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Member Firm of Baker & McKenzie International

The Global Employer: Philippines 2021



The Global Employer

Philippines Guide 2021

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**Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law*

About the guide

This guide is intended to provide employers and human resources professionals with a comprehensive overview of the key aspects of Philippine labor law. It covers the entire life cycle of the employment relationship from hiring through to termination, with information on working terms and conditions, family rights, personnel policies, workplace safety and discrimination. The guide links to our global handbooks, which include information for the Philippines on immigration and data privacy. The guide also contains information on the employment implications of share and asset sales.

Save where otherwise indicated, law and practice are stated in this guide as at September 2021.

IMPORTANT DISCLAIMER: The material in this guide is of the nature of general comment only. It is not offered as legal advice on any specific issue or matter and should not be taken as such. Readers should refrain from acting on the basis of any discussion contained in this guide without obtaining specific legal advice on the particular facts and circumstances at issue. While the authors have made every effort to provide accurate and up-to-date information on laws and regulations, these matters are continuously subject to change. Furthermore, the application of these laws depends on the particular facts and circumstances of each situation, and therefore readers should consult their attorney before taking any action.

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1 Overview

1.1 General overview

In terms of the labor landscape, the 1987 Philippine Constitution recognizes and affirms labor as a social economic force. As such, the rights of workers are protected and their welfare is promoted. The constitution also guarantees workers' security of tenure, humane conditions of work and equality of employment opportunities.

At the same time, the 1987 Philippine Constitution expressly recognizes the right of employers to earn reasonable returns on investments and to expansion and growth. In this regard, employers have the prerogative to manage, control and use their property and to conduct their business in the manner they deem best. Employers have the right to prescribe reasonable rules and regulations, to select workers and to transfer, reduce or lay off workers depending on the needs of the business, provided said rights are exercised in good faith and in accordance with applicable Philippine laws and subsisting contracts.

1.2 General legal framework

1.2.1 Sources of law

The 1987 Philippine Constitution recognizes and guarantees certain rights of workers.

The Philippines is a hybrid jurisdiction, meaning that it is based on both civil and common law. It has codified bodies of law, notable among which is the Labor Code of the Philippines ("**Labor Code**") and the Civil Code of the Philippines, which includes general laws relating to obligations and contracts. Nonetheless, decisions of the Supreme Court of the Philippines ("**Supreme Court**") also have the force and effect of law.

1.2.2 Collective agreements

There may be a collective agreement between an enterprise and a legitimate labor union representing the enterprise's employees. Such an agreement will bind the enterprise, the union and the employees. The Philippines does not have industry-wide collective agreements.

1.2.3 Court framework

The Philippine court system has a hierarchical structure within which is a specialized labor court.

The lowest level is the Single Entry Desk, from whom employees can seek assistance against their employers. If the Single Entry Desk is not successful in resolving the complaint of an employee, the latter may file a formal complaint with the regional arbitration branch of the National Labor Relations Commission (NLRC) with jurisdiction over the workplace.

Next is the appellate division of the NLRC, which hears appeals from decisions of the regional arbitration branch.

Above the appellate division of the NLRC is the Court of Appeals (part of the mainstream judicial system), to which a party can question the decision of the appellate division of the NLRC.

Finally, at the top is the Supreme Court, which is the court of final appeal and which can give binding "interpretations" concerning the specific application of laws and regulations. The Supreme Court is not limited to hearing appeals of significant cases.

1.2.4 Litigation considerations

A labor complaint normally takes more than three to four years to litigate because it involves several levels of the court system.

When an employee has a labor complaint, they may file the same with the NLRC, as well as with the DOLE and the National Conciliation and Mediation Board, after which the parties will be subject to a 30-day mandatory conciliation-mediation. If the complaint remains unresolved and at the option of the employee, the complaint will be referred to a regional arbitration branch of the NLRC, which is the trial court level and which will hear and decide the complaint. The decision of the labor arbiter at the regional arbitration branch may be appealed to the appellate division of the NLRC within 10 days from receipt of such decision. If the labor arbiter's decision involves a monetary award (e.g., back wages), an appeal by the employer may only be perfected upon posting a cash or surety bond equivalent to the monetary award, exclusive of damages and attorney's fees. In addition, an order of the labor arbiter to reinstate the employee is effective even pending appeal to the appellate division of the NLRC and the employer has the option to choose between actual or payroll reinstatement.

The decision of the appellate division of the NLRC may still be elevated to the Court of Appeals and subsequently to the Supreme Court. In this regard, a special civil action for certiorari to the Court of Appeals does not stay the execution of the decision of the appellate division of the NLRC, unless the Court of Appeals issues a temporary restraining order.

All levels of the court system are essentially pro-labor. Any doubt between the evidence of the employer and the employee is resolved in the employee's favor in line with the constitutional mandate to afford full protection to employees.

1.3 Types of working relationship

Individuals who provide their services broadly fall into the following main groups: (i) direct employees; (ii) contractors' employees; and (iii) independent contractors. The status of an individual is important because it determines their right to benefits, to join a union and to security of tenure. The table below provides more information on these groups.

Types of working relationship	
Direct employees	Employees include regular employees, casual employees, project employees, seasonal employees, fixed-term employees and probationary employees who may be working full time or part time. The company directly employs them. All employees enjoy security of tenure during the term of their employment.
Contractors' employees	<p>A company may enter into a contracting arrangement where the contractor agrees to perform a specific service. The contractor may hire employees and assign them to perform the contracted service. The company may not manage the means and methods used by the contractor and the contractor's employees to perform the service. There is a risk that the contractor's employees could later claim a de facto employment relationship with the company.</p> <p>A contracting arrangement involves two contracts. First, the company and the contractor enter into a service agreement. Second, the contractor and the employee enter into an employment contract.</p> <p>Contracting arrangements face a number of restrictions. For example, an arrangement for the provision of people is not allowed in the Philippines.</p>

Types of working relationship	
Independent contractors	<p>Independent contractors (sometimes referred to as consultants) are generally individuals who work for a company by directly signing a service agreement with the said company. They do not have the same level of rights and protection as employees and their service agreements are treated as normal civil contracts.</p> <p>Like contractors' employees, the company may not manage the means and methods the independent contractor uses to perform the contracted service. There is a risk that the individual could later claim a de facto employment relationship with the company.</p>

1.4 On the horizon

Following the mid-term elections in May 2019, the 18th Congress commenced on 1 July 2019. Many pro-employee bills that were not enacted into law in previous Congresses were refiled at the start of session of the 18th Congress. Some of these bills seek to strengthen the security of tenure of employees and restrict the use of contracting arrangements, and to strengthen the rights of employees who are not on indefinite-term employment contracts.

2 Hiring employees

2.1 Key hiring considerations

The concept of "at-will" employment is generally not recognized in the Philippines, with certain limited exceptions, such as definite-term employees who can be dismissed at the end of the term of their employment.

