ( ) this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay off.

(c) Any employee, whether employed for a definite period or not, shall, beginning on his first day of service, be considered as an employee for purposes of membership in any labor union.

(d) No docket fee shall be assessed in labor standards disputes. In all other disputes, docket fees may be assessed against the filing party, provided that in bargaining deadlock, such fees shall be shared equally by the negotiating parties.

(e) x x x
(f) x x x
(g) x x x
(h) x x x
(i) x x x

40.1. **Guarantees of Art. 292** (formerly art. 277): self-organization; statutory due process; workers shall not be assessed docket fees in labor standards disputes; and the SOLE's suspension power.

5-Second Bar Rule

1. Determine cause.
2. If none → Illegal.
3. If valid cause → Check procedure.
4. If procedure defective → Valid dismissal + nominal damages only.

The Substantial Identity Rule

The ground for dismissal in the decision must be substantially the same as the charge stated in the first notice. An employee cannot be dismissed for an offense not alleged in the notice to explain**.** This protects the employee's constitutional right to be informed of the accusation.

What "Substantial Identity" Means

✔The dismissal ground may be worded differently

✔It may refer to the same factual incident

✖But it must not be an entirely different offense

Jurisprudential Basis:

King of Kings Transport, Inc. v. Mamac: The first notice must specify the particular acts or omissions constituting the grounds.

Perez v. Philippine Telegraph and Telephone Company: The Court stressed that due process requires that the employee be informed of the specific charges and given the opportunity to defend against them.

Note: If the first notice warns of admonition but the second notice dismisses, the right of the employee to statutory due process is deemed violated.

Examples

Valid (Substantial Identity Present)

First Notice: “Falsification of time records on March 1.”
Decision: “Dishonesty for falsifying time records on March 1.”

✔Same incident, same factual basis → valid.

Invalid (No Substantial Identity)

First Notice: “Tardiness.”
Decision: “Serious misconduct for theft.”

✖Different offense, different factual basis → violation of due process.

Result: If just cause actually exists → valid dismissal + ₱30,000 nominal damages. If no just cause → illegal dismissal.

Formula for Nominal Damages: As long as prescribed pre-termination procedure is violated, nominal damages accrue. In the first Gregorio Tongko vs Manulife decision, an insurance agent was found to have been validly dismissed but was awarded nominal damages. In Aliling vs Feliciano, the complainant was found to have been illegally dismissed and was awarded nominal damages.

Bar-Core Summary

Due process requires that the employee be informed of the specific charges in the first notice and that the ground for dismissal be substantially identical to the offense charged. A dismissal based on a different or uncharged offense violates procedural due process.

5-Second Recall Rule

Charge in Notice = Ground in Decision.
If not substantially the same → Due process violated.

Problem 1

Lara, a bank branch operations officer, was served a Notice to Explain stating:

“You are required to explain why no disciplinary action should be taken against you for irregular approval of three (3) loan applications on May 10, 2025 in violation of bank policies.”

She submitted a written explanation asserting that she relied on documents submitted by clients and denied personal gain.

After investigation, the bank issued a Notice of Decision terminating her for:

> "Serious misconduct, fraud, and loss of trust and confidence for approving fictitious loans and conspiring with borrowers to defraud the bank."

No amended notice was issued. During arbitration, the employer failed to prove conspiracy or personal gain but established that Lara violated internal loan verification procedures and was grossly negligent in approving deficient applications.

Lara files a complaint for illegal dismissal alleging violation of due process under the substantial identity rule.

Resolve.

Answer

The dismissal is procedurally defective and substantively questionable.

Under Art. 292 and the two-notice rule in King of Kings Transport, Inc. v. Mamac and Perez v. Philippine Telegraph and Telephone Company, the ground for dismissal must be substantially identical to the charge stated in the first notice. If procedural due process is violated but just cause exists, dismissal remains valid with nominal damages under Agabon v. NLRC.

Here, the first notice charged "Irregular approval of loans in violation of policy." The dismissal was based on "Serious misconduct, fraud, conspiracy, and loss of trust." Irregular approval (policy violation) is not fraud or conspiracy. Fraud requires intentional deception and personal gain. Irregular approval may imply negligence or poor judgment.

Thus, dismissal for fraud and conspiracy violates the substantial identity rule because those were not specifically charged. The employer failed to prove fraud and conspiracy. It only proved gross negligence. But gross negligence was not clearly specified in the first notice as a distinct charge. The first notice merely referred to "irregular approval," which could imply procedural lapse but not necessarily gross negligence or willful breach.

Two possible outcomes:

✔ If gross negligence is deemed substantially included in "irregular approval," dismissal may be upheld as valid for just cause (gross neglect of duty), but employer must pay ₱30,000 nominal damages for procedural defect.

