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SyCipLaw Employment & Immigration Update

VOLUME XVIII, ISSUE NO. 1 | JANUARY 2023

BACK TO WORK AMIDST COVID-19

By: Ara Patrice P. Rillera

With workers returning to work on-site, the Department of Labor and Employment ("*DOLE*") issued Labor Advisory No. 1, series of 2022, or the Isolation and Quarantine Leaves of Employees in the Private Sector, to guide employers.

Under the Labor Advisory, employers are urged, in consultation with the employees or employee's representative if any, to adopt and implement an appropriate paid isolation and quarantine leave program on top of existing leave benefits under a company policy, a Collective Bargaining Agreement, the Labor Code, and special laws. The paid isolation and quarantine leaves shall be without prejudice to other benefits provided by the Social Security System and the Employees' Compensation Commission.

Employees falling under the definition of close contact, suspect, probable, or confirmed case shall complete the home-based or facility-based quarantine or isolation period in accordance with the prevailing issuances of the relevant government agencies, specifically of the DOLE, the Department of Health ("*DOH*"), and the Department of Trade and Industry ("*DTI*").

The definitions of the different classifications under the COVID-19 Surveillance System, as provided in DOH issuances, are as follows:

- **Suspect** – a person who presents symptoms and has traveled or worked in an area with community or high risk of transmission within 14 days prior to symptom onset.

- **Probable** – a person who meets the clinical criteria above and is a contact of a probable or confirmed case or with chest imaging findings suggestive of COVID-19. Also included is a person with recent onset of anosmia (loss of smell) or ageusia (loss of taste) in the absence of any other identified cause.

- **Confirmed** – a person who tested positive for COVID-19, irrespective of the presence or absence of clinical signs and symptoms.

- **Close Contacts** – shall refer to persons who have experienced any one of the following exposures during the two days before and the 14 days after the onset of symptoms of a suspect, confirmed, or probable case. Exposure shall be any of the following: [a] face-to-face contact with a confirmed case within one meter and for more than 15 minutes, with or without a mask; [b] direct physical contact with a confirmed case; [c] direct care for a patient with probable or confirmed COVID-19 with probable or confirmed COVID-19 disease without using Personal Protective Equipment (PPE); or [d] other situations as indicated by local risk assessments.

The difference between isolation and quarantine is provided in DOH Department Memorandum No. 2020-0439 dated October 6, 2020, titled *Omnibus Interim Guidelines on Prevention, Detection, Isolation, Treatment, and Reintegration Strategies for COVID-19*. Isolation refers to the separation of sick people with a contagious disease from people who are not sick. Therefore, isolation intends to treat and monitor suspect, probable, and confirmed cases. Quarantine refers to the separation and movement restrictions of people who were exposed to a contagious disease to see if they become sick. Hence, quarantine intends to keep individuals under observation to see if they will develop COVID-19 signs or symptoms or if they will test positive for COVID-19.

The following table may be referred to as a guide for the protocols per classification:

	Exposed/Close Contact	**Suspect, Probable, or Confirmed**
With Symptoms	ISOLATION Needs medical attention/symptom management and monitoring by a medical professional	
No Symptoms	QUARANTINE Needs monitoring to [a] take action as needed for possible onset of symptoms, [b] ensure restricted movement by non-medical personnel of the Barangay Health Emergency Response Teams (BHERT) or the Occupational Safety and Health (OSH) Officer, and [c] provide clearance for travel of returning and tourist bubbles	ISOLATION Needs medical attention/symptom management and monitoring by a medical professional

DOLE SUSPENDS LABOR INSPECTIONS

By: Patrice Jane L. Romero

Labor inspections is one of the ways the Department of Labor and Employment ("*DOLE*") implements its visitorial and enforcement powers under the Labor Code, to secure a higher level of compliance with labor laws and standards, and to ensure continuity and sustainability of compliance at workplaces. This function is delegated by the DOLE Secretary to the regional offices, through the labor inspectors, to enforce labor laws and social legislation through the conduct of routine inspection, complaint inspection, and occupational safety and health ("*OSH*") investigation.