The Labor Code prohibits the elimination or diminution of employee benefits. This means that an employer may not unilaterally take back or reduce benefits that it has voluntarily given to its employees. For this non-diminution rule to apply, the following requirements should be present: (i) the grant of the benefit is based on an express policy of the employer or it has ripened into a practice over a long period of time; (ii) the grant of the benefit is consistent and deliberate; and (iii) the grant of the benefit is not due to error in the construction or application of a doubtful or difficult question of law.

2.2 Avoiding the pitfalls

There are many issues that an employer must consider when hiring employees, among which are signing a written employment contract and offering an attractive compensation and benefit package. The consequence of not signing a written employment contract is that the employee can claim to be a regular employee, even if the intention was for them to be a definite-term employee. It is recommended that an employer does not offer extremely generous compensation and/or an extremely generous benefit package for the sole purpose of attracting recruits. This is because such package may not be sustainable in the long term and the employer may not withdraw or reduce the components of the package in light of the non-diminution of benefits rule (see 2.1).

2.3 Procedural steps and key documents in recruitment

2.3.1 Identifying the vacancy

When there is a vacancy, the employer should consider whether the position should be performed by an employee, an independent contractor or a contractor's employee (under a contracting arrangement). If the employer decides the services of an employee is necessary, it should decide

whether to hire the employee on an indefinite-term (regular employee with or without probationary period) or definite-term (casual, seasonal, project or fixed-term employee) basis.

2.3.2 Preparing a job description and person specification for the position

While not specifically required, it is best practice to have a person specification and job description for a position. The person specification may guide the recruitment, while the job description may assist with employee management.

2.3.3 Advertising the job

The usual recruitment channels in the Philippines include mass media (print and internet), on-campus interviews and other job fairs, and recruitment companies.

2.3.4 Shortlisting and interviewing

Companies should comply with general nondiscrimination principles and specific legislations against discrimination when recruiting employees — please see **14** below.

2.3.5 Making an offer of employment, subject to conditions where appropriate

An employment offer becomes an employment contract once the job applicant accepts the offer. The employer should include all employment terms in the employment offer. If the intention is to require the applicant to subsequently sign a detailed employment agreement, such signing should be made a condition of the employment offer.

3 Carrying out pre-hire checks

3.1 Background checks

The Philippines does not prohibit pre-hire background or reference checks. As a matter of practice, Philippine employers conduct background and reference checks on the (i) identification, (ii) education, (iii) employment history and/or (iv) criminal record of prospective employees. The information collected and processed during the background check may fall within data privacy legislation — see **11** below.

It is good practice to ask the prospective employee to give their written consent authorizing the employer and its representatives to verify the information disclosed in the application form and during interviews and to process the said information. The written consent may be used as a defense in case the employer verifies a piece of information and the prospective employee claims that their right to privacy has been violated because of such verification.

3.2 Reference checks

Please see **3.1**.

3.3 Medical checks

Pre-employment physical examinations should be conducted to determine the physical condition of the prospective employee at the time of hiring and to prevent the placement of an individual on a job where, through some physical or mental impairments, they may be dangerous to fellow workers or to property. The Occupational Safety and Health Standards also require annual physical examinations. All examinations should be complete and thorough, they should be rendered free of charge to the employees and they should include x-ray or special laboratory examinations when necessary due to the particular nature of the employment. Records of physical examinations and all information obtained by health personnel should be held strictly confidential.

4 Immigration

Please refer to our handbook *The Global Employer: Focus on Global Immigration and Mobility*, which is accessible [HERE](#), for information about the immigration system in the Philippines.

5 The employment contract

5.1 Form of the employment contract

Employment contracts may be in any form, including oral, except in the case of contractors' employees whose employment contracts have to be in writing. Nevertheless, it is advisable to enter into a written employment contract to define the expectations, rights, privileges, duties and obligations of the employer and the employee.

Employers should note that the Philippines observes the non-diminution of benefits rule. This rule means that an employer may not unilaterally eliminate or diminish a benefit that it has no obligation to give but nevertheless voluntarily decides to give (see further at **2.1**).

5.2 Types of employment contract

If an individual is engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer, they should be employed as a regular employee (i.e., an employee with an indefinite term) unless the employment relationship can qualify as an alternative employment arrangement. Such alternative employment arrangements apply to project, seasonal, casual and fixed-term work. The validity of these alternative employment arrangements depends on whether the requirements for these alternative employment arrangements have been met. If the requirements have not been met, the ostensible alternative employment arrangement shall be disregarded and the employee shall be deemed a regular employee. The table below provides further information on the types of employment contract.

Types of employment contract	
Regular (i.e., permanent/indefinite employment)	As stated above, if an individual is engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer, they should be employed as a regular employee (i.e., an employee with an indefinite term) unless the employment relationship can qualify as an alternative employment arrangement.
Project employment	Project employment arises when the period of employment has been fixed for a specific undertaking, the completion of which has been determined at the time of the engagement of the employee. A project employee may acquire the status of a regular employee when they are continuously rehired after the cessation of a project and the tasks they perform are vital, necessary and indispensable to the usual business or trade of their employer.
Seasonal employment	Seasonal employment arises when the work is to be performed only at a certain time of the year and the employment is for the duration of that time of the year.
Casual employment	Casual employment arises when an employee is engaged to perform work that is merely incidental to the business of the employer and such work is for a definite period that is made known to the employee at the time of their engagement. If the casual employee renders at least one year of service, whether such service is continuous or not, they shall be considered a

Types of employment contract	
	regular employee with respect to the activity for which they are employed and their employment shall continue while such activity exists.
Fixed-term employment	Fixed-term employment arises when the commencement and termination dates of the employment relationship have been set before the employment relationship begins. Fixed-term employment is highly restricted and it is subject to the following criteria: (i) 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 their consent; or (ii) it satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no dominance exercised by the former over the latter. As much as possible, fixed-term employment should involve highly educated people or highly technical positions.

5.3 Language requirements

As Filipinos generally understand English, employment contracts may be written in English. It is prudent, however, to check the English fluency of prospective employees. The Civil Code of the Philippines provides that if one of the parties to a contract is unable to read or the contract is in a language not understood by them and mistake or fraud is alleged, the person enforcing the contract must show that its terms have been fully explained to the former.

6 Working terms and conditions

6.1 Trial periods

Before an employee becomes a regular employee, their employer can require them to undergo a probationary period. The maximum length of the probationary period is six months, counted from the date the new employee started working. The employer may not normally extend the probationary period. Once the new employee is allowed to work after the lapse of the probationary period, their employment will be deemed a regular employment by operation of law. In addition, at or before the beginning of the probationary period, the employer must notify the employee of the standards that they must satisfy. Otherwise, the employment will also be deemed a regular employment from the time the employee started working. Probationary periods are not possible in other types of employment arrangements.