✖ If the Arbiter finds that fraud and conspiracy materially differ from the charged offense and that gross negligence was not clearly alleged, dismissal is illegal for lack of proper charge.

Why this is Super Tricky

1. The employer shifted from policy violation to fraud and conspiracy.
2. Fraud was not proven.
3. One must determine whether gross negligence is substantially identical to irregular approval.
4. Outcome depends on how narrowly the first notice is interpreted.

Bar Examiner Trap

If evidence proves a different offense than charged, ask:

- Was it substantially the same factual basis?
- Was the employee fairly apprised of the real accusation?
- Was the element of intent added later?

If intent is added later → likely due process violation.

Art. 294

> **ART. 294. Security of Tenure.– In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.**

40.2. **Art. 294** (formerly Art. 279) does not limit security of tenure to regular employees; it simply provides that regular employees can only be dismissed for just or authorized causes; the logical consequences of illegal dismissal are immediate reinstatement and full backwages; if reinstatement is ordered by the LA/VA, there is no need for a writ of execution to enforce it; the components of backwages are salary, allowances and benefits or their monetary equivalent; benefits shall include SIL and 13th month pay if the illegally dismissed employee is entitled thereto.

Art. 295

> **ART. 295. Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season. An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.**

40.3. **Art. 295** (formerly Art. 280) is not an EER test; it only distinguishes between regulars and casuals; as exceptions to the "usually necessary or desirable" rule, fixed-term employment, project-based employment, and seasonal employment are listed.

Note: Article 295 does not determine whether an employer-employee relationship (EER) exists. It presupposes that an EER already exists. Its function is only to classify employees as regular or casual**,** and to recognize exceptions. The EER test is determined by the four-fold test (selection and engagement, payment of wages, power of dismissal, and control test), not Article 295. However, under the **Selection Test** in which one must ask why A engaged B, nature of work distinguishes employment affair from other affairs. Hence, if A engaged B not for his unique skills, talents or celebrity status but because his services were usually necessary or desirable in its usual business then independent contractorship should be ruled out in favor of employment tie. If a church engaged workers not to propagate the faith or administer sacraments but to carry out its non-pastoral purposes, like running its schools, ecclesiastical affair should be ruled out in favor of employment affair.

Core Rule Under Article 295

An employee is <u>regular</u> when: He performs activities usually necessary or desirable in the usual business or trade of the employer.

Exceptions to the "Usually Necessary or Desirable" Rule

Even if work is necessary or desirable, employment may still be validly non-regular if it falls under recognized exceptions:

1. Fixed-Term Employment

Valid when the term is knowingly and voluntarily agreed upon and not designed to circumvent security of tenure.

In **Brent School, Inc. v. Zamora**, the Court upheld fixed-term employment if:

- No force, duress, or improper pressure
- Equal bargaining power
- Not a scheme to defeat tenure

2. Project-Based Employment

Employment tied to a specific project with a determined duration, made known at engagement.

In **Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez**, the Court held that the project must be:

- Distinct and identifiable
- Duration specified at the time of hiring

3. Seasonal Employment

Work dependent on seasonality, recurring but not continuous year-round.

In **Mercado v. NLRC**, it was held that seasonal employees may become regular seasonal employees after repeated hiring for the same seasons.

Important Clarification

Art. 295:

✔Classifies employment status

✖Does not determine existence of employment relationship

If no EER exists, **Art. 295** does not apply.

Bar-Core Summary

Article 295 distinguishes regular from casual employees using the "usually necessary or desirable" standard, subject to recognized exceptions such as

fixed-term, project-based, and seasonal employment. It is not a test for determining the existence of an employer-employee relationship.

Note: Work that is necessary or desirable may be contracted out to an independent contractor as well. Hence, as a general rule, nature of work is not indicative of employer-employee relationship.

Fixed-Term Employment: The Brent Doctrine

In ***Brent School, Inc. v. Zamora***, the Supreme Court upheld fixed-term employment provided:

1. The term was knowingly and voluntarily agreed upon;
2. There was no force, duress, or improper pressure;
3. The term was not designed to circumvent security of tenure.

Thus, even if the work is necessary and desirable, fixed-term employment may be valid.

Media Industry Cases

1. ABS-CBN Cases

ABS-CBN Broadcasting Corporation v. Nazareno

Cameramen and technical staff repeatedly hired for programs were declared **regular employees**, as their functions were necessary and desirable to broadcasting operations.

Dumpit-Murillo v. Court of Appeals

A news correspondent was held a regular employee due to control and integration into operations, despite being labeled as talent.

2. GMA Cases

GMA Network, Inc. v. Pabriga

Repeatedly engaged program employees performing necessary broadcasting functions were considered regular employees.