As of October 31, 2022, the DOLE reported that for the year 2022, a total of 74,945 establishments were inspected by labor inspectors. Out of these establishments, the labor inspectors found that the inspected establishments have low initial compliance rates at 53.96% and 78.08% on OSH standards and general labor standards, respectively. Common violations found by labor inspectors include non-compliance with the registration, reporting, and remittance requirements with the Social Security System, Philippine Health Insurance Corporation, and Home Development Mutual Fund, and the absence of a company OSH program. The compliance rate on OSH and general labor standards significantly increased to 72.61% and 88.24%, respectively, after the implementation of the necessary corrections by the inspected establishments.

To focus on attending to all pending labor standards cases and to prepare for the inspection program for 2023, DOLE Secretary Bienvenido E. Laguesma issued Administrative Order No. 342, series of 2022, which directed all regional directors of the DOLE to temporarily cease all labor inspection activities in their respective regions starting December 1, 2022. The suspension of labor inspection activities does not include OSH investigations, technical safety inspections, and other inspection activities as directed by the DOLE Secretary.

Even if labor inspections are currently suspended, DOLE Secretary Laguesma directed the DOLE Regional Directors to ensure that all results of inspection activities are uploaded in the Labor Inspection–Management Information System on or before December 31, 2022.

The conduct of labor inspections, specifically routine inspections, will resume upon the issuance of the 2023 General Authority for Labor Inspectors.

NLRC LIFTS INTERIM PROCEDURAL AMENDMENTS AND ADOPTS HYBRID MODE

By: Patrick Edward L. Balisong

On the heels of the onslaught of the COVID-19 pandemic, the National Labor Relations Commission ("*NLRC*") issued NLRC En Banc Resolution No. 03-20, series of 2020, or the *Interim Amendments to the 2011 NLRC Rules of Procedure* ("*Interim Amendments*").

Under the Interim Amendments, the conduct of mandatory conciliation and mediation conferences were suspended, making it discretionary upon the Labor Arbiters. The Interim Amendments likewise suspended the simultaneous filing of position papers under Rule V, Section 12(a) of the 2011 NLRC Rules of Procedure, which provides that the Labor Arbiter shall direct the parties to simultaneously submit their verified position papers, with supporting documents and affidavits, if any, within 10 calendar days from the date of termination of the mandatory conciliation and mediation conference. Also, under the Interim Amendments, summons shall be issued within two days from receipt of the complaint. An order directing the filing of position papers shall be issued within five days from receipt of the return, and the position papers shall be submitted by registered mail, or authorized courier, within 15 days from receipt of the order. Either party will have five days from receipt of the order to file a motion to set the case for mandatory conciliation and mediation conference, setting forth the terms and conditions of the proposed settlement, including the amount being offered. The other party then had three days to respond and make a counteroffer. The Labor Arbiter will then determine the propriety of setting the case for mandatory conciliation and mediation conference; otherwise, the parties will be directed to file their position papers.

While the COVID-19 pandemic remains a veritable issue, government offices and services have started easing COVID-19-related restrictions and protocols. Accordingly, on October 18, 2022, the NLRC issued NLRC *En Banc* Resolution No. 12-22, series of 2022, captioned *Lifting of the Interim Amendments to the 2011 NLRC Rules of Procedure.* The conduct of mandatory conciliation and mediation conferences shall now resume, as well as the simultaneous filing of position papers under Rule V, Section 12(a) of the 2011 NLRC Rules of Procedure.

While the Interim Amendments have been lifted, paving for the return of mandatory conciliation and mediation conferences, the NLRC, through *NLRC En Banc Resolution No. 13-22, series of 2022, or the Hybrid Mode in the Conduct of Mandatory Conciliation and Mediation Conferences and Other Hearings* , resolved that the conduct of the mandatory conciliation and meditation conferences may be done, as far as practicable: [a] face-to-face; [b] by videoconferencing, [c] by other electronic means; or [d] by any combination thereof. If any of the parties have no access to technology for electronic hearings, the NLRC may provide a

hearing room and gadgets for their use, subject to availability.

Typically, the NLRC uses Zoom, Google Meet, and Facebook Messenger for videoconferencing. Other videoconferencing applications may also be used, subject to the availability and accessibility of these applications to the parties.

WHAT'S NEW, DEPARTMENT OF MIGRANT WORKERS?

