Labor Law

Labor Law includes all the rules of law governing the conditions under which persons may work under the control of other persons called employers.

Constitutional Provisions on Labor

> ***Section 3, Article XIII of the 1987 Constitution****. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.*
>
> *It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with the law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.*
>
> *The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.*
>
> *The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and expansion and growth.*
>
> ***Section 14****. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.*
>
> ***Section 15****. The State shall respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means.*
>
> ***Section 16****. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.*

Labor, whether local or overseas, organized or not organized, shall be given constitutional protection. The right to strike, although already part of the right to self-organization, is specifically mentioned. The right to a living wage is expressly stated. A wage is a living wage if it is adequate to sustain a worker and his family in dignity.

The State shall promote shared responsibility between workers and employers. Thus, the workers shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. In this regard, the law may provide for consultations with workers or their unions. The union, which is the collective bargaining agent, may be represented in the governing body of an enterprise whose opinion voicing that of the union he represents may be taken into account by the management.

The recognition by the State of the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments as well as to expansion and growth may be considered a sequel to the rule that the principle of shared responsibility between workers and employers must be promoted by the State. The words "just share in the fruits of production" should not cover only basic salaries and other employment benefits but may also cover profit-sharing.

The State also protects the rights of the working women by assuring them safe and healthful conditions of work and opportunities to maximize their full potential in the service of the nation.

Classification of Employees

The employees of a company may be classified as follows (Cabulay & Carpio-Aldeguer, 2015):

- **Regular Employees**. The employees who are deemed regular are those who have been engaged to perform activities that are usually necessary or desirable in the usual trade or business of the employer. Any employee who has rendered at least one (1) year of service, whether such service continuous or broken, will be considered a regular employee with respect to the activity in which he is employed, and his employment will continue while such activity exists. They enjoy the benefit of security of tenure provided by the Philippine Constitution and cannot be terminated for causes other than those provided by law and only after due process is given to them (Maranan et al., 2019).
- **Casual Employees**. *Casual employees* are those whose employment is neither regular, project, nor seasonal as defined under Article 295 of the Labor Code. There is casual employment where an employee is engaged to perform a job, work, or service which is merely incidental to the business of the employer, and such job, work, or service is for a definite period made known to the employee at the time of engagement; provided, that any employee who has rendered at least one (1) year of service, whether such service is continuous or not, shall be considered a regular employee concerning the activity in which he is employed, and his employment shall continue while such activity exists.
- **Seasonal Employees**. *Seasonal employees* are those whose work or services is seasonal in nature, and the employment is for the duration of the season. Regular seasonal employees are those called to work from time to time. The nature of their relationship with the employer is such that during the offseason, they are temporarily laid off, but during the summer season, they are reemployed or when their services may be needed. They are not, strictly speaking, separated from the service but are merely considered as on leave of absence without pay until they are reemployed. Their employment relationship is never severed but only suspended. As such, those employees can be considered as in the regular employment of the employer. In effect, these seasonal regular employees enjoy the security of tenure and cannot be dismissed without just cause.
- **Project Employees**. A *project employee* is one whose "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 services to be performed is seasonal in nature, and the employment is for the duration of the season." The principal test for determining whether an employee is a project employee or a regular employee is whether the project employee was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employee was engaged for that project. Failure of the employer to file termination reports after every project completion with the nearest public employment office is an indication that an employee was not and is not a project employee.
- **Probationary Employees**. A *probationary employee* is one who is on trial by an employer during which the employer determines whether or not he is qualified for permanent employment. Probationary employment shall not exceed six (6) months from the date the employees started working. In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at the time, he shall be deemed a regular employee.
  Probationary employment shall be governed by the following rules:
  - Where the work for which the employee has been engaged is learnable or apprenticeable following the standards prescribed by the Department of Labor and Employment, the period of probationary employment shall be limited to the authorized learnership or apprenticeship period, which is applicable.
  - Where the work is neither learnable nor apprenticeable, the period of probationary employment shall not exceed six (6) months reckoned from the date the employee started working.

- The services of any employee who has been engaged on a probationary basis may be terminated only for a just or authorized cause or when he fails to qualify as a regular employee following reasonable standards prescribed by the employer.

A probationary employee enjoys only a temporary employment status, not a permanent status. In general terms, he is terminable anytime as long as such termination is made before the expiration of the six-month probationary period. The employment of a probationary employee may only be terminated either: a) for a just or authorized cause; or b) when the employee fails to qualify as a regular employee following reasonable standards made known to him by the employer at the start of the employment.