Mining Industry

Philex Mining Corporation v. NLRC

The Court emphasized that if employees perform tasks necessary and desirable to the mining business, they may be regular despite contractual labels.

Seasonal Employment

Mercado v. NLRC

Seasonal workers repeatedly hired over several seasons may become regular seasonal employees.

Religious/Institutional Context

Espiritu v. National Labor Relations Commission

The Court reiterated that regular employment depends on the nature of the work, not on the designation in the contract.

Core Doctrinal Clarifications

1. Article 295 is a classification rule, not an EER test.
2. EER is determined by the four-fold test (control is decisive).
3. Labels such as "talent," "consultant," or "project-based" are not controlling.
4. If work is necessary and desirable and not validly excepted, employment is regular.

Bar-Core Summary

Article 295 distinguishes regular from non-regular employees based on the "usually necessary or desirable" standard, subject to recognized exceptions such as fixed-term (Brent), project-based, and seasonal employment. It does not determine the existence of an employer–employee relationship which is governed by the Control Test.

COMPARATIVE MATRIX
Article 295 - Classification of Employees

Type of Employment	Defining Feature	Duration	Security of Tenure	Key Case
Regular	Performs work usually necessary or desirable to employer's business	Indefinite	May be dismissed only for just/authorized cause	ABS-CBN Broadcasting Corporation v. Nazareno
Project-Based	Hired for specific project with defined duration made known at engagement	Ends upon project completion	Co-terminous with project	Philex Mining Corporation v. NLRC
Seasonal	Work dependent on season, recurring but not continuous	During season	Regular seasonal after repeated hiring	Mercado v. NLRC
Fixed-Term	Employment for a definite agreed period	Fixed date	Valid if not meant to circumvent tenure	Brent School, Inc. v. Zamora
Casual	Work not usually necessary or desirable	Indefinite but non-core	Becomes regular after 1 year of service	Art. 295

Key Distinctions:

Regular Employment

- Core business functions
- Continuous and necessary
- Security of tenure attaches

Example: News cameraman in broadcasting.

Project Employment

Must be:

✔Distinct and identifiable project

✔Duration determined at hiring

✔Made known to employee at engagement

If no specific project defined → likely regular.

Seasonal Employment

- Work tied to a season
- Repeated hiring over seasons → regular seasonal status

Fixed-Term Employment

Under *Brent*:

✔Term knowingly and voluntarily agreed

✔No circumvention of security of tenure

✔No undue pressure

If term used to avoid regularization → employee deemed regular.

Problem 1

MetroBuild Construction Corp. hired Carlos as a "Project Administrative Officer" under a written contract stating that his employment would last for 12 months**.** The contract specified that he was assigned to the "SkyTower Project Phase 3." The contract further provided that his employment would automatically terminate upon expiration of the 12-month period.

Carlos was hired in 2020 and was continuously re-hired under identical 12-month contracts for 2021, 2022, and 2023. During these years, he worked not only for SkyTower Phase 3 but also for two other company projects without executing new project contracts. His duties included payroll processing, procurement coordination, and general administrative supervision for various ongoing construction projects of MetroBuild.

In 2024, after expiration of his fourth 12-month contract, MetroBuild did not renew his contract. Carlos filed a complaint for illegal dismissal, claiming he was a regular employee.

MetroBuild argues that Carlos was either:

1. A project employee whose employment ended with the project; or
2. A fixed-term employee under a valid 12-month contract.

Resolve.

Answer

Carlos is a regular employee.

Under Article 295, an employee is regular if he performs activities usually necessary or desirable in the employer's business.

Fixed-term employment is valid only under the standards in Brent School, Inc. v. Zamora.

Project employment requires that:

- The project is distinct and identifiable;
- The duration is determined and made known at hiring;
- The employee is assigned specifically to that project. (See Philex Mining Corporation v. NLRC)

The Project Employment Defense Fails.

Although initially assigned to "SkyTower Phase 3," Carlos:

- Worked on multiple projects without new project contracts;
- Performed administrative functions common to all construction operations;
- Was continuously rehired for four consecutive years.

His duties were necessary and desirable to MetroBuild's usual business. He was not tied exclusively to one project. Thus, he was not a true project employee.

The Fixed-Term Defense Fails

Under *Brent*, fixed-term contracts are valid only if not designed to circumvent security of tenure.

Here:

- The 12-month term was repeatedly renewed;

- Work was continuous and integral to operations;
- Term contracts were used successively.

Repeated renewals suggest circumvention of regularization.

Carlos performed functions necessary and desirable to the employer's construction business for four continuous years. The repeated fixed-term contracts and multi-project assignments negate project or valid fixed-term classification.

