

Employment law in the Philippines – an overview



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Introduction

The Philippine economy continues to be one of the fastest growing in South East Asia, and the country remains an attractive jurisdiction in which to do business due to relatively low labor costs and an educated and largely bilingual workforce.

This in-brief provides a snapshot of some of the key aspects of employment law in the Philippines. Our Hong Kong office coordinates employment and immigration/global mobility support across the Asia Pacific region (including the Philippines). This publication provides general guidance only: expert advice should be sought in relation to particular circumstances. Our Hong Kong office can source Philippine advice through its links with local firms in the Philippines.

The employment law landscape

The Philippine legal system is a mix of the civil law and the common law system.

The main sources of Philippine law are the Constitution, statutes, treaties and conventions, and judicial decisions. While the Constitution is the highest law, the Labour Code (“the Code”) is the statute that regulates employment relationships. The Code also applies to foreign nationals working in the Philippines.

The Philippine employment landscape is generally pro-labour rather than pro-management, meaning the law tends to be more employee-friendly.

Commencing employment

Structuring the employment relationship

There is no requirement for a foreign employer to set up a local entity to employ local workers in the Philippines. The foreign employer may either secure a licence to do business or set up a branch in the Philippines.

Types of employment

There are five categories of employment arrangements: regular employment where the employee is engaged for an indefinite period; project employment where the period of employment is fixed for a specific undertaking; seasonal employment where the period of employment is only for a certain time of the year; casual employment where the employee is engaged to perform work that is merely incidental to the business of the employer and for a definite period; and fixed-term employment where the duration of the employment is specified before the employment relationship commences. Fixed-term contracts are not limited to seasonal work and extend to employment arrangements where both parties have voluntarily agreed on a fixed period of employment.

Part-time workers in regular employment are entitled to the same rights as permanent employees.

The employment contract

An employment contract can be oral or written so long as it satisfies the essential requirements of consent, object and cause. Parties are generally free to negotiate the terms and conditions of the contract, provided that they comply with the minimum statutory standards and are no less favourable than prescribed by the Code.

The law does not require contracts to be written in any particular language. While it is most common for contracts to be in English, a dual language contract in Filipino is recommended if an employee is a Philippine national and unable to fully understand the contract in English.

Probationary periods are permitted and the maximum period allowed is six months.

Key minimum employment rights

Leave

There are 12 paid regular holidays each year when employees are entitled to be paid their normal rate for an unworked day. Employees can be required to work on these days but must be paid double their usual rate of pay for doing so. Additional special non-working holidays are also proclaimed by the government each year, on which employers may choose to grant unpaid leave. Employees who are required to work on a special holiday must be paid a premium of 30% of their normal pay, or 50% if it falls on the employee's rest day.

Employees are entitled to five days of paid vacation leave after 12 months of service.

Employees are not entitled to statutory sick leave, although in practice many employees are granted sick leave through a voluntary employer policy or collective bargaining agreements.

Female employees are entitled to maternity leave of up to 105 days, all of which is paid. Male employees are entitled to seven paid paternity leave days.



Working time

Maximum working hours are generally eight hours per day or 48 hours per week. Employees who work in excess of eight hours are entitled to overtime pay of 25% on top of their normal wage, or 30% for if the work is done on a rest day.

Employees are entitled to an unpaid rest period of at least 24 consecutive hours for every six consecutive days of work.

In emergency situations employees may be required to perform overtime work and to work outside their normal work schedule, provided they are paid the overtime premium.

Employees are entitled to a daily unpaid meal break of at least one hour or a paid meal break of 20 minutes.

Pay and social security

The minimum wage rate varies between regions. In Metro Manila, the minimum wage is now P 537.00 per day effective from 2 January 2020.

Employees and employers must both contribute to the Social Security System (SSS), National Health Insurance Programme and the Home Development Mutual Fund which covers sickness, maternity, disability, retirement, deaths and funerals, health insurance and housing loans. The employee's and the employer's contribution rates to the SSS are set in accordance with the employee's monthly salary following the schedule set out by the Social Security Commission. For example, the current SSS contribution rate is 11% of monthly salary not exceeding PHP16,000 and is split between the employer (7.37%) and the employee (3.63%).