6.2 Working time

The normal hours of work should not exceed eight hours a day. Unless there is a valid compressed workweek arrangement and except for exempt employees (see **6.5**), an employee who works for more than eight hours a day is entitled to overtime pay equivalent to the applicable wage rate plus at least 25%.

An employer may require its employees to work six days per week. Employees, except exempt employees (see **6.5**), are entitled to a rest period without pay of no less than 24 consecutive hours for every six consecutive normal working days. For work performed on rest days, the employer should pay compensation equivalent to the applicable wage rate plus at least 30%. The rate for work on a rest day will vary if the rest day work is rendered on a regular holiday or a special day (see **6.10**), or during the period of between 10 pm and 6 am on the following day.

Moreover, employers may not require employees to render overtime work or work during their scheduled rest day, except in certain cases and provided that appropriate compensation is paid. In practice, employers ask employees to sign employment contracts where the employees agree to perform work outside their normal work schedule.

An employer must give its employees at least one hour of non-compensable time off for regular meals. However, an employer is allowed to give employees a meal break of less than one hour in certain cases. In any of these cases, the shorter meal period must be considered as compensable hours worked and must not be, in any case, less than 20 minutes.

6.3 Wage and salary

Under the Philippines' minimum wage law, the minimum wage rate varies from one region of the country to another and is determined by the relevant Regional Tripartite Wages and Productivity Board. Under the most recent wage order for the National Capital Region (i.e., Metro Manila), the minimum gross basic wage is PHP 537 per day.

6.4 Making deductions

Employers may not make deductions from an employee's wage or salary unless the deductions are made pursuant to legal requirements or with the employee's consent.

6.5 Overtime

As set out in **6.2**, the normal hours of work should not exceed eight hours a day. Unless there is a valid compressed workweek arrangement, an employee who works for more than eight hours a day is entitled to overtime pay equivalent to the applicable wage rate plus at least 25%.

The overtime rate will vary if the overtime work is rendered on a rest day, regular holiday or special day, or during the period of between 10 pm and 6 am on the following day. However, certain classes of employees (referred to as "exempt employees" in this publication) are not entitled to such overtime pay, namely:

- government employees
- managerial employees and officers or members of the managerial staff
- field personnel
- members of the family of the employer who are dependent on them for support
- domestic helpers and persons in the personal service of another
- employees who are paid by results, as determined by the Secretary of the Philippine Department of Labor and Employment (DOLE) in appropriate regulations

The entitlement of employees to overtime pay depends on the nature of their duties and responsibilities. If the employees' duties and responsibilities do not qualify them as exempt employees, they are entitled to overtime pay. Conversely, should these employees' duties and responsibilities qualify them as exempt employees, they are not entitled to overtime pay.

Furthermore, employers may not require employees to perform overtime work, except in certain cases and provided that they pay appropriate compensation. In practice, employers ask employees to sign employment contracts where the employees agree to perform overtime work.

6.6 Bonus and commission

All "rank-and-file" employees of employers covered by the Revised Guidelines on the Implementation of the 13th Month Pay Law are entitled to a bonus called "13th month pay," regardless of the amount of their monthly basic salary, their designation or employment status, and the method by which their salary is paid, provided that they have worked for at least one month in a calendar year. The 13th month pay of a rank-and-file employee should be equivalent to at least one-twelfth of the total basic salary that the employee earned within a calendar year. The required 13th month pay should be paid no later than 24 December of each year. Nonetheless, an employer may give its rank-and-file employees half of the required 13th month pay before the opening of the regular school year in June and the other half on or before 24 December. The frequency of payment of the 13th month pay may also be the subject of an agreement between the employer and the collective bargaining agent of its rank-and-file employees.

6.7 Benefits in kind

Some employers, particularly multinational companies, may provide benefits in addition to mandatory benefits, such as a company car and life, medical and disability insurance. The benefits may be subject to withholding tax or fringe benefit tax, depending on the position of the employees, and social insurance contributions.

6.8 Equity incentive plans

Some employers, particularly multinational companies, offer equity incentive plans. The offer will be subject to securities regulations and may give rise to tax and employment implications.

6.9 Pensions

An employee is entitled to receive such retirement benefits as they may have earned under existing laws, any collective bargaining agreement and other agreements. However, an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided by the Labor Code.

In the absence of any provision on optional retirement in a collective bargaining agreement, an employer's retirement plan or any other agreement, an employee (with the exception of underground mining employees) has the option to retire and receive retirement pay upon reaching the age of 60 years or more, provided that they have served at least five years with their employer. When the employee (who is not an underground mining employee) reaches the compulsory retirement age of 65, their employer may retire them and pay such person retirement pay. In the case of underground mining employees, they may retire and receive retirement pay upon reaching 50 years of age and completing five years of service with their employer, or their employer may retire them and pay them retirement pay when they reach 60 years (which is the compulsory retirement age for an underground mining worker). An eligible retiring employee is entitled to retirement pay equivalent to at least their half-month salary for every year of service, with a part-worked period of at least six months being considered as one whole year.

The term "half-month salary" for retirement pay purposes generally includes the 15-day salary of the employee based on their latest salary date, the cash equivalent of five days of service incentive leave, one-twelfth of the 13th month pay due to the employee and all other benefits that the employer and employee may agree upon to be included in computing the retirement pay.

6.10 Public holidays

There are 12 regular holidays, namely:

- New Year's Day (1 January)
- Maundy Thursday (movable date)
- Good Friday (movable date)
- Eid al-Fitr (movable date)
- Eid al-Adha (movable date)
- Araw ng Kagitingan (Monday nearest 9 April)
- Labor Day (Monday nearest 1 May)
- Independence Day (Monday nearest 12 June)
- National Heroes' Day (last Monday of August)
- Bonifacio Day (Monday nearest 30 November)
- Christmas Day (25 December)
- Rizal Day (Monday nearest 30 December)

Every employer should pay its employees, except exempt employees, their regular daily wage for any unworked regular holiday. When an employer asks a nonexempt employee to work during a regular holiday, the employee should receive at least 200% of the applicable wage rate on the said regular holiday. The rate for work on a regular holiday will vary if the regular holiday work is rendered during the periods of between 12 am and 6 am, and 10 pm and 12 am of the regular holiday.

There are four special holidays, namely:

- Ninoy Aquino Day (Monday nearest 21 August)
- All Saints' Day (1 November)
- Feast of the Immaculate Conception of Mary (8 December)
- the last day of the year (31 December)

The president may declare additional special holidays. Employees who are not required to work on these special holidays are not, by law, entitled to compensation. Work performed on these holidays by nonexempt employees, however, merits compensation equivalent to the applicable wage rate plus at least 30%. If the special holiday also happens to be the nonexempt employee's scheduled rest day, the premium rate is increased to at least 50% of the applicable wage rate. The rate for work on a special holiday will vary if the special holiday work is rendered during the periods of between 12 am and 6 am, and 10 pm and 12 am of the special holiday.