He is a regular employee**,** and non-renewal constitutes illegal dismissal.

Note: Re-write this into ALAC format.

Why This Is Tricky

- Employer uses both "project" and "fixed-term" defenses.
- Repeated 12-month contracts create illusion of valid term.
- Employee initially assigned to named project but later integrated into general operations.

Problem 2

StarVision Network hired Andrea as a "Program Segment Producer" for its daily noontime variety show *HappyTime*. She signed successive 6-month "Talent Agreements" from 2018 to 2024. Each agreement stated:

- She is an "independent contractor";
- Her engagement is project-based, co-terminous with the season of *HappyTime*;
- The Network exercises no control over the means and methods of her work;
- Her talent fee is ₱80,000 monthly.

In reality:

- Andrea reported to the Executive Producer daily;
- She was required to attend production meetings;
- Her scripts were subject to approval;
- She followed detailed content guidelines and broadcast standards;

- She was assigned to produce segments not only for *HappyTime* but also for special holiday shows and election coverage specials;
- The show *HappyTime* ran continuously without seasonal interruption from 2018 to 2024.

In 2024, after her latest 6-month contract expired, StarVision did not renew her agreement. Andrea filed a complaint for illegal dismissal, alleging she was a regular employee.

StarVision argues:

1. She was an independent contractor (talent);
2. She was a project employee tied to *HappyTime*;
3. Alternatively, she was a valid fixed-term employee under successive 6-month contracts.

Resolve.

Answer

Andrea is a regular employee. The non-renewal constitutes illegal dismissal.

Under Art. 295 classifies employees as regular when they perform activities usually necessary or desirable in the employer's business. However, Article 295 presupposes the existence of an employer–employee relationship (EER). The existence of EER is determined by the control test.

The Independent Contractor Defense Fails

Despite being labeled a "talent":

- Andrea reported daily;
- Her scripts required approval;
- She followed editorial and broadcast guidelines;
- She attended mandatory production meetings.

These indicate control over the means and methods of work. Under *ABS-CBN v. Nazareno* and *Dumpit-Murillo*, media personnel repeatedly engaged and subject to editorial control are employees, not independent contractors.

The Project Employment Defense Fails

HappyTime ran continuously for six years.

- No defined project duration;

- No clear seasonal termination;
- She was assigned to multiple programs beyond *HappyTime*.

Broadcasting is StarVision's core business. Producing program segments is necessary and desirable.

Under Art. 295, she is regular.

The Fixed-Term Defense Fails

Under *Brent*, fixed-term employment is valid only if not designed to circumvent security of tenure.

Here:

- 6-month contracts repeatedly renewed for 6 years;
- Continuous need for her services;
- Integration into regular operations.

Repeated renewals indicate circumvention.

Andrea performed work necessary and desirable to the network's broadcasting business under the network's control for six continuous years. She is a regular employee. Non-renewal is illegal dismissal.

Why This Is Harder

- Three overlapping defenses (independent contractor, project, fixed-term).
- Contract labels contradict actual practice.
- "Season" argument collapses due to continuous airing.
- Control test defeats contractor argument.
- Repeated renewals defeat fixed-term argument.

Examiner's Trap

The key is to:

1. First determine EER (control test).
2. Then apply Art. 295 classification.
3. Then test exceptions (project/fixed-term).

Misapplying Art. 295 as an EER test is a fatal Bar mistake.

Problem 3

PrimeWave Broadcasting Network engaged Marco, a well-known investigative journalist, under successive one-year "Talent Consultancy Agreements" from 2017 to 2024. Each contract provided:

- Marco is an independent contractor;
- He retains full creative freedom over story selection and investigative approach;
- Engagement is co-terminous with each documentary season;
- Compensation is ₱150,000 per documentary episode.

In practice:

- PrimeWave assigned him to its flagship weekly investigative program *Expose*;
- The program aired continuously year-round from 2017 to 2024;
- Marco pitched story ideas but final approval rested with the Network's Editorial Board;
- He was required to follow internal editorial policies, ethical guidelines, and broadcast standards;
- The Network fixed broadcast schedules and required attendance in production meetings;
- Marco used network equipment, cameramen, and production staff;
- He could decline certain story assignments but not editorial compliance requirements.

In 2024, after his latest contract expired, PrimeWave did not renew his agreement. Marco filed a complaint for illegal dismissal, claiming regular employment.

PrimeWave argues:

1. Marco is an independent contractor because of creative freedom;
2. He is project-based per documentary season;
3. Alternatively, he is a valid fixed-term employee under *Brent*.

Resolve.

Answer

Marco is a regular employee. The non-renewal constitutes illegal dismissal.

Under Article 295 classifies employees but does not determine EER. The existence of EER is governed by the control test.