By: Giancarlo Kristoffer D. Gabriel

Following the creation of the Department of Migrant Workers ("*DMW*") pursuant to Republic Act No. 11641, or the Department of Migrant Workers Act ("*RA 11641*"), the Department of Labor and Employment ("*DOLE*") and the DMW issued Joint Circular No. 01, series of 2022 (the "*Joint Circular*"), on July 7, 2022, to facilitate and ensure the efficient and effective implementation of RA 11641. The Joint Circular covers the period of transition from the effectivity of RA 11641 until the DMW is fully constituted and operational. The Joint Circular covers the agencies which were consolidated or merged, or whose powers and functions were transferred from the DOLE to the DMW. The agencies included are the Philippine Overseas Employment Administration ("*POEA*"), the Philippine Overseas Labor Officers ("*POLOs*"), the International Labor Affairs Bureau ("*ILAB*"), the Overseas Workers Welfare Administration ("*OWWA*"), the National Maritime Polytechnic ("*NMP*"), and the National Reintegration Center for OFWs ("*NRCO*") under the OWWA.

The Joint Circular mandates the creation of a Joint DOLE-DMW Management Committee to carry out the purposes of the Joint Circular, make recommendations to the DOLE and DMW Secretaries on appropriate actions to be taken from its implementation, and to monitor and ensure the full constitution of the DMW.

Governance, Supervision and Operation of Consolidated and Merged Agencies

The Joint Circular provides that during the transition period, or until further orders and issuances, all existing policies, rules, and regulations implemented by the covered agencies, including but not limited to the 2016 Revised POEA Rules and Regulations Governing the Recruitment of Land-Based Overseas Filipino Workers and the 2016 Revised POEA Rules and Regulations Governing the Recruitment of Sea-Based Overseas Filipino Workers, shall remain in full force and effect.

The DMW Secretary shall exercise primary administrative control and supervision over the POEA, POLOs, ILAB, and NRCO, and shall exercise administrative supervision over the NMP and the OWWA.

Quasi-judicial Functions of the POEA and DOLE Secretary

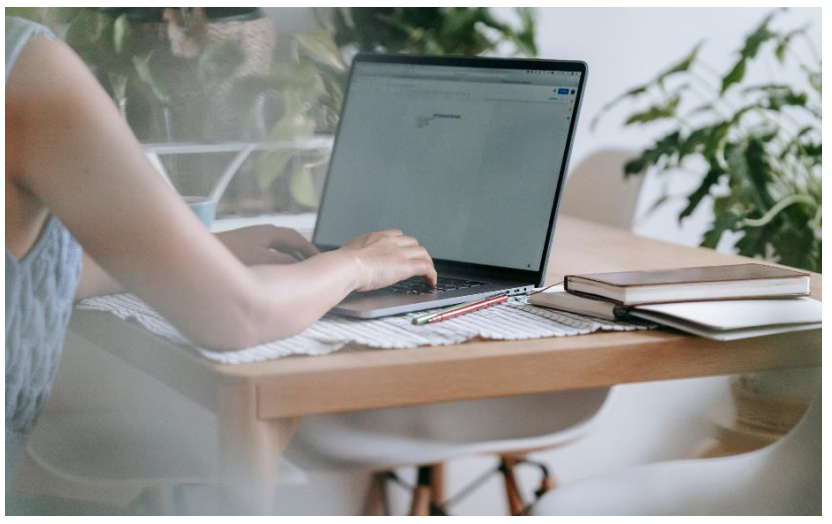
The Joint Circular provides that the POEA Administrator shall continue to receive, hear, and decide all cases under his/her original jurisdiction, in accordance with existing rules, regulations, and procedures, while the DOLE Secretary shall continue to receive, hear, and decide all cases under his/her appellate jurisdiction, also in accordance with existing rules, regulations, and procedures.

Issuance of License to Recruitment and Manning Agencies

The Joint Circular provides that the authority of the DOLE Secretary to issue licenses to recruitment and manning agencies shall continue to be delegated to the POEA Administrator.

DOLE ISSUES REVISED IMPLEMENTING RULES AND REGULATIONS OF THE TELECOMMUTING ACT

By: Sophia Francesca Z. Espinosa



On September 16, 2022, the DOLE issued Department Order No. 237, series of 2022, or the Revised Implementing Rules and Regulations of Republic Act No. 11165 or the Telecommuting Act ("*Revised Telecommuting Rules*").