Employees are also entitled to service incentive leave — see **8.2**.

6.11 Sick leave and pay

Employers are not required to provide paid sick leave to employees. It is nonetheless a common practice to provide 10 to 15 days' paid sick leave to employees.

6.12 Taxes and social security

6.12.1 Tax

Employers are required to deduct a withholding tax on compensation paid to employees based on a prescribed withholding tax table. In general, the term "compensation" means all remuneration for services performed by an employee for their employer under an employer-employee relationship. The name by which the remuneration for services is designated is immaterial. Therefore, salaries, emoluments and honoraria, allowances, commissions, fees (including director's fees, if the director is, at the same time, an employee of the employer), bonuses, benefits, pension and retirement pay, and other income of a similar nature constitute compensation income subject to withholding tax. The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes compensation. Therefore, it may be paid on the basis of piece-work or a percentage of profit and may be paid hourly, daily, weekly, monthly or annually.

The Tax Reform for Acceleration and Inclusion Law ("**TRAIN Law**"), or Republic Act No. 10963, was enacted into law and it became effective on 1 January 2018. Under the TRAIN Law, an individual with an annual taxable income of PHP 250,000 or less is exempt from income tax. Those with an annual taxable income above PHP 250,000 are subject to graduated rates ranging from 20% to 35% effective 2018, and 15% to 35% effective 2023. The deductible 13th month pay and other benefits are higher at PHP 90,000 compared to PHP 82,000 under the old law.

Note, however, that the TRAIN Law also amended the allowable deductions to arrive at taxable income. The TRAIN Law removed the personal exemption of PHP 50,000, additional exemption of PHP 25,000 per dependent child and the premium for health and hospitalization insurance of PHP 2,400 per year.

Furthermore, fringe benefits given to non-rank-and-file employees are now subject to a 35% final tax rate, instead of 32%. The grossed-up monetary value is determined by dividing the actual monetary value by 65%.

6.12.2 Social security

The employer and its employees are also required to be members of and contribute to the Social Security System (SSS), Philippine Health Insurance Corporation ("**PhilHealth**") and Home Development Mutual Fund ("**Pag-IBIG Fund**") (HDMF). The employer is responsible for withholding and remitting the contributions of its employees, and remitting the employer's counterpart contributions, within the period set by law or regulations. The contributions are based on the monthly salary of the employees. The employer must make its counterpart contributions and may not deduct such counterpart contributions from the employees' salary. Failure to remit the contributions to the SSS, PhilHealth and the HDMF could give rise not only to monetary liability for the employer, but also to criminal sanctions against the employer and its officers.

7 Family rights

7.1 Time off for antenatal care

Pregnant employees do not have a legal right to time off for antenatal care. If they need to attend a medical checkup or go to hospital before childbirth, the employee normally avails of the vacation leave and sick leave that her employer has granted.

7.2 Maternity leave and pay

On 20 February 2019, Republic Act No. 11210 ("**RA 11210**"), also known as the 105-Day Expanded Maternity Leave Law, was passed. It increases maternity leave benefits to eligible employees. On 1

May 2019, the DOLE, the SSS and the Civil Service Commission of the Philippines jointly issued the Implementing Rules and Regulations of RA 11210 ("**Rules**"). According to the SSS, the benefits of RA 11210 are available to eligible female employees in the private sector who give birth or suffer a miscarriage or emergency termination of a pregnancy on or after 11 March 2019.

The expanded maternity benefits are as follows:

- maternity leave of 105 days with full pay, whether the eligible female employee gives birth via caesarean section or natural delivery
- maternity leave of 60 days with full pay for miscarriages (i.e., pregnancy loss before the 20th week of gestation) or an emergency termination of pregnancy (i.e., pregnancy loss on or after the 20th week of gestation, which includes stillbirth)
- allocation of seven days of maternity leave credits to the child's father or an alternate caregiver
- additional maternity leave of 30 days without pay in case of live childbirth provided that a written notice to the employer is given at least 45 days before the end of her maternity leave (in case of a medical emergency, prior notice is excepted but subsequent notice is required)
- additional maternity leave of 15 days with full pay in case the eligible female employee is also a solo parent as defined under Republic Act No. 8972

The expanded maternity benefits apply regardless of a female worker's employment status, civil status and legitimacy of her child, and frequency of pregnancy.

Maternity leave benefits should be availed by the eligible female worker either before or after the actual period of delivery in a continuous and uninterrupted manner. Maternity leave can be used as combinations of prenatal and postnatal leave provided that postnatal care is not fewer than 60 days.

In case of live birth, maternity leave credits of seven days may be allocated to the following:

1. the child's father, whether or not they are married to the female worker
2. upon election of the mother, taking into account the best interests of the child, of an alternate caregiver in case of the death, absence or incapacity of the child's father, who can be either of the following:
 - a) a relative within the fourth degree of consanguinity
 - b) the current partner, regardless of sexual orientation or gender identity, of the female worker sharing the same household

The female worker shall notify her employer of her exercise of the option to allocate her maternity leave credits. Likewise, the child's father or the alternate caregiver shall notify their employer of the allocated leave and the inclusive dates.

Implications for the employers

As the maternity benefit is now 105 days with full pay, employers have the statutory obligation to pay the difference between what the SSS will shoulder as maternity benefit and the usual salary of the female employees, unless they are exempted because of their business situation.

"Full pay" is defined in the Rules as follows:

Actual remuneration or earnings paid by an employer to a worker for services rendered on normal working days and hours not lower than the wage rate fixed by the Regional Tripartite

Wages and Productivity Board including allowances provided for under existing company policy or collective bargaining agreement, if any.

The Rules provide that employed female workers shall receive full pay that consists of: (i) SSS maternity benefit computed based on their average daily salary credit as determined by the SSS; and (ii) salary differential to be paid by the employer, if any.

The exempt establishments and enterprises are:

- distressed establishments
- retail/service establishments and other enterprises employing not more than 10 workers
- microbusiness enterprises and enterprises engaged in the production, processing or manufacturing of products or commodities including agro-processing, trading and services, whose total assets are not more that PHP 3 million in accordance with the Barangay Micro Business Enterprises Act of 2002
- enterprises already providing similar or more than the benefits provided in RA 11210

The exempt establishments and enterprises should annually submit proofs and other necessary documents for the approval of the DOLE.

In this regard, employers that fail or refuse to comply shall be punished by: (i) fine of PHP 20,000 to PHP 200,000; (ii) imprisonment of six years and one day to 12 years; or (iii) both, at the discretion of the court. In case a corporation commits the act or omission, the penalty shall be imposed on its managing head or directors.

Failure of the corporation or enterprise to comply with RA 11210 shall also be a ground for the nonrenewal of business permits.