Independent Contractor Defense — The Creative Control Trap

The key issue is whether creative discretion negates employer control. While Marco had freedom in investigative angles, PrimeWave:

- Retained final editorial approval;
- Required compliance with internal editorial standards;
- Fixed broadcast schedule;
- Required attendance at production meetings;
- Provided equipment and production staff.

The decisive factor is control over the means and methods, not merely over results. Editorial supervision and policy compliance constitute control under broadcasting jurisprudence (*ABS-CBN v. Nazareno*; *Dumpit-Murillo*). Creative latitude does not eliminate EER where institutional control remains.

Thus, Marco is not an independent contractor.

Project Employment Defense — The "Season" Illusion

The show *Expose* ran continuously for seven years.

- No distinct, finite project;
- No genuine interruption between seasons;
- Broadcasting is the core business of PrimeWave.

Producing investigative documentaries is necessary and desirable to the network's operations. Project employment requires a specific, identifiable project with a determinable duration made known at hiring. That is absent here.

Fixed-Term Defense — The Brent Circumvention Test

Under *Brent*, fixed-term employment is valid only if not designed to circumvent security of tenure.

Here:

- Successive one-year contracts for seven years;

- Continuous airing;
- Integration into flagship program;
- No parity of bargaining power (network controls production infrastructure).

Repeated renewals indicate circumvention.

Marco performed functions necessary and desirable to PrimeWave's core broadcasting business under the network's effective control for seven continuous years. He is a regular employee. Non-renewal amounts to illegal dismissal.

Why This Is a Nightmare

1. Creative autonomy complicates control analysis.
2. "Seasonal documentary" framing masks continuous operations.
3. Per-episode compensation mimics contractor setup.
4. Talent label conflicts with operational integration.
5. Multiple defenses require sequential analysis:
   - Determine EER (control test);
   - Apply Article 295 classification;
   - Test exceptions (project/fixed-term).

Examiner's Ultimate Trap

Do not confuse:

Creative discretion ≠ absence of control. Label of "talent" ≠ independent contractor. Repeated fixed-term contracts ≠ valid Brent arrangement.

Art. 296

ART. 296. Probationary Employment. – Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

40.4. **Art. 296** places 6 months as maximum probationary period; the period can be shortened or prolonged by mutual agreement. The grounds for termination are just or

authorized causes; failure to qualify. After the probationary period, the employee cannot demand regularization as a matter of right. The provision does not cover teachers in the private sector.

Arts. 297-299

> **ART. 297. Termination by Employer. – An employer may terminate an employment for any of the following causes:**
>
> **(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;**
> **(b) Gross and habitual neglect by the employee of his duties;**
> **(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;**
> **(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and**
> **(e) Other causes analogous to the foregoing.**

40.5. **Art. 297.** Just causes are listed causes for dismissal and imply fault or culpability on the employee's part; however, even an unlisted cause can justify a dismissal if it is similar to any of the listed causes, in which case it is called an analogous cause; violation of pre-termination procedure for fault-based dismissals requires assessment of P30K nominal damages; circumstances may justify adjustment.

> **Analogous Causes Rule.** A dismissal can be justified with an unlisted cause, provided it is fault-based and it is similar to any of the listed causes. Use of *shabu* is not an Art. 297 crime. Crime under said provision has for its victim the employer, immediate member of his family or authorized representative. But, since it is similar to serious misconduct, it justifies termination of employment.

> **Cognate Offenses Rule.** Although previously punished, prior infractions can be combined with the present offense to justify a dismissal as long as all the offenses ar cognate offenses, i.e., they are of the same nature or classification. If the punished past offenses belong to gross and habitual neglect of duty and the present offense belongs to insubordination, combination is not allowed (*McDonald's Katipunan v. Alba, G.R. No. 156382, 18 Dec. 2008).*

> **Totality of Infractions Rule.** For purposes of determining the penalty to impose, totalization of an employee's infractions is allowed for the reason that fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct or ability taken separately and independently of each other (*Realda v. New Age Graphics, 686 Phils. 1110*).

Substantial Identity Rule. The substantial identity of the 2 grounds stated in the first notice and 4 grounds stated in the second notice (first 2 as stated in the first notice, and the second 2 are implied) bars an award of nominal damages. There is no violation of due process because the first notice gives ample opportunity to the employee to explain the implied offenses.

Art. 298

Art. 298. Closure of Establishment and Reduction of Personnel. – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

40.6. **Art. 298.** Authorized causes are business performance -based grounds for dismissal; the dismissed employee is not at fault; hence, if the 30-day notice is violated, the penalty is P50K nominal damages; the amount can be adjusted as required by the circumstances; number of claimants, capacity to pay, effort at compliance, and giving of benefits.