New Definitions

The Revised Telecommuting Rules clarified the definition of an "alternative workplace" and a "regular workplace". An alternative workplace is "any location where work, through the use of telecommunication and/or computer technology, is performed at a location away from the principal place of business of the employer, including but not limited to the employees' residence, co-working spaces, or other spaces that allow for mobile working." On the other hand, a regular workplace is the principal place of business, or any branch office or physical premises established or provided by the employer where employees regularly report to or perform work. The Revised Telecommuting Rules also defined "computer technology" as "all electronic media and services including computers, software, electronic mail, telephones or mobile phones, voicemail, facsimile machines, online services, and the internet."

Greater Protection to Telecommuting Employees

In addition to reiterating that the terms and conditions of telecommuting shall not be less than the minimum labor standards under the law, the Revised Telecommuting Rules now provides that telecommuting shall not in any way diminish or impair the terms or conditions of employment contained in any applicable company policy or practice, individual contract, or collective bargaining agreement. It further states that work performed in an alternative workplace shall be considered as work performed in the regular workplace of the employer, and that all the time that an employee is required to be on duty , and all the time that an employee is permitted or suffered to work in the alternative workplace, shall be counted as hours worked.

An important delineation made in the Revised Telecommuting

Rules is that of the status of telecommuting employees vis-à-vis field personnel. It states that telecommuting employees are not considered field personnel, except when their actual hours of work cannot be determined with reasonable certainty.

The Revised Telecommuting Rules also provides that other hybrid arrangements where work can be performed both in the regular and alternative workplace, or compressed workweek or staggered working time arrangements, may be adopted separately or incorporated in the telecommuting program.

Form of the Telecommuting Program

The Revised Telecommuting Rules state that the initiative to establish a telecommuting program may come from either the employer or the employees. As to the form, the telecommuting program may be in the form of a separate policy, or incorporated into existing policies or employment contracts, or may be in such other form that is convenient to the parties, provided that there is evidence that the employer and employees voluntarily agreed to adopt the program.

The Revised Telecommuting Rules also provide a more detailed guide for telecommuting programs. A telecommuting agreement must provide for the minimum provisions on eligibility for telecommuting. This takes into account, among other items, the job qualifications, the nature of the work, and the personal circumstances of the employees.

The agreement must also provide for the alternative workplaces acceptable for telecommuting as well as the minimum requirements for computer hardware and software suitable for the work. It must also contain occupational safety and health standards, including mental health programs, common performance standards for telecommuting employees and those at the employer's premises, a code of conduct for telecommuting employees to follow, and standards for data protection and confidentiality. There should also be emergency protocols to address device breakdowns and weather disturbances. Lastly, the duration of the telecommuting program and provisions on dispute resolution must be provided for in case of disputes arising from the implementation of the telecommuting program.

Implementation of the Telecommuting Program

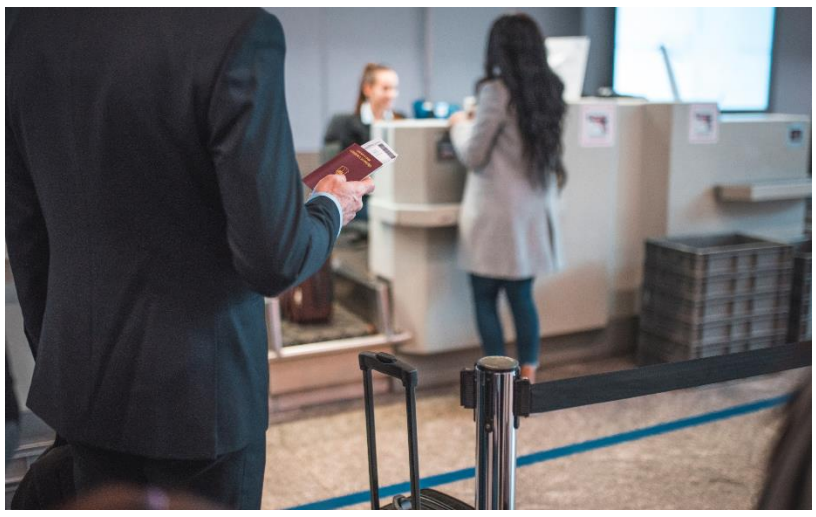
Under the Revised Telecommuting Rules, the facilities, equipment and supplies necessary to implement a telecommuting program, and to enable the employee to perform his or her work in an alternative workplace, including expenses for the acquisition, proper handling, usage, maintenance, repair and return of equipment, are considered ordinary and necessary costs of the business of the employer.