Employers should familiarize themselves with the eligibility conditions under the law. The obligations of an employer arise when a female employee meets all the eligibility and notification requirements. An employer is also recommended to audit its existing maternity leave policies. It should verify whether it is an exempt establishment, and, if not, align its existing policies with the new requirements under RA 11210. It may likewise set up administrative mechanisms to ensure the smooth implementation of its obligations (e.g., documentation for the allocation of maternity leave credits).

7.3 Paternity leave and pay

Paternity leave benefit is granted to all married male employees, regardless of employment status (e.g., probationary, regular or project). It applies to the first four deliveries or miscarriages of the employee's lawful wife with whom he is cohabiting. The leave shall be for seven days, with full pay, consisting of his basic salary, provided his pay shall not be less than the mandated minimum wage. In the event the paternity leave benefit is not availed of, said leave is not convertible to cash.

7.4 Parental leave and pay

In addition to leave privileges under existing laws, parental leave of not more than seven paid working days every year shall be granted to any solo parent employee, as defined in the law, who has rendered service of at least one year. A change in the status or circumstance of the parent claiming parental leave benefit, such that they are no longer left alone with the responsibility of parenthood, shall terminate their eligibility for this benefit.

7.5 Adoption leave and pay

Philippine law provides that the same maternity and paternity benefits and other benefits granted to biological parents upon the birth of a child should be granted to a person who is adopting a child, provided the child is under 7 years old at the time of adoption. In practice, however, anecdotal information indicates the SSS has refused to reimburse employers for maternity benefits granted to female employees who adopt children below the age of 7 years old (unlike the case of female employees who give birth or suffer a miscarriage).

7.6 Other family rights

7.6.1 Leave due to domestic violence

If an employee is a victim of violence (against women and their children), she is entitled to paid leave of up to 10 days in addition to paid leave under other laws, extendable when the necessity arises as specified in a protection order issued by an appropriate authority. The female employee can avail of the 10-day leave at her own discretion and such leave shall cover the days that the employee has to attend to medical and legal concerns. Unused leave is not cumulative and not convertible to cash.

7.6.2 Leave due to gynecological disorders

Female employees who have rendered continuous aggregate employment service of at least six months for the last 12 months are entitled to a special leave benefit of up to two months with full pay following surgery caused by gynecological disorders.

8 Other types of leave

8.1 Union matters

Some collective bargaining agreements between enterprises and labor unions allow union officers to go on paid leave to attend to union matters. The agreements would specify the number of days of paid leave to which union officers are entitled.

8.2 Service incentive leave

Except for exempt employees, every employee who has rendered at least one year of service is entitled to a yearly service incentive leave (which is commonly replaced by vacation leave) of five days with pay. The service incentive leave should be converted to its money equivalent and paid to the nonexempt employee by the employer if not used or exhausted by the said employee at the end of the year. Generally, an employer can regulate the schedule of the service incentive leave of its employees.

9 Termination provisions and restrictions

9.1 Notice periods

Please refer to **15.5**.

9.2 Payment in lieu of notice

Where an employer is required to observe a notice period, it is not allowed to pay salary in lieu of notice. Nonetheless, it may place an employee on garden leave.

9.3 Garden leave

The Philippines allows garden leave. The employee remains employed and continues to receive their compensation and benefits as if they are coming to work during the leave, although they are not required to report for work. Moreover, garden leave is counted as part of the employee's length of service.

9.4 Intellectual property

The ownership of intellectual property lies with the employer if the invention or creation results from the performance of the employee's regularly assigned duties, unless there is an agreement, express or implied, to the contrary. The invention or creation belongs to the employee if the inventive activity is not part of the employee's regular duties, even if the employee uses the time, facilities and materials of their employer.

9.5 Confidential information

One of the most practical ways for employers to protect trade secrets is with the use of a confidentiality agreement. It is therefore highly advisable for employers to require managerial, scientific and technical personnel to enter into confidentiality agreements barring the use and transfer of industrial secrets and/or technological results during and after the term of their employment. A confidentiality agreement may take the form of a provision or section of an employment contract or it may be a separate agreement entered into by the employer and the employee.

9.6 Post-termination restrictions

There are some cases where the Supreme Court has upheld the validity of a provision prohibiting, within a certain time or place, an employee from engaging in another form of employment competitive with the employer's business. In evaluating the validity of such provisions, courts normally look at the public interest involved. If no public interest is involved, courts then look at the reasonableness of the restraint. The Supreme Court has referred to a "test of reasonableness" (i.e., if the restraint on competition was reasonably necessary, it will be upheld). Restraints have been upheld as reasonably necessary if: (i) the restraint is reasonably necessary for the protection of the contracting parties; (ii) there is a limitation of time and place; and (iii) the field of coverage is limited.

Philippine law does not require separate consideration for the validity of noncompetition and non-solicitation clauses. The existence of separate consideration, however, may strengthen the argument that the employee freely entered into the agreement.

9.7 Retirement

Please refer to **6.9**.

10 Managing employees

10.1 The role of personnel policies

Employers in the Philippines are not required to have employee handbooks containing a number of policies or procedures. However, they are required by law to have certain policies in place (see **10.2**).

Nevertheless, it is good practice for employers to supplement the terms of the employment contracts with a set of company rules for the purpose of protecting employer rights and stipulating employee duties.

If they decide to have an employee handbook, employers should consult with their employees about it prior to its implementation.

Employers often use employee handbooks as management tools to communicate rules and regulations to employees. The rules in handbooks or other employer rules can be used as the basis for terminating an employment contract if the employee seriously violates labor discipline or the rules and regulations. If an employee handbook has been adopted through employee consultation, and an employee's employment is terminated based on the rules set out in the employee handbook, then the handbook can be admitted into evidence if the employee brings an action to challenge the termination.

The following consultation procedures should be followed to adopt a set of company rules:

- the proposed company rules are discussed with the employee representative (if there are any) or employees at-large
- the representative or employees at-large may put forward proposals or comments regarding the proposed company rules
- the employer considers the proposals or comments
- the final company rules are communicated to employees

Note that the consultation procedure is a procedural requirement. The company is under no legal obligation to make substantive changes or modifications to the company rules if the employees raise such a demand and the law does not require the actual consent of the employees to the policies. Based on court commentaries, courts put particular emphasis on the last step in the process, i.e., publicizing the company rules to all employees. Therefore, to ensure the enforceability of the company rules, the company should go through the full consultation procedure for full compliance, or if the company wishes to take an aggressive approach, it should at least obtain the employees' acknowledgment of receipt of the final company rules.

10.2 The essentials of an employee handbook

The table below shows the policies and procedures that are generally required by law and the main, recommended policies.

Policies required by law	Recommended policies
Anti-sexual harassment policy	Employee handbook
Drug-free workplace program	
Family welfare program	
Tuberculosis prevention and control policy and program	
HIV and AIDS prevention and control policy and workplace program	
Workplace policy and program on hepatitis B	
Lactation policy	
Occupational safety and health program	
Mental health policy	
COVID-19 prevention and control policy	

10.3 Codes of business conduct and ethics

While not mandatory in the Philippines, it is critical for a multinational company to have a code of business conduct and ethics in place to build the legal basis for the company to manage employees' business activities and take any disciplinary actions as necessary. A practical approach to launch the policy is to localize the global code of business conduct and ethics in the Philippines.

