

WORKERS' RIGHTS & LEGAL ISSUES IN THE WORKPLACE

OCCUPATIONAL HEALTH NURSES
ASSOCIATION OF THE PHILIPPINES

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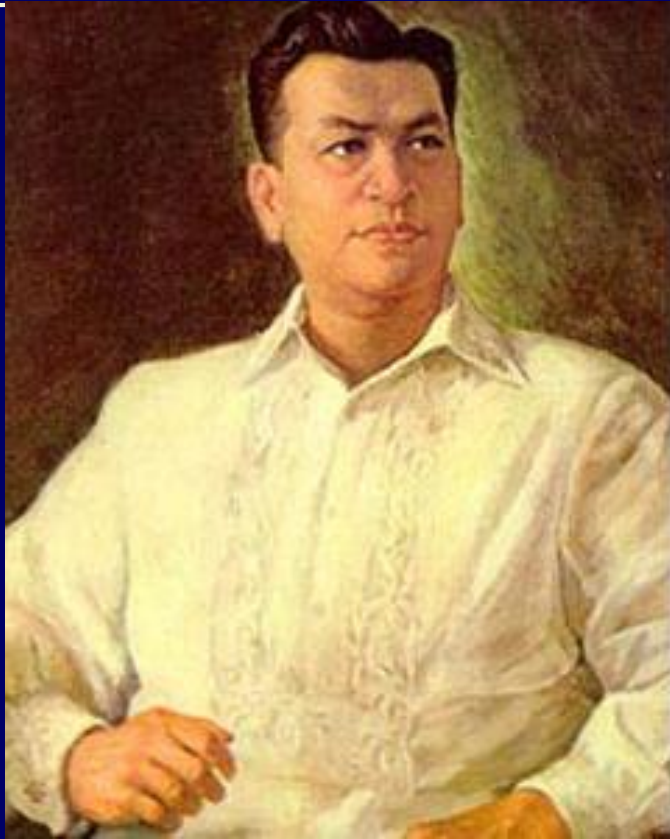
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OCCUPATIONAL HEALTH NURSES ASSOCIATION OF THE PHILIPPINES

**“Always at its Best in
the Service of the
Filipino Workers.”**

Social Justice



- *“HE WHO HAS LESS
IN LIFE SHOULD
HAVE MORE IN
LAW!”*
- - Ramon Magsaysay

Social Justice

Calalang vs
Williams,
70 Phils 726

Humanization
of laws

Equalization
S&E forces

Social justice is the promotion of the welfare of all the people, the adoption by the government of measures calculated to insure economic stability of all the component elements of society thru the maintenance of proper economic equilibrium in the interrelations of the members of the community, constitutionally, thru the adoption of measures legally justifiable, or extra-constitutionally, thru the exercise of the power of the government, based on the time-honored principle of *salus populi est suprema lex.*”

Labor Standards

Set out
the minimum

Terms,
Conditions &
benefits

Employer
Must
Provide or
Comply with

to which workers are entitled
as a matter of right.

Minimum Standards Workers are entitled to as a matter of right:

- Minimum wage
- Holiday pay
- Overtime pay
- Night shift differential
- Service charges
- Service incentive leave
- Maternity leave
- Paternity leave
- Parental leave for solo parent
- Leave for victims against women and children
- 13th month pay
- Separation pay
- Retirement pay

Labor Relations

define
Status,
rights &
duties

As well as
Institutional
mechanism

That govern
Individual &
Collective
interactions

between employers, employees and
their representatives.

Labor Code

What is
Labor Code?
PD 442, as
amended

**Codification into
One volume of 60
pieces of law**

**8 hr law,
min wage law,
termination law**

Labor Code (PD 442)

- Preliminary Title
- Book 1: Pre-employment
- Book 2: Human Resource Dev't
- Book 3: Conditions of Employment
- Book 4: Health Safety and Social Benefits
- Book 5: Labor Relations
- Book 6: Post Employment
- Book 7: Transitory and Final Provisions

ILO Convention Part of Law of the land

- In *The Heritage Hotel Manila vs. National Union of Hotel, Restaurant and Allied Industries* (G.R.178296, January 12, 2011), the court treats ILO Convention No 87 with high respect as a binding law. (Justice Nachura).

Fr. Joaquin Bernas, SJ said

- the Philippines recognizes that international law has the force and effect of the domestic law under the “incorporation clause” of the 1987 Constitution (Sec 2 of Article II). Thus, International Conventions of the International Labor Organization such as ILO Convention No. 87 and Convention No. 98 can be used by the parties like the Labor Code, Civil Code, Penal Code and other acts of Congress in the settlement of disputes in quasi-judicial bodies and regular courts.