The power of the employer to terminate an employee on probation is subject to the following conditions:

- It must be exercised following the specific requirements of the contract;
- The dissatisfaction on the part of the employer must be real and in good faith, not prejudicial so as to violate the contract or the law;
- There must be no unlawful discrimination in the dismissal.

The burden of proving just or valid cause of dismissing an employee rests on the employer.

- **Employees for a Fixed Term**. These are employees covered in employment contracts providing for "term employment" or "fixed-period employment." Stipulations providing for fixed period employment are valid when the period agreed upon has been knowingly and voluntarily agreed by the parties without force, duress, or improper pressure exerted on the employee, and when such stipulations were not designed to circumvent the laws on the security of tenure.
  The following are the guidelines that must be observed for fixed contracts of employment that may not circumvent the security of tenure:
  - The fixed period of employment was knowingly and voluntarily agreed upon by the parties, without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
  - It satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter.
- **Overseas Filipino Workers**. Also referred to as a "migrant worker," an *overseas Filipino worker* refers to a person who is to be engaged, is engaged, or has been engaged on a remunerated activity in a state of which he or she is not a legal resident. A person to be engaged in a "remunerated activity" refers to an applicant worker who has been promised or assured employment overseas and acting on such promise or assurance sustains damage and/or injury. The law which governs overseas employment is Republic Act 8042 or the "Migrant Workers and Overseas Filipinos Act of 1995."
- **Special Workers**. The following are considered special workers:
  - *Apprentices.* An "apprentice" is a worker who is covered by a written apprenticeship agreement with an individual employer or an of the recognized entities. It is a person undergoing training for an approved apprenticeable occupation during an established period assured by an apprenticeship agreement.
    An "apprenticeship agreement" is an employment contract wherein the employer binds himself to train the apprentice and the apprentice, in turn, accepts the terms of training. An "apprenticeable occupation" means any trade, form of employment, or occupation which requires more than three (3) months of practical training on the job supplemented by related theoretical instruction. The period of apprenticeship shall not exceed six (6) months.
  - *Learners. Learners* are persons hired as trainees in semi-skilled and other industrial occupations which are non-apprenticeable and which may be learned through practical training on the job in a relatively short period of time which shall not exceed three (3) months. Learners may be employed when no experienced workers are available, the employment of learners is necessary

to prevent curtailment of employment opportunities, and the employment does not create unfair competition in terms of labor costs or impair or lower working standards.

- *Handicapped workers. Handicapped workers* are those whose earning capacity is impaired by age or physical or mental deficiency or injury. Under Section 4(a) of RA 7277, also known as "Magna Carta for Disabled Persons," "disabled persons" are those suffering from restriction or lack of different abilities, as a result of mental, physical, or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being. A qualified disabled employee shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives, or allowances as a qualified able-bodied person.

Application of the Law

Case: Philippine Airlines, Inc. (PAL) contracted the services of G.C. Services Enterprises to undertake specific projects. Accordingly, G.C. Services recruited and hired carpenters, painters, and electricians and assigned them to different PAL shops, namely: Carpentry Shop, Electrical Shop, Technical Center Shop, and In-flight Center Shop, all under PAL's Construction and Corporate Services Department. These hired workers had been employed for a period ranging from one (1) year and four (4) months to 11 years and ten months. Also, these workers were supervised, directed, and controlled by PAL's regular employees. What is the classification of the workers which were recruited and hired by G.C. Services for PAL?

Benefits, Privileges, and Policies Affecting Employees (Cabulay & Carpio-Aldeguer, 2015)

Minimum Wage. Under Republic Act No. 6727 (Wage Rationalization Act), the determination of minimum wage rates is now within the function of the Regional Tripartite and Productivity Board. The concept of "minimum wages" underlies the effort of the State to promote productivity improvement and gain-sharing measures to ensure a decent standard of living for the workers and their families to affirm labor as a primary social, economic force.

Collective Bargaining. This means conferring promptly and in good faith for negotiating agreements concerning wages, hours of work, and the like and entering into written contracts (called Collective Bargaining Agreement or CBA), adjustment of grievances, and so on. The provisions commonly found in collective bargaining agreements are 1) Enumeration or reservation of management rights; 2) Union recognition and security; 3) Wage and fringe benefits and their administration; 4) Physical working conditions; 5) Selected personnel management and plant operation practices; 6) Grievance and arbitration, and 7) Duration of contract.