11 Data privacy and employee monitoring

Please refer to our Global Privacy Handbook, which is accessible [HERE](#), for information on data privacy and monitoring requirements in the Philippines.

12 Workplace safety

12.1 Overview

Republic Act No. 11058, the DOLE's Department Order No. 198, Series of 2018 and the Occupational Safety and Health Standards are the main law and regulations on workplace safety, which define the obligations of employers and employees.

12.2 Main obligations

Each employer, contractor and any person who manages, controls or supervises the work being undertaken must: (i) furnish its workers with a place of employment free from hazardous conditions that are causing or are likely to cause death, illness or physical harm to the workers; (ii) give complete job safety instructions or orientation to all workers (especially those entering the job for the first time), including those relating to familiarization with their work environment; (iii) inform the workers of the hazards associated with their work, health risks involved or those to which they are exposed, preventive measures to eliminate or minimize the risks, and steps taken in case of emergency; (iv) comply with the Occupational Safety and Health Standards including training, medical examination and, where necessary, provision of protective and safety devices such as personal protective equipment and machine guards; (v) use only approved devices and equipment in the workplace; (vi) allow workers and their safety and health representatives to participate actively in the process of organizing, planning, implementing and evaluating the safety and health program in the workplace; and (vii) implement, where necessary, measures to deal with emergencies and accidents including first aid arrangements.

12.3 Claims, compensation and remedies

All employers are required to contribute a certain amount per month to the Employees' Compensation and State Insurance Fund, which the SSS administers. Employees do not have to contribute to the fund. The fund provides compensation to an employee or the employee's dependents in case the employee suffers a work-related injury or disease. The compensation is in the form of medical supplies and services and/or cash benefit if the employee is unable to earn because of the injury or disease. Death and funeral benefits are also given.

In lieu of the compensation from the Employees' Compensation and State Insurance Fund, an employee who suffers a work-related injury or disease may file a claim for damages against their employer, but they have to prove that the employer was at fault in causing the injury or disease.

13 Employee representation, trade unions and works councils

Information about working with trade unions and works councils can be found throughout this guide. For more information about this subject in the Philippines, please contact us. See [Key contacts](#) for contact details.

14 Discrimination

14.1 Who is protected?

The Labor Code provides that the government shall ensure equal work opportunities, regardless of sex, race or creed.

The Women in Development and Nation Building Act affords women equal work opportunities with men. In addition, the Labor Code makes it unlawful for an employer to discriminate against any female employee with respect to the terms and conditions of employment solely on account of sex. It is also unlawful for an employer to do any of the following: (i) to require as a condition of employment or continuation of employment that a female employee shall not get married; (ii) to stipulate expressly or tacitly that upon getting married a female employee shall be deemed resigned or separated; (iii) to dismiss, discharge, discriminate or otherwise prejudice a female employee merely by reason of her marriage; (iv) to deny any female employee the benefits provided in the Labor Code or to discharge any female employee with the aim of preventing her from enjoying the benefits provided in the Labor Code; (v) to discharge any female employee on account of her pregnancy or while on leave or in confinement due to her pregnancy; and (vi) to discharge or refuse the admission of any female employee upon her returning to work for fear that she may again be pregnant.

The Labor Code also makes it unlawful for an employer to do any of the following: (i) to discriminate against any person with respect to terms and conditions of employment on account of their age; (ii) to discriminate against any employee who has filed any complaint concerning wages or has testified or is about to testify in such complaint; (iii) to discriminate against employees in the exercise of their right to self-organization; (iv) to discriminate with regard to wages, hours of work and other terms and conditions of employment to encourage or discourage membership in any labor organization; and (v) to discriminate against an employee who has given or is about to give testimony under the Labor Code.

There are also a number of special laws and regulations prohibiting discrimination against the actual, perceived or suspected human immunodeficiency virus (HIV) status of people, persons with a disability or mental health condition, indigenous cultural communities and indigenous people, solo or single parents, and persons with tuberculosis and hepatitis B.

14.2 Types of discrimination

Discrimination

See 14.1.

Harassment

There are two anti-sexual harassment statutes in the Philippines. First, Republic Act No. 7877, also known as the Anti-sexual Harassment Act of 1995 ("**RA 7877**"), declares superior-subordinate sexual harassment unlawful in the employment environment. Under RA 7877, work-related sexual harassment is committed by an employer, employee, manager, supervisor or agent of the employer 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 the other, regardless of whether the demand, request or requirement for submission is accepted by the object of the act. In

particular, sexual harassment is committed in a work-related or employment environment when: (i) the sexual favor is made as a condition in the hiring or in 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 in any way that would discriminate, deprive or diminish employment opportunities, or otherwise adversely affect the said employee; (ii) the above acts would impair the employee's right or privileges under existing labor laws; or (iii) the above acts would result in an intimidating, hostile or offensive environment for the employee.

Second, Republic Act No. 11313, also known as the Safe Spaces Act ("**RA 11313**"), declares gender-based sexual harassment unlawful in the workplace. The crime of gender-based sexual harassment in the workplace includes: (i) an act or series of acts involving any unwelcome sexual advances, requests or demand for sexual favors or any act of a sexual nature, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems, that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities; (ii) conduct of a sexual nature and other conduct based on sex affecting the dignity of a person, which is unwelcome, unreasonable and offensive to the recipient, whether done verbally, physically or through the use of technology such as text messaging or electronic mail or through any other forms of information and communication systems; and (iii) conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient, provided that the crime of gender-based sexual harassment may also be committed between peers and those committed to a superior officer by a subordinate, or to a teacher by a student, or to a trainer by a trainee.

Both RA 7877 and RA 11313 also impose on the employer the duty to prevent or deter acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of such acts — see **14.7**.

14.3 Special cases

See **14.1**.

14.4 Exclusions

14.4.1 Occupational requirements

A bona fide occupational qualification may be valid, provided it reflects an inherent quality that is reasonably necessary for satisfactory job performance.

14.4.2 Grounds of religion or belief

Employees may refuse to observe the provision in some collective agreements on mandatory membership of unions, as a condition for employment, if the refusal is based on religious belief.

14.5 Employee claims, compensation and remedies

Employees can bring criminal actions for discrimination — see further at **14.6**.

The filing of a criminal action does not normally bar a discriminated employee from instituting an entirely separate and independent civil action for monetary claims against their erring employer. These claims include, but are not limited to, damages and other affirmative relief.