ILO Core Labor Standards

- the prohibition of slavery and compulsory labor (C29; C105),
- the elimination of discrimination (C100;C111),
- the prohibition of exploitative child labor (C182),
- freedom of association and the right to collective bargaining (C87;C98)

Basic Constitutional Rights

Article XIII
Section 3
1987 Consti-
tion

1.Right to organize;
2.Right to CB & Nego;
3.Peaceful concerted
activities, strike;

4.Security of tenure;
5.Humane condition
of work; 6.living wage;
7.participate in
Decision making; &
8. Just share in the fruits

[

Management Prerogative

Established
company practice

CBA

Laws

**The Principle of Justice and Fair
Play**

Everything concerning the business

Employer's Power: Management Prerogatives

- Managerial Prerogatives are considered natural rights that allow employers to manage their business/employees
- Article 428 of the Civil Code provides that: “the owner has the right to enjoy and dispose of a thing, without other limitations other than those established by law.”

Right to regulate all aspects of employment

- (1) hiring
- (2) the freedom to prescribe work assignments
- (3) working methods, process to be followed
- (4) regulation regarding transfer of employees
- (5) supervision of their work
- (6) lay-off and discipline, and
- (7) dismissal and recall of workers (*J. Peralta, St. Paul College of Qc vs Spouses Ancheta, September 7, 2011, GR No 169905*)

Law Limiting Management Prerogative Normal Working Hours(Article 83)

- The normal hours of work an employee has to render must not exceed eight (8) hours a day and should be exclusive of the one (1) hour daily lunch break.
- Philippine laws, however, do not prohibit work done for less than eight hours.

Working hours shall include:

- all time during which an employee is required to be on duty and/or to be at a prescribed workplace;
- all time during which an employee is permitted to work; and
- rest periods of short duration during working hours.

5-day Work Week

- 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 meal time.

Health Personnel

- resident physicians
- nurses
- nutritionists
- dietitians
- pharmacists
- social workers
- lab technicians
- paramedical technicians
- psychologists
- midwives
- attendants and
- all other hospital or clinic personnel.

Exception:

- 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.

CBA provision a limitation to management prerogative

- the CBA provisions agreed upon by the Company and the Union delimit the free exercise of management prerogative pertaining to the hiring of contractual employees (Goya Inc.vs Goya Inc. Employees Union-Federation of Free Workers [FFW], Jan 21, 2013 [Justice Peralta])

CBA a limitation to management prerogative to outsource or contract out jobs

- Evidently, this case has one of the restrictions- the presence of specific CBA provision
- the CBA is the norm of conduct between the parties and compliance therewith is mandated by the express policy of the law
- (Goya Inc. vs GIEU-FFW GR 170054, Jan 21, 2013, [Justice Peralta])

The state regulates relations between workers & employers

SEC 3 (par. 4) , ARTICLE XIII OF THE CONST:

“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 on investments, and to expansion and growth.”

Employment is a property right

Callanta vs Carnation Phils, 145 SCRA 268:

“It is a principle well recognized under this jurisdiction, that one’s employment, profession, trade or calling is a property right, and the wrongful interference therewith is an actionable wrong. The right is considered to be property right within the protection of the constitutional guarantee of due process of law.”

Work is a property right

Callanta vs Carnation Phils, 145 SCRA 268:



Doctors and dentist, independent contractors?

- Given the following:
- (1) repeated renewal of petitioners' contract for fifteen years, interrupted only by the close of the school year;
- (2) the necessity of the work performed by petitioners as school physicians and dentists; and
- (3) the existence of LSGI's power of control over the means and method pursued by petitioners in the performance of their job

Samonte vs La Salle

(Feb 10, 2016)

- The SC ruled that petitioners attained regular employment, entitled to security of tenure who could only be dismissed for just and authorized causes.

5-5-5 Outlawed in Purefoods case (1997)

- The workers (numbering 906) were hired by petitioner Pure Foods Corporation to work for a fixed period of five months at its tuna cannery plant in Tambler, General Santos City, SC found illegally dismissed.
- SC said that since reinstatement is no longer possible because the petitioner's tuna cannery plant had, admittedly, been closed in November 1994, the proper award is separation pay equivalent to one month pay or one-half month pay for every year of service, whichever is higher, to be computed from the commencement of their employment up to the closure of the tuna cannery plant. The amount of back wages must be computed from the time the private respondents were dismissed until the time petitioner's cannery plant ceased operation

Just causes for termination

Article 297 (old 282):

- 1. Serious misconduct or willful disobedience of lawful orders*
- 2. Gross and habitual neglect of duties*
- 3. Fraud or willfull breach of trust*
- 4. Commission of a crime*
- 5. Other analogies cases*
 - 1. Abandonment*
 - 2. Defiance of the AJO of Labor Secretary*

Authorized causes for termination

Article 298 (old 283):

- 1. Introduction of labor saving device*
- 2. Redundancy*
- 3. Retrenchment*
- 4. Closure*

Article 301 (old 284): disease

Article 302 (old 285): Retirement

Gross misconduct

In the case of ***Molato vs. NLRC***, the Supreme Court ruled:

“For misconduct or improper behavior to be a just cause for dismissal the same **must be related to the performance of the employee’s duties and must show that he has become unfit to continue working** for the employer.”

Assaulting a co-employees is serious misconduct

- The act of assaulting another employee constitutes serious misconduct which, under Article 297 (282) of the Labor Code, is a just cause for the termination of employment. (Ha Yuan Restaurant vs NLRC, 516 Phil 124, 2006; Eastern Paper Mills versus NLRC, 252 Phil 618, 1989).