The parties to collective bargaining are the employer and the employees represented by their labor union. While it is a mutual obligation of the parties to bargain, the employer is not under any legal duty to initiate contract negotiation. The mechanics of collective bargaining are set in motion only when the following conditions are present, namely: 1) possession of the status of majority representation of the employees' representative following any of the means of selection or designation provided for by the Labor Code; 2) Proof of majority representation, and 3) a demand to bargain under Art. 261 (a) of the Labor Code. If the jurisdictional preconditions are present, the collective bargaining should begin within 12 months following the determination and certification of the employees' exclusive bargaining representative.

Failure or refusal to meet and convene, evading the purposes of bargaining and not observing good faith, and grossly violating the economic provisions of the CBA constitutes unfair labor practice which is a violation under the Labor Code. In this regard, a strike or lockout may occur when the bargaining is caught in a deadlock.

The CBA negotiated by the employees' bargaining agent should be ratified or approved by the majority of all the workers in the bargaining unit, not just the members of the bargaining union. The ratification is mandatory. The CBA after ratification should be registered within 30 calendar days from the execution of the agreement

with the Bureau of Labor Relations or the Department of Labor and Employment Regional Office that has jurisdiction over the establishment. All provisions of the CBA shall have a term of three (3) years after its execution. Insofar as the representation aspect is concerned, the term is five (5) years.

Maternity and Paternity Leaves. Based on the Implementing Rules and Regulations of Republic Act No. 11210, or the "105-Day Expanded Maternity Leave Law", all covered females regardless of civil status, employment status, and the legitimacy of her child shall be granted one hundred five (105) days maternity leave with full pay, and an additional fifteen (15) days with full pay in case the female worker qualifies as a solo parent under Republic Act No. 8972, or the "Solo Parents' Welfare Act of 2000."

In cases of miscarriage or emergency termination of pregnancy, sixty (60) days of maternity leave with full pay shall be granted.

The *covered employees* include female workers in the public and private sectors, female workers in the informal economy, female members who are voluntary contributors to the Social Security System (SSS), and female national athletes.

On the other hand, Republic Act No. 8187, also known as the Paternity Leave Act of 1996, governs the granting of paternity leave benefits to every married male employee. Under the said law, every married employee in the private and public sector shall be entitled to a paternity leave of seven (7) days with full pay for the first four (4) deliveries of the legitimate spouses with whom he is cohabiting. The following conditions must be met to avail of paternity leave benefits:

- He is an employee at the time of delivery of his child;
- He is cohabiting with his legitimate spouse at the time she gives birth or suffers a miscarriage;
- He has applied for paternity leave following the Implementing Rules; and
- His wife has given birth or suffered a miscarriage.

Republic Act No. 8972, otherwise known as the Solo Parents' Welfare Act of 2000, governs the granting of leave privileges to solo parents. Also, to leave privileges under existing laws, parental leave of not more than seven (7) days every year shall be granted to any solo parent employee who has rendered service for at least one (1) year.

Leave for Victims of Violence Against Women and Their Children. Under Republic Act No. 9262 or the "Anti-Violence Against Women and Their Children Act of 2004", women employees who are victims of acts of violence shall be entitled to a leave of up to ten (10) days with full pay. The said leave shall be extended when the need arises, as specified in the protection order issued by the barangay or the court.

Special Leave Benefits for Women. Under Republic Act No. 9710 or "The Magna Carta Of Women Act", any female employee, regardless of age and civil status shall be entitled to a special leave of two (2) months with full pay based on her gross monthly compensation due to surgery caused by gynecological disorders provided she has rendered at least six (6) months continuous aggregate employment service for the last twelve (12) months prior to surgery.

Service Incentive Leave (SIL). Under the Labor Code, an employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days (5) with pay. Unused service incentive leave shall be converted to cash. This does not apply to those employees enjoying vacation leave of at least five days with pay.

Service Charges. The rule of service charges applies only to establishments collecting service charges such as hotels, restaurants, lodging houses, nightclubs, cocktail lounge, massage clinics, bars, casinos, gambling houses, and similar enterprises, including those entities operating primarily as private subsidiaries of the government. All service charges actually collected by covered establishments shall be distributed completely and equally, based on actual hours or days of work or service rendered, among the covered employees, including those already receiving the benefit of sharing in the service charges. The shares shall be distributed and paid to the covered employees not less than once every two (2) weeks or twice a month at intervals not

exceeding sixteen (16) days. In the event that the minimum is increased by law or wage order, service charges paid to the covered employees shall not be considered in determining the covered establishment's compliance with the increased minimum wage. “Covered employees” refer to all employees, except managerial employees as defined herein, under the direct employ of the covered establishment, regardless of their positions, designations, or employment status, and irrespective of the method by which their wages are paid.