Persons found guilty of acts of sexual harassment under RA 7877 are subject to imprisonment of one to six months, a fine of PHP 10,000 to PHP 20,000, or both a fine and imprisonment, at the discretion of the court. The aggrieved party may also institute an independent civil action for damages and other affirmative relief. An employer that is informed of such acts and that fails to take immediate action will

be jointly and severally liable with the erring employee for damages arising from the acts of sexual harassment.

On the other hand, under RA 11313, if an employer fails to comply with its duties under the said statute, it may be penalized with a fine of PHP 5,000 to PHP 10,000. If it fails to take action on reported acts of gender-based sexual harassment committed in the workplace, it may be penalized with a fine of PHP 10,000 to PHP 15,000.

14.6 Potential employer liability for employment discrimination

Employers who willfully commit any unlawful acts of discrimination, or who violate applicable implementing rules and regulations, can be held criminally liable and punished with a fine, imprisonment or both, at the discretion of the court and depending on the circumstances of the discrimination. For offenses committed by a corporation and other juridical persons, the penalty may be imposed upon the guilty officer or officers. If the guilty officer or officers are foreign nationals, they will be deported after satisfaction of the penalty imposed by the court.

In relation to sexual harassment, the employer will be liable for damages or fines arising from the sexual harassment act if it is informed of such act and it fails to take immediate action. Therefore, it is very important for the employer to investigate a sexual harassment complaint as soon as it receives such complaint and to impose the appropriate penalty on the erring employee, in accordance with the rules and regulations it has put in place.

14.7 Avoiding discrimination and harassment claims

14.7.1 Discrimination

To help avoid discrimination and harassment claims, companies can include anti-discrimination/harassment policies or procedures in their employee handbook/company rules. An important issue in implementing such policies or procedures is ensuring that the reporting channel is effective to protect employees who submit complaints.

14.7.2 Harassment

As set out in **14.2**, RA 7877 and RA 11313 impose on the employer the duty to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of such acts. Toward this end, the following is required:

- The employer must promulgate appropriate rules and regulations in consultation with and jointly approved by the employees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions. The said rules and regulations issued should include, among others, guidelines on proper decorum in the workplace and educational or training institutions.
- The employer must create a committee on decorum and investigation of cases on sexual harassment. The committee shall be composed of at least one representative from each of the following groups: management, labor union, if any, supervisory rank employees and rank-and-file employees. A woman shall head it and not less than half of its members shall be women. It shall conduct meetings, as the case may be, with officers and employees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment.
- The employer must disseminate or post copies of RA 7877 and RA 11313 for the information of all concerned.

The Supreme Court has had occasions to rule on the validity of a disciplinary action imposed by an employer on an employee who was found guilty of sexual harassment.

In addition to complying with its duties and obligations as set out above, an employer should act immediately on receiving a sexual harassment complaint. It should investigate the veracity of the complaint in accordance with its rules and regulations for the investigation of sexual harassment cases, which it has previously put in place. If there is merit in the complaint, the employer should impose the appropriate penalty on the erring employee.

15 Termination of employment

15.1 General overview

In general, an employer may terminate an employee's employment only if there is a legal (i.e., just or authorized) cause for termination and it has followed the procedures required for the cause of termination. At-will employment, where the employer may dismiss an employee at any time, without cause and by mere notice or salary in lieu of notice, is not allowed under Philippine labor law. On the other hand, an employee may terminate their employment for any reason by serving a written notice to their employer at least one month (i.e., 30 days) in advance. In the event that the employee does not give any notice, the employer may hold the employee liable for damages. Under certain instances, the employee may terminate their employment without the need to serve notice.

15.2 By the employer

In the Philippines, an employer has a right to hire, dismiss and discipline employees, while the employee has a right to security of tenure. The employee's right to security of tenure means that they may be dismissed only for one of the causes defined in the Labor Code and only after the observance of the appropriate procedural due process by their employer.

The just causes for termination of employment are as follows:

- serious misconduct or willful disobedience by the employee of the lawful orders of the employer or representative in connection with their work
- gross and habitual neglect by the employee of their duties
- fraud or willful breach by the employee of the trust reposed in them by the employer or duly authorized representative
- commission of a crime or offense by the employee against the person of their employer or any immediate member of the employer's family or duly authorized representative
- other causes analogous to the foregoing

The authorized causes for termination of employment are as follows:

- installation of labor saving devices
- redundancy
- retrenchment to prevent losses
- closing or cessation of operation of the establishment or undertaking
- disease, where the continued employment of the afflicted employee is prohibited by law or is prejudicial to their health, as well as to the health of their co-employees

15.3 By the employee

An employee may terminate their employment for any reason by serving a written notice to their employer at least one month (i.e., 30 days) in advance. In the event that the employee does not give any notice, the employer may hold the employee liable for damages. Under certain instances, the employee may terminate their employment without the need to give any notice.

15.4 Employee entitlements on termination

The separation from work of an employee for a just cause (see **15.2**) does not entitle them to separation pay. However, this is without prejudice to whatever rights, benefits and privileges the employee may have under an applicable employee agreement, company policy or practice.

In all cases of employment termination with an authorized cause (see **15.2**), the employee is entitled to receive separation pay. The separation pay is equivalent to either half a month's salary for every year of service or one month's salary for every year of service, depending on the authorized cause of employment termination — see further at **15.9**.

15.5 Notice periods

An employer needs to follow an appropriate procedural process to dismiss an employee — see further in **15.7**. In relation to employee notice, see **15.3**.

15.6 Terminations without notice

If an employee is dismissed without their employer observing the appropriate procedures, they are entitled to nominal damages, the amount of which is subject to the discretion of the court, even if there is a just or authorized cause for employment termination. For this purpose, the court will take into consideration the relevant circumstances of each case, particularly the gravity of the due process violation. The nominal damage serves as a penalty upon the employer for its failure to comply with the requirements of procedural due process for employment termination.

In relation to an employee not serving their required notice, see **15.3**.

15.7 Form and content of notice termination

The Labor Code requires not only that an employee be dismissed for a just or authorized cause, but also that they be dismissed only after the observance of the appropriate procedural due process by the employer.

In the case of employment termination for just cause, the Labor Code requires the employer to serve a written notice on the employee informing the employee of the charges against them and giving the employee a reasonable opportunity within which to explain their side of events (i.e., at least five calendar days to submit an explanation).

After serving the notice, the employer should give the employee a further opportunity to be heard through a hearing or conference so that the employee can answer the charges with the assistance of counsel, if they so desire. If the employer decides to dismiss the employee, it should serve another written notice on the employee to inform the employee of its decision to dismiss them.

In the case of employment termination for an authorized cause, the employer should serve a written notice of termination on each affected employee and to the appropriate regional or field office of the DOLE at least one month before the intended effective date of termination. The notice should specify the authorized cause and the effective date of termination.

The notices described in the preceding paragraphs are mandatory. They cannot be waived or substituted with their monetary equivalent.

For employment termination due to disease, in addition to the notice requirements in the preceding paragraph, there should be a certification by a competent public health authority that the disease cannot be cured within six months even with proper medical treatment.