Employers must also contribute an equivalent to one per cent of the employee's monthly salary to the Employees' Compensation Programme which covers medical and rehabilitation services. The current required minimum contribution is PHP10.

Terminating employment

Terminating employment is relatively restrictive from an employer's perspective and must be carried out in compliance with statutory requirements.

Termination by an employer is only legal if there is a just or authorised cause. The employer may not dismiss an employee at any time without cause by merely giving notice or payment in lieu of notice. Examples of a just cause are serious misconduct, gross and habitual neglect, fraud or wilful breach, or the commission of a crime by the employee. Examples of an authorised cause are installation of labour-saving devices, redundancy, retrenchment to prevent loss, cessation of operation, and disease.

In order to legally dismiss an employee due to a just cause, the employer must serve a written notice to the employee setting out the reason and giving the employee an opportunity to respond. If the employer decides to proceed with the termination, another written notice must be served to the employee.

Termination on grounds of an authorised cause is slightly different. The employer must serve a written notice to the employee and to the Department of Labour and Employment at least 30 days before the effective date of termination. Severance pay shall amount to at least one half month's salary or to one month's salary for every year of service, depending on the authorised cause.

An employee may terminate employment for any reason by serving notice to the employer at least 30 days in advance. Where the employee fails to give notice, the employer may hold the employee liable for damages.

There are no specific categories of employees protected from dismissal under Philippine law. All employees are protected in absence of a just or authorised cause for dismissal.

Employees are entitled to file a procedural or a substantive claim for dismissal, and the employee may be entitled to receive nominal damages even if there was a just or authorised cause. The consequences of an illegal dismissal include reinstatement or damages, and legal fees may also be incurred where the dismissal was carried out in bad faith.

Discrimination and harassment

Employees have the right to work without being discriminated against on the basis of gender, age, race, creed, disability, diseases or indigenous backgrounds. The Code also makes it unlawful for employers to discriminate against employees who have filed any complaint concerning wages, joined or encourage membership of labour organisations, or testified under the Code.

Sexual harassment in the workplace is also prohibited under statutory law.

Protecting the business

Employers may restrict employees' activities during and after termination of employment provided that the restrictive covenant is not contrary to public welfare and is considered fair and reasonable. The question of reasonableness is determined on a case-by-case basis. In general, a non-compete clause will be considered valid if it specifies the time, place and trade that is covered.

Resolving disputes

Employees may bring their claims against employers with or without legal representation.

The Code requires parties to first undergo mandatory conciliation and mediation proceedings before a Labour Arbiter in order to try to reach an amicable settlement. Litigation proceedings will only commence if the parties fail to settle in whole or in part.

Employee representation

Employees are free to join unions. It is unlawful under the Code for any person to discriminate against or interfere with employees in their exercise of the right to join labour unions.

Business transfers

There is no legal protection of employees in transfer of undertaking situations. In the absence of any express stipulation, employees are not automatically transferred to the new employer when a business is sold and the new employer is not under any obligation to maintain or incorporate any employment terms from previous employment contracts. In an asset sale transaction, employees do not automatically transfer to the buyer without the consent of the employees. The employee has to be terminated by the original employer for authorised cause and then hired by the buyer-employer. In a share sale transaction, there is no transfer of employees to speak of in the absence of change in employer.

Data protection

Employees are entitled to data protection rights where personal information is involved. Under the Data Privacy Act, employees have the right to be informed of whether personal information pertaining them is being processed. Employees are also able to suspend or withdraw personal information from the employer's system where it is incomplete, outdated, false, unlawfully obtained, used for unauthorised purposes, or no longer used for the same purpose for which it was obtained. In addition, employers have obligations to retain the information only for as long as necessary to fulfil the purpose for which it was obtained, provide reasonable access to the information to employees, correct inaccurate information immediately, and implement reasonable and appropriate measures to protect its employees' information.

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