Employment Contracts. An employment contract is that under which one person (employee) binds himself with respect to another (employer) to place at the service of the latter his efforts in work, and the latter in turn agrees to pay him a compensation proportional to the time or the quantity of work done.

The concept of “employment contract” is regulated under the provisions of the Labor Code of the Philippines, Civil Code of the Philippines, and other special laws. The execution of employment contracts is in line with the characteristics of autonomy of contracts wherein parties are free to stipulate terms and provisions in a contract, as long as these terms and provisions are not contrary to law, morals, good customs, public order, and public policy. An employment contract is impressed with the public interest. Hence, other considerations of moral and social character have to be reckoned with to promote industrial peace and in keeping with social justice. Whenever there is doubt in the interpretation of any labor or employment contracts, the same shall be construed in favor of the safety and decent living for the laborer.

Legally speaking, a contract of employment is consensual which does not require additional formalities for its validity. However, the current practice in labor-intensive industries like the tourism industry is to utilize express written employment contracts, clearly understood and voluntarily agreed by the parties to protect the interest of both capital and labor. This is true especially for employees under probationary, project, casual, and fixed-term employment wherein the standards, scope, and duration of the employment must be expressed, clearly understood, and voluntarily agreed by the parties. It is a fair assumption to say that employees would comply with norms if they are properly and sufficiently informed. This communication process increases the extent of knowledge of each employee, expands the span of understanding of each employee, and enhances the level of acceptance by each employee.

By way of practice, the following are usually incorporated in a written and express contract of employment to emphasize the need for employees to comply with lawful and reasonable orders given by superiors concerning their jobs:

- Company rules and regulations;
- Code of Discipline;
- Policy manual on security, safety, accounting, and auditing;
- Day-to-day instruction;
- Job description;
- Standard operating procedures; and
- Memoranda given by superiors to their subordinates.

Death Benefits. Under the Social Security Law, upon the death of a member who has paid at least 36 monthly contributions before the semester of death, his primary beneficiaries shall be entitled to the monthly pension: Provided, that if he has no primary beneficiaries, his secondary beneficiaries shall be entitled to a lump sum benefit equivalent to 36 times the monthly pension. If he has not paid the required 36 monthly contributions, his primary and secondary beneficiaries shall be entitled to a lump sum benefit equivalent to the monthly pension times the number of monthly contributions paid to the Social Security System (SSS) or 12 times the monthly pension, whichever is higher. A funeral grant equivalent to Php12,000 shall be paid, in cash or in-kind, to help defray the cost of funeral expenses upon the death of a member, including a permanently disabled member or retiree.

In case of work-related deaths, beneficiaries will receive death benefits under the Employees Compensation and State Insurance Fund, in addition to the benefits under the SSS Law. Accordingly, the amount under the

Employees Compensation Fund shall be the amount equivalent to his monthly benefit, plus 10% thereof for each dependent child, but not exceeding five. The Employees Compensation Commission has increased the funeral benefits to Php10,000.

Health Benefits. This includes sickness, medical and hospitalization benefits. Under the Social Security Law, a member who has paid at least three (3) monthly contributions in the 12-month period immediately preceding the semester of sickness or injury and is confined more than three (3) days in a hospital or elsewhere with the approval of the SSS, shall be paid a daily sickness benefit equivalent to 90% of hid average daily salary credit.

In case of work-related sickness, the covered employee will be entitled to medical services, appliances, and supplies, in addition to the benefits under the SSS Law.

Retirement. Under Article 302 of the Labor Code, as amended by Republic Act No. 7641, also known as The New Retirement Law, any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contracts. In the absence of a retirement plan or agreement providing for retirement benefits of employees in establishments, an employee upon reaching the age of 60 years or more, but not beyond 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 a retirement pay equivalent to at least 1/2 month salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year.

Uniform Policies. Some tourism establishments, which include but not limited to restaurants, department stores, rest area in gasoline stations, deluxe and first-class hotels, tourist inns, special interest resorts, apartels, motels, and those engaged in water transport services, require their employees and staff to be well-groomed and should wear clean and smart uniforms. Uniform policies in these establishments are prerequisite requirements to be accredited by the Department of Tourism.

SSS, PhilHealth, Employees' Compensation Commission, and Pag-IBIG. Employees in the private sector are covered under the SSS Law wherein the mission is to promote and perfect a sound and viable tax-exempt social security system suitable to the needs of the people which shall provide meaningful protection to members and their beneficiaries against hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden.