15.8 Protected employees

An employer is prohibited from discharging a woman because of her pregnancy, or while on leave or in confinement due to her pregnancy. Also, it is generally unlawful for an employer to forcibly lay off an employee because of old age or to impose early retirement based on an employee's age. Further, an employee should not be dismissed because of a mental health condition unless the condition progresses to such severity that the condition affects the safety of the employee and colleagues and work performance and productivity.

15.9 Mandatory severance

The separation from work of an employee for a just cause does not entitle them to separation pay. However, this is without prejudice to whatever rights, benefits and privileges the employee may have under an applicable employee agreement, company policy or practice.

In all cases of employment termination with an authorized cause, the employee is entitled to receive separation pay.

In the case of employment termination due to installation of labor saving devices or redundancy, the Labor Code provides that the employee is entitled to separation pay equivalent to at least one month's pay for every year of service or one month's pay, whichever is higher. A part-worked period of at least six months is considered one year for separation pay purposes, e.g., if an employee has worked for six years and seven months, they will be entitled to severance pay calculated on the basis of seven years' employment.

In the case of employment termination due to retrenchment to prevent losses, closure not due to serious business losses and disease, the Labor Code provides that the employee is entitled to separation pay equivalent to half a month's pay for every year of service or one month's pay, whichever is higher. A part-worked period of at least six months is considered one year in this instance as well.

With respect to employment termination because of closure due to serious business losses, employees are currently not entitled to any separation pay.

The separation pay described above is the minimum amount set by the Labor Code. The employer is not prohibited from giving a greater amount of separation pay out of its own generosity. The employer may also be required to give more separation pay under employment contracts, company policy or company practice.

15.10 Collective redundancy situations

The requirements for redundancy terminations are the same whether the separation involves one employee or more.

A redundancy situation exists when the services of an employee are in excess of what is reasonably required by the actual needs of the company. To be a valid ground for termination, the following conditions must be present:

- There must be superfluous positions or services of employees.

- The positions or services must be in excess of what is reasonably demanded by the actual requirements of the enterprise to operate in an economical and efficient manner.
- Good faith must be used in determining the redundant positions.
- Fair and reasonable criteria must be applied when selecting employees for redundancy.
- There must be adequate proof of redundancy and management approval of the restructuring.

The above should be documented, which will be useful if a redundant employee questions their dismissal in court.

To terminate an employee on the ground of redundancy, the employer should serve a written notice on each affected employee and on the DOLE at least one month before the intended effective date of the termination. In addition, the employer should pay severance pay — see **15.9**.

15.11 Claims, compensation and remedies

If an employer terminates the employment of an employee without a legal cause, the termination is illegal. This will entitle the illegally dismissed employee to reinstatement without loss of seniority rights and other privileges, to payment of full back wages, inclusive of allowances, and of other benefits or their monetary equivalent calculated from the time compensation was withheld until actual reinstatement, and to payment of damages.

In addition, if there was cause for the dismissal but the employer failed to observe the procedural requirements, the employee will be entitled to nominal damages, the amount of which will be awarded at the court's discretion.

15.12 Waiving claims

A separation agreement, waiver or release from the employee will not bar the employee from subsequently filing a complaint concerning their employment, including their employment termination, or bar the court from hearing the complaint. Notwithstanding that rule, it is still prudent to get an employee to sign their separation agreement, waiver or release. The separation agreement, waiver or release may strengthen the employer's position in the event that an action is filed on matters covered by the document. If it can be shown that the separation agreement, waiver or release was voluntarily entered into and that it represented a reasonable settlement, the document is binding on the parties and it may not be disowned at a later stage.

16 Employment implications of share sales

16.1 Acquisition of shares

In the case of share acquisitions, all rights, duties and liabilities owed by or to the employees of the target company continue to be owed by or to the target company. The purchaser merely buys the shares of the target company and, therefore, indirectly inherits all the rights, duties and liabilities as the new owner of the target company. If there is an integration of the target company's business with the purchaser's business post-acquisition, this may be through an acquisition of assets and the considerations set out below will be relevant.

16.1.1 Protections against dismissal

If the purchaser in a share acquisition wants to make any employees of the target company redundant, there must be a legitimate reason for the redundancy and the transaction itself cannot be that reason. Please refer to **15.10**.

16.2 Information and consultation requirements

There are no approval or consultation requirements for carrying out the transaction, unless requirements under agreements are in place, e.g., in collective bargaining agreements.

17 Employment implications of asset sales

17.1 Acquisition of assets

In an asset acquisition, the legal consequences under Philippine labor laws are quite complex and uncertain. Although there are no defined statutes governing employment matters in asset acquisitions, case law provides certain guidance as to the likely treatment of any employment-related conflict that may arise out of an asset acquisition.

The general rule is that labor contracts are considered personal contracts, i.e., enforceable only against the parties to the contract. Due to this, labor contracts are generally not enforceable against a purchaser of assets, unless this is provided for in the transfer agreement. A good faith purchaser is not obliged to continue employing employees of the seller. However, this general rule is not absolute. In certain cases, the Supreme Court has been known to disregard the personal nature of labor contracts and to hold the purchaser, vendor or both liable in transactions where it has been deemed that good faith was lacking.

17.2 Automatic transfer of employees

See 17.1.

17.3 Changes to terms and conditions of employment

A purchaser of assets (in good faith) has the discretion to offer employment to those employees of the seller that it wishes to employ on its own terms and conditions, provided these are not below the statutory requirements.

17.4 Information and consultation requirements

There are no approval or consultation requirements for carrying out the transaction, unless requirements under agreements are in place, e.g., in collective bargaining agreements.

17.5 Protections against dismissal

There may be no need for the purchaser to implement any post-acquisition redundancy. A purchaser of assets (in good faith) has no obligation to absorb employees of the seller or to continue employing them. The purchaser can select the employees it requires or wants, avoiding the need to implement any post-acquisition redundancy.

17.6 Other considerations

17.6.1 Employment implications of mergers and consolidations

In cases of mergers and consolidations, the rules on the transfer of general liabilities and obligations to the surviving corporation or the consolidated corporation are applied to employment-related obligations and liabilities. The surviving or consolidated corporation becomes responsible for all the liabilities and obligations of each of the constituent corporations in the same manner as if a surviving or consolidated corporation would itself incur such liabilities or obligations. Any claim, action or proceeding pending by or against any such constituent corporations may be prosecuted by or against the surviving or consolidated corporation.

17.6.2 Protections against dismissal

If the surviving or consolidated corporation wants to make any of its employees redundant, there must be a legitimate reason for the redundancy and the transaction itself cannot be that reason. Please refer to **15.10**.

17.6.3 Information and consultation requirements

There are no approval or consultation requirements for carrying out the transaction, unless requirements under agreements are in place, e.g., in collective bargaining agreements.

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