1. Retrenchment: Bar-Core Principle

Retrenchment is valid when the employer proves:

1. It is necessary to prevent losses**;**
2. Losses are substantial, serious, actual or reasonably imminent**;**
3. Losses are proven by sufficient and convincing evidence (preferably audited financial statements);
4. Done in good faith**;**
5. With fair and reasonable selection criteria**;**
6. With 30-day prior notice to employee and DOLE + proper separation pay.

Legal Basis: **Lopez Sugar Corporation v. Federation of Free Workers.**

Valid Financial Statement

Courts require:

✔Audited Financial Statements (AFS)

✔Audited by an independent external auditor

✔Income Statement + Balance Sheet

✔Showing substantial net losses

As emphasized in **Asian Alcohol Corporation v. NLRC** and **Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.**

Example:

Audited Income Statement (Excerpt)

Year	Gross Revenue	Operating Expenses	Net Income (Loss)
2022	₱100M	₱110M	(₱10M)
2023	₱95M	₱120M	(₱25M)
2024	₱90M	₱130M	(₱40M)

Three consecutive years of increasing net losses = substantial, continuing losses. If signed by an independent CPA with audit opinion, this satisfies evidentiary requirement.

Proper Separation Pay Computation: ½ month pay per year of service OR 1 month pay, whichever is higher. Fraction of at least 6 months = 1 whole year.

Example Computation

Employee:

- Monthly Salary = ₱20,000
- Length of Service = 8 years and 7 months

Since 7 months ≥ 6 months → counted as 9 years.

½ month pay per year:

₱20,000 × 0.5 = ₱10,000 per year
₱10,000 × 9 years = ₱90,000

Compare with 1 month pay:

₱20,000

Separation Pay = ₱90,000 (higher amount)

Bar-Core Summary

Retrenchment is valid only if supported by audited financial statements proving substantial losses, implemented in good faith with fair selection criteria, and accompanied by 30-day notice and proper separation pay (½ month per year or 1 month, whichever is higher).

2. Redundancy: Bar-Core Principle

Redundancy is a management prerogative, but it must be exercised in good faith, supported by substantial evidence, and implemented with fair criteria and proper separation benefits**.** A feasibility study supports—but does not automatically validate—the dismissal.

A feasibility study shows:

- 40% decline in administrative workload due to automation
- Payroll and recruitment functions integrated into a single HRIS system
- Duplication of clerical functions in HR

Management adopts a revised staffing pattern.

Before Restructuring:

Position	No. of Employee	Core Functions
HR Manager	1	Supervision
HR Officer (Recruitment)	2	Hiring & Onboarding

Position	No. of Employee	Core Functions
HR Officer (Compensation)	1	Payroll processing
HR Assistants	3	Clerical & encoding
Payroll Clerk	1	Manual payroll prep

Total HR Staff: 8

After Restructuring:

Position	No. of Employees	Core Functions
HR Manager	1	Supervision
HR Generalist	2	Recruitment + payroll (HRIS-based)
HR Support Staff	1	Administrative support

Total HR Staff: 4

Positions Declared Redundant

- 2 HR Officers
- 2 HR Assistants
- 1 Payroll Clerk

Total Affected: 5 Employees

Why This May Qualify as Valid Redundancy

✔Automation reduced manual payroll work

✔Recruitment volume decreased

✔Duties consolidated into HR Generalist roles

✔Position titles eliminated in the new structure

✔Cost-efficiency and duplication supported by feasibility findings

But validity still requires:

- Good faith
- Fair and reasonable selection criteria (e.g., performance ratings, seniority)
- 30-day notice to employee and DOLE
- Proper separation pay

Art. 299

ART. 299. Disease as Ground for Termination. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

40.7. **Art. 299.** Continuing employment cannot be denied based on a sick employee's failure to submit a medical clearance; only a medical certificate issued by a competent public health authority that he suffering from a disease of such nature or at such stage that it is incurable in 6 months even with adequate medical attention can justify his dismissal.

An employee may be dismissed on the ground of disease only if:

1. He is suffering from a disease;
2. Continued employment is prohibited by law or prejudicial to his health or that of his co-employees;
3. There is a certification by a competent public health authority that the disease is incurable within six (6) months even with proper medical **treatment**; and
4. Proper notice and separation pay are given.

Controlling Jurisprudence

- **Sy v. Court of Appeals** — Certification by a competent public health authority is mandatory.
- **Tan v. Silahis International Hotel** — Company doctor's opinion alone is insufficient.
- **Deoferio v. Intel Technology Philippines, Inc.** — Employer bears burden of proving statutory compliance.

Separation Pay: At least 1 month salary OR ½ month salary per year of service, whichever is greater. A fraction of at least 6 months = 1 whole year.