PhilHealth assumed the responsibility of administering the former Medicare program for the private sector employees, with its landmark transfer from the Social Security System (April 1998). PhilHealth aims to rapidly ensure that all people have the opportunity to gain access to the health services they need at every stage of life without the risk of financial ruin and make the program sustainable in the long run through effective revenue collection and efficient purchasing ability.

According to Republic Act No. 7742, which was fully implemented on January 1, 1995, membership to the PAG-IBIG Fund shall be mandatory for all employees covered by SSS. This mandatory coverage extends to expatriates whose age is up to 60 years old and who are compulsorily covered by the SSS. In the absence of an explicit exemption from SSS coverage, the said expatriate, upon assumption of office, shall be compulsorily covered by the Fund. Some of the benefits under the PAG-IBIG program are the housing loan, calamity loan, and a provident savings program.

Termination of Employment. It is the constitutional right of workers to security of tenure and their right to be protected against dismissal except for just and authorized cause and without prejudice to the requirement of notice under Article 298 of the Labor Code. Due process in termination disputes is the heath of security of tenure and is personal to the employee.

The following are the standards of due process for termination of employment under Article 292 (b) of the Labor Code:

- A written notice served on the employee specifying the ground and grounds for termination and giving to said employee reasonable opportunity within which to explain his side;

- A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is allowed to respond to the charges, present his evidence, or rebut the evidence presented against him; and
- A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify the termination. In case of termination, the foregoing notices shall be served on the employee's last known address.

For termination of employment as based on authorized causes under Article 298 of the Labor Code (i.e., 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), the requirements of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor at least 30 days before the effectivity of the termination specifying the grounds for termination.

If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required. If the termination is brought about by the failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served to the employee within a reasonable time from the effective date of termination.

Under Article 297 of the Labor Code, the following are considered just causes for termination:

- Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- Gross or habitual neglect by the employee of his duties;
- Fraud or willful breach by the employee of the trust reposed by him by his employer or duly authorized representative;
- Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- Other causes analogous to the foregoing.

Under Article 299 of the Labor Code, 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.

Application of the Law

Case: Mr. Ciro Betila (Betila, for short) worked with Century Park Sheraton Hotel, Manila as a room attendant from June 22, 1980, until July 22, 1989, when his services were terminated. On January 22, 1989, Mr. Motomu Okumura, a Japanese guest at the Sheraton Hotel, filed a complaint with the Tourist Security Division of the Department of Tourism regarding the loss of 40,000 Japanese yen and US$210 inside his hotel room. An investigation was conducted by the Tourist Security Division. They found out that the room attendant assigned to Mr. Okumura's room on the day was Betila. Betila was invited to appear on January 22, 1989, to shed light on the complaint but failed to appear despite receipt of the notice. The investigation proceeded in his absence.

On January 26, 1989, the Tourist Security Division submitted a progress report to the hotel with the following findings:

"Investigation disclosed that Betila reported to duty on January 22, 1989, and left around 2:00 PM, earlier than his off-duty, but after he had serviced Room 350 and no other room attendant entered the same room until 5:00 PM when the theft was discovered by the victim. The following day, said person (Betila) failed to appear for investigation because such day was his scheduled day-off. The records of personnel assignment where alleged losses occurred x x x show that from June 1986 to December 1988, there were 12 reported losses in the room assignments of Betila, and all (the lost articles) were not recovered. Two (2) of the mentioned cases were reported to this office and investigated by Investigators Romeo Balanquit and Leo

Castillo. Both investigators informed the undersigned that in their respective cases, the investigation disclosed that the reported losses in the room assignments of Betila all occurred on the date before his scheduled day-off, thereby providing him the best opportunity to escape investigation immediately after the discovery of the crime committed. Said modus operandi is true in the instant case."
Ciro Betila was recommended to be separated from service.
On April 5, 1989, Mr. Masatoshi Kusumoto, another Japanese guest at the hotel, also lost his money. Again, it appeared that Betila was the one who cleaned his room on the said date. The Tourist Security division sent Betila a letter informing him of Mr. Kusumoto's complaint. He was also invited to appear before said office on April 8, 1989, for investigation. Once more, he did not honor the invitation. The investigation proceeded in his absence. From the worksheet submitted by Betila to the hotel, it was established that he was the only person who entered the room of Mr. Kusumoto on said date, before the discovery of the missing money. The investigator again recommended the dismissal of Betila "to deter him from victimizing more hotel guests to the detriment of the hotel in particular and the tourism industry in general."
In a letter, dated May 5, 1989, Nicolas R. Kirit, Executive Housekeeper of the hotel, informed responded Betila of the findings of the Department of Tourism as contained in its two (2) letter recommendations, copies of which were attached to said letter. Betila was required to explain his side within 48 hours from receipt of the letter. Despite the receipt of the said letter on May 11, 1989, he did not submit his explanation.
The hotel management then proceeded to evaluate the findings and recommendations made by the investigators of the Department of Tourism. It decided to dismiss Betila from the service, and he was informed of his dismissal in a Memorandum, dated July 17, 1989. Betila refused to acknowledge its receipt. Instead, he filed a complaint about illegal dismissal and unfair labor practice against Century Park Sheraton.
Is Ciro Betila validly dismissed by the hotel company?