Long years of service not taken as mitigating factor for serious misconduct

" (A)ll the more should the employee's years of service be taken against him in the light of the finding of the lower tribunals that his violation of an established company rule was shown to be willful and such willfulness was characterized by a wrongful attitude." "The erring employee has never shown any feeling of remorse for what he has done x x x in inflicting injury upon a co-employee." He even refused to answer questions during the investigation (Justice Peralta in Cesar Naguit vs San Miguel Corporation, GR 188839, June 22, 2015)

Sexual Congress at the Office

- One the night of July 4, 1982, at about 11 o'clock, Trinio allowed two female security guards, Vicky and Excelsa to come inside the Security Office; he caused the introduction of intoxicating liquor into the premises of which he imbibed; he invited and allowed a guard on duty, Marcelino, to partake of the liquor when the latter entered the office; and thereafter he, a married man, had sexual intercourse with Guard Excelsa, a married woman, on top of the desk of the Security Head, while Magaling pretended to be asleep during all the time that the lustful act was commenced and consummated. (Standford Microsystems vs NLRC , Jan 28, 1988)

Repulsive to Morality

- Trinio did violate his employer's rules: he allowed women into the Security office; he allowed liquor to be brought in; he drank that liquor and invited another security guard to drink it, too; he and his lady friend, both being married but not to each other, satisfied their carnal passion in a business office and the known presence of another person. This last act was, to be sure, one "repulsive to morality," as the Labor Arbiter has put it. (Standford Microsystems vs NLRC , Jan 28, 1988)

First offense not an excuse

- The offenses cannot be excused upon a plea of their being "first offenses," or have not resulted in prejudice to the company in any way. No employer may rationally be expected to continue in employment a person whose lack of morals, respect and loyalty to his employer, regard for his employer's rules, and appreciation of the dignity and responsibility of his office, has so plainly and completely been bared (Standford Microsystems vs NLRB , Jan 28, 1988)

Grossly immoral Conduct

- A teacher's act of entering into said second marriage constitutes grossly immoral conduct. No doubt, such actuation demonstrates a lack of that degree of morality required of him as a member of the teaching profession. When he contracted his second marriage despite the subsistence of the first, he made a mockery of marriage, a sacred institution demanding respect and dignity. (Rene Ventenilla Puse vs Ligaya Delos Santos Puse, March 15, 2010, GR No. 183678)

Is falling in love to a student an immoral conduct?

- “If the two fell in love, despite disparity in their age and academic levels, this only lends substance to the truism that the heart has reasons of its own which reason does not know
- “But, definitely, yielding to this gentle and universal emotion is not to be so casually equated with immorality.”
- (*Evelyn Chua-Qua vs Hon Jacobo Claver, G.R. 49549[August 30,1990]*)

Marriage between persons despite differences of ages of 14 years is not defiance of contemporary norms

- “The deviation of the circumstances of their marriage from the social pattern cannot be considered as defiance of the contemporary social norms.”
(Evelyn Chua-Qua vs Hon. Jacobo Clave, G.R. 49549 [August 30, 1990]).

Pregnancy out of wedlock

- Pre-marital sexual relations between two consenting adults who have no impediment to marry each other, and, consequently, conceiving a child out of wedlock, gauged from a purely public and secular view of morality, does not amount to a disgraceful or immoral conduct under Section 94(e) of the 1992 MRPS. (Santos Leus vs SSCW, Jan 28, 2015)

Sexual Harassment

- “The dearth of quality employment has become a daily ‘monster’ roaming the streets that one may not be expected to give up one's employment easily but to hang on to it, so to speak, by all tolerable means.

Sexual Harassment

- Perhaps, to private respondent's mind, for as long as she could outwit her employer's ploys she would continue on her job and consider them as mere occupational hazards." (Philippine Aeolus Automotive United Corporation vs NLRC and Cortez, **G.R. No. 124617. April 28, 2000**)

Insubordination/Self-incrimination

- In the honest belief that issuing a letter of apology would incriminate him in the said criminal case and upon the advice of his own lawyer at that Montallana wrote to respondents and voluntarily communicated that he was willing to issue the required apology, but only had to defer the same in view of his legal predicament. (Montallana vs La Consolacion, Dec 8, 2014)

Insubordination/Self-incrimination

- As the Court sees it, the tenor of his letters, and the circumstances under which they were taken, at the very least, exhibited Montallana's good faith in dealing with respondents.
- (Montallana vs La Consolacion, Dec 8, 2014),

Insubordination/Self-incrimination

- This, therefore, negates the theory that his failure to abide by respondents' directive to apologize was attended by a "wrong and perverse mental attitude rendering the employee's act inconsistent with proper subordination," which would warrant his termination from employment.(Montallana vs La Consolacion, Dec 8, 2014))

Beauty of our dreams

“The future belongs to those who
believe in the beauty of their dreams.”

(Eleanor Roosevelt)

Thank you

God Bless!