Illustrations:

Scenario 1 – Valid Medical Termination

Employee diagnosed with advanced kidney failure. Government hospital issues certification stating illness cannot be cured within 6 months even with treatment. Employer gives 30-day notice and pays proper separation pay.

✔Termination valid.

Scenario 2 – Invalid (No Proper Certification)

Company doctor declares employee unfit for work due to tuberculosis. No certification from a competent public health authority. Employee dismissed.

✖Illegal dismissal.

Scenario 3 – Curable Illness

Employee diagnosed with mild pneumonia. Doctor certifies illness curable within 3 months. Employer dismisses employee.

✖Invalid. Disease must be incurable within 6 months.

Problem 1

Maria, earning ₱30,000 monthly, worked for 12 years and 8 months. She was diagnosed with a degenerative neurological disease. A certification issued by a government hospital states that her condition cannot be cured within six months even with proper medical treatment. The employer dismissed her after proper notice.

Is the dismissal valid? If so, compute her separation pay.

Answer

Yes, the dismissal is valid.

Under Art. 299 of the Labor Code, termination due to disease is valid upon certification by a competent public health authority that the illness is incurable within six months.

Maria's condition was certified by a government hospital as incurable within six months. Proper notice was given.

Dismissal is valid.

Separation Pay Computation

Length of service: 12 years and 8 months 8 months ≥ 6 months → counted as 13 years

Option 1: 1 month pay = ₱30,000
Option 2: ½ month pay per year
₱30,000 × 0.5 = ₱15,000 ₱15,000 × 13 years = ₱195,000
Separation Pay = ₱195,000 (higher amount)

Bar-Core Summary

Medical termination is strictly construed. It requires certification from a competent public health authority stating incurability within six months, plus notice and proper separation pay (1 month or ½ month per year, whichever is higher). Absent strict compliance, dismissal is illegal.

Problem 2

Ramon worked for 9 years and 5 months as a warehouse supervisor earning ₱40,000 monthly. He was diagnosed with pulmonary tuberculosis. The company physician declared him "unfit for work indefinitely." Ramon went on leave but failed to submit a medical clearance after four months.

The employer required him to return to work with a fitness certificate. When Ramon failed to submit one, the company terminated him on the ground of disease. During proceedings, the employer presented only the company doctor's report. No certification from a government or public health authority was presented.

Assuming dismissal was illegal, compute Ramon's monetary entitlement if reinstatement is no longer feasible and separation pay in lieu of reinstatement is awarded. He was dismissed on January 1, 2024, and the decision becomes final on January 1, 2026.

Answer

The dismissal is illegal.

Under Art. 299, dismissal due to disease requires certification by a competent public health authority that the illness is incurable within six months even with proper medical treatment.

As held in:

- Sy v. Court of Appeals — Certification is mandatory.
- Tan v. Silahis International Hotel — Company doctor's opinion is insufficient.

The employer relied solely on its company physician. No certification from a competent public health authority was presented. Tuberculosis is generally curable within six months with proper treatment. Thus, statutory requirements were not met.

Termination is illegal.

Monetary Computation (Trick Part)

Since reinstatement is no longer feasible:

1. Backwages

Backwages run from dismissal (Jan 1, 2024) until finality (Jan 1, 2026) = 2 years.

₱40,000 × 24 months = ₱960,000

2. Separation Pay in Lieu of Reinstatement

For illegal dismissal:

1 month salary per year of service. Length of service: 9 years and 5 months
5 months < 6 months → counted as 9 years

₱40,000 × 9 = ₱360,000

Total Award

Backwages: ₱960,000
Separation Pay: ₱360,000

Total: ₱1,320,000

Why This Is a Trick

- Failure to submit medical clearance does NOT justify dismissal.
- TB is usually curable — cannot satisfy the "incurable within 6 months" standard.
- Employer must present certification from a competent public health authority.
- When dismissal is illegal, computation shifts to illegal dismissal rules — NOT Art. 299 separation pay.

41

Arts. 300-301

ART. 300. Termination by Employee. – (a) 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.

(b) 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 his 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 his representative against the person of the employee or any of the immediate members of his family; and

4. Other causes analogous to any of the foregoing.

ART. 301. When Employment not Deemed Terminated. – The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

41.1. **Overt Act Test.** The operative act in constructive dismissal is the employee's act of quitting for a just cause; just causes are SICO (serious insult, inhuman and unbearable treatment, crime/offense and other analogous causes); the SICO act is the overt act of dismissal, absent which the self-termination is either a resignation or abandonment;

41.2. **Resignation vs. Constructive Dismissal.** Resignation is a voluntary relinquishment of job when personal reasons cannot be sacrificed in favour of the exigencies of the employer's business; whereas, constructive dismissal is a forced relinquishment of job effected thru the employer's act of placing the employee in a situation that leaves him no option except to quit.