Laws Against Discrimination

> **Article 3 of the Labor Code of the Philippines.** *Declaration of basic policy.* The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race, or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, the security of tenure, and just and humane conditions of work.

The laws against discrimination concerning labor are as follows (Cabulay & Carpio-Aldeguer, 2015):

- **Republic Act No. 7277, also known as the Magna Carta for Disabled Persons**
  The following constitutes acts of discrimination against handicapped workers:
  - Limiting, segregating, or classifying a disabled job applicant in such a manner that adversely affects his work opportunities;
  - Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out a disabled person unless such standards, tests, or other selection criteria are shown to be job-related for the position in question and are consistent with business necessity;
  - Utilizing standards, criteria, or methods of administration that have the effect of discrimination based on disability or perpetuate the discrimination of others who are subject to common administrative control;
  - Providing less compensation, such as salary, wage, or other forms of remuneration and fringe benefits, to a qualified disabled employee, because of his disability, than the amount to which a non-disabled person performing the same work is entitled;
  - Favoring a non-disabled employee over a qualified disabled employee for promotion, training opportunities, study, and scholarship grants, solely on account of the latter's disability;

- Reassigning or transferring a disabled employee to a job or position he cannot perform because of his disability;
- Dismissing or terminating the services of a disabled employee because of his disability unless the employer can prove that he impairs the satisfactory performance of the work involved to the prejudice of the business entity: Provided, however, that the employer first sought to provide reasonable accommodations for disabled persons;
- Failing to select or administer in the most effective manner employment test to which accurately reflects the skills, aptitude, or other factors of the disabled applicant or employee that such test purports to measure, rather than the impaired sensory, manual, or speaking skills of such applicant or employee if any; and
- Excluding disabled persons from membership in labor unions or similar organizations.

- **Republic Act No. 6725, An Act Strengthening the Prohibition on Discrimination against Women Concerning Terms and Conditions of Employment**
  The following are acts of discrimination:
  - Payment of a lesser compensation, including wage, salary, or other forms of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and
  - Favoring a male employee over a female employee concerning promotion, training opportunities, study, and scholarship grants solely on account of their sexes.
- **Presidential Decree No. 966 (July 20, 1976), Declaring Violations of the International Convention on the Elimination of All Forms of Racial Discrimination to be Criminal Offenses and Providing Penalties Thereof.**
  All organizations and all propaganda activities, which promote and incite racial discrimination, are illegal and prohibited. Violations of Presidential Decree No. 966 and the International Convention on the Elimination of All Forms of Racial Discrimination shall result in criminal liability.

Employment of Women

It is the policy of the State to protect the working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

Sexual Harassment in the Workplace

Under Republic Act No. 7877, also known as the Sexual Harassment Act of 1995, *sexual harassment* is committed by an employer, employee, manager, supervisor, agent of the employee, manager, supervisor, agent of an employee, or any other person who, having authority, influence, or moral ascendancy over another in a work environment, demands, requests, or otherwise requires any sexual favor from others, regardless of whether the demand, request for the requirement for submission is accepted or not.

In a work-related environment, sexual harassment is committed when:

- The sexual favor is made as a condition in the hiring or the employment, re-employment, or continued employment of the said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges, or the refusal to grant the sexual favor results in limiting, segregating, or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect the said employee;
- The above acts would impair the employee's rights or privileges under existing labor laws; or
- The above acts would result in an intimidating, hostile, or offensive environment for the employee.

In this regard, it shall be the duty of the employer to prevent or deter the commission of the acts of sexual harassment and promulgate appropriate rules and regulations in consultation with and jointly approved by employees prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions.

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