41.3. **Abandoment vs. Constructive dismissal.** Abandonment is a self-termination that is deduced from the employee's unjustifiable refusal to render service and commission of an overt act from which his intent not to resume work can be deduced; whereas, constructive dismissal is a quitting because continued employment has been rendered impossible, unreasonable or unlikely by the employer.

41
Art. 302

Art. 302. Retirement. – Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

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 hereby declared 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 (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

An underground mining employee upon reaching the age of fifty (50) years or more, but not beyond sixty (60) years which is hereby declared the compulsory retirement age for underground mine workers, who has served at least five (5) years as underground mine worker, may retire and shall be entitled to all the retirement benefits provided for in this Article.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code. Nothing in this Article shall deprive any employee of benefits to which he may be entitled under existing laws or company policies or practices.

42.1. **Retirement Pay**: 22.5 x Daily Salary x Length of Service

42.2. **Arts. 82 & 95 (PD 851).** The 22.5 comes from ½ month salary (15 days), SIL (5 days) and 1/12 of 13th month pay (2.5 days); the 15 will always be given; however, whether to give the 5 (SIL) depends on whether or not the retiree is entitled to SIL (see Art. 82); and whether to give the 2.5 (13th month pay) depends on whether or not the retiree is entitled to 13th month pay (see P.D. 851); all employees in all establishments, whether for profit or not, are entitled to SIL – except if employee No. 9 (Less Than 10 Rule), receiving the equivalent of SIL, and the employer enjoys exemption; all land-based rank-n-file employees are entitled to 13th month pay – except managers, supervisors, those receiving equivalent 13th month pay, and workers whose employers are exempt, viz., " workers paid on task basis" and "workers paid on purely commission basis."

42.3. **Retirement Age**: in general (60-65); underground/surface miner (50-60); licensed racehorse jockey (55).

43
Art. 306

ART. 306. Money Claims. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

All money claims accruing prior to the effectivity of this Code shall be filed with the appropriate entities established under this Code within one (1) year from the date of effectivity, and shall be processed or determined in accordance with the implementing rules and regulations of the Code; otherwise, they shall be forever barred.

Workmen's compensation claims accruing prior to the effectivity of this Code and during the period from November 1, 1974 up to December 31, 1974, shall be filed with the appropriate regional offices of the Department of Labor not later than March 31, 1975; otherwise, they shall forever be barred. The claims shall be processed and adjudicated in accordance with the law and rules at the time their causes of action accrued.

43.1. **Reckoning Date**. The 3-year prescriptive period shall be counted from the date the money claim became a legal possibility, or day it could be judicially brought, e.g., date of discovery of the illegal salary deductions (*Virgilio Anabe v. Asian Construction, et al., G.R. No. 183233, 23 Dec. 2009*).

43.2. **Curious Animal**. As a curious animal, service incentive leave (SIL) does not prescribe like other money claims (*Autobus Transport System, Inc. v. Bautista, G.R. No. 156367, 16 May 2005*).

43.3. **Twenty-five (25) SILs**. SIL prescribes in 3 years but differently as follows:

(a) Monetization Option (2nd Option). From date of demand for payment.

(b) Commutation Option (3rd Option). From date of retirement, resignation or termination.

If filed within 3 years from constructive dismissal, it is not barred as to allow the employee to get all her 25 commuted SILs. (*Lourdes Rodriguez v. Park N Ride, et al., G.R. No. 222980, 20 March 2017*).

Note: *In* ***Apolinario Z. Zonio, Jr. v. 88 Aces Maritime Services, Inc., Khalifa A. Algosaibi Diving and Marine Services Co., and Janet A. Jocson,*** *G.R. No. 239052, October 16, 2019*, the Supreme Court recognized that a party was able to institute its claim within the reglementary period by virtue of filing its Request for Single Entry Approach (SEnA) before the prescriptive period expired, and thus the subsequent filing of the formal complaint was timely for purposes of prescription.

Explanation:

- Under Philippine law and practice, initiating SEnA proceedings by filing an RFA interrupts or tolls prescription (i.e., it "stops the clock") so long as the RFA was filed before the prescriptive period expired. After the SEnA process is terminated (e.g., issuance of a Referral/Certificate of Non–Settlement), the prescriptive clock continues from where it left off.
- Thus, even if the formal complaint (e.g., before the NLRC) is filed after the original prescriptive period, it is not considered barred if the SEnA RFA was timely filed.

Key Point: The critical date is the filing of the SEnA Request for Assistance, not the filing date of the subsequent labor complaint, for purposes of preserving rights against prescription.