In the previous implementing rules and regulations, differences in interpretation and implementation of a telecommuting program should be resolved through the grievance mechanism of the company and, if there is no such grievance mechanism, the grievance shall be referred for conciliation and mediation to the regional office or field office of the DOLE. Under the Revised Telecommuting Rules, in the absence of a grievance mechanism, the parties shall endeavor to resolve the difference through dialogue and consultation. In case of unresolved grievances, the parties may request assistance from the regional office or field office of the DOLE for conciliation or mediation or they may go through voluntary arbitration.

If an employer seeks to implement a telecommuting program, notice must be given to the DOLE through the Establishment Report System, which may be accessed at https://reports.dole.gov.ph/. The notice shall include all branches, satellite offices, or similar operational units, if any, implementing the telecommuting program.

GUIDELINES IN THE ACCREDITATION OF AGENTS AND APPOINTMENT OF EMPLOYERS' AUTHORIZED REPRESENTATIVES FOR FILING OF ALIEN EMPLOYMENT PERMIT APPLICATIONS AND RELATED DOCUMENTS

By: Ara Patrice P. Rillera



On February 11, 2022, the Department of Labor and Employment ("*DOLE*") issued Department Order No. 221-A-22, or the *Guidelines in the Accreditation of Agents and Appointment of Employers Authorized Representatives for filing of Alien Employment Permit (AEP) Applications and Related Documents* (the "*AEP Accreditation Guidelines*"), pursuant to Section 28 of DOLE Department Order No. 221, series of 2021, or the *Revised Rules and Regulation for the Issuance of Employment Permits to Foreign Nationals* (the "*AEP IRR*").

The AEP Accreditation Guidelines allow consultancy firms, law offices, and Employers' Authorized Representatives ("*EARs*"), through their employer, to apply for an Alien Employment Permit ("*AEP*") or Certificate of Exemption or Exclusion, on behalf of the employer or foreign national, provided they have been accredited and registered with the DOLE as an Accredited Agent ("*AA*") together with their transacting employee (*i.e.*, EAR) or authorized personnel ("*AP*").

The applicant consultancy firm, law office, or EAR must submit an application for accreditation together with all the required documents to the DOLE Regional Office. Applications with incomplete requirements shall not be accepted, received, or processed. The following fees to be paid by the applicant shall be non-refundable: [a] PhP8,000 for Accreditation registration; [b] PhP8,000.00 for renewal of Accreditation; [c] PhP2,000 for each Accreditation ID and/or replacement thereof; and [d] PhP4,000 for each Supplemental Authority to Transact per regional application.

The DOLE Regional Office shall evaluate and process the approval of applications and issue the Certificate of Accreditation within five working days. The Certificate of Accreditation shall be valid for two years across all DOLE Regional Offices. The DOLE Regional Office concerned shall issue an Authority to Transact and the corresponding Accreditation ID to the AP or EAR indicating the same validity, unless sooner revoked or cancelled.

No Accreditation ID shall be issued to the AP or EAR prior to his/her attendance to the DOLE Training, Orientation or seminar for awareness and compliance to the AEP Guidelines and the AEP IRR, which is scheduled within one month from the date the Certificate of Accreditation is issued.

The AP/EAR must also present their Accreditation ID upon entry and wear it at all times while inside the DOLE premises. A photocopy of their ID must also be attached in all applications that they facilitate for processing.

For clients situated in another region, the AA may apply for a Supplemental Authority to Transact with the concerned DOLE Regional Office to allow its AP to transact in that said region.

The Accreditation covers only transactions related to the application for AEP, either new or for renewal, Certificate of Exclusion, and Certificate of Exemption. A Service Contract or Agreement between the AA and the Philippine-based employer or foreign national must clearly define the scope and extent of authority of the AA in the said applications and must be submitted to the DOLE Regional Office prior to the commencement of any transaction. The AP is prohibited from transacting with the DOLE Regional Office without the required prior submission of the Service Contract Agreement.

PRIVATE SECTOR EMPLOYEES — NO LONGER WATERPROOF?

By: Ara Patrice P. Rillera

On August 23, 2022, the Department of Labor and Employment ("*DOLE*") issued Labor Advisory No. 17, series of 2022, which governs the suspension of work in the private sector by reason of weather disturbances and similar occurrences. It provides that in the exercise of management prerogative, the employer may suspend work to ensure the safety and health of employees during weather disturbances and similar occurrences. Such suspension must be in coordination with the safety and health committee, safety officer, or any other responsible company officer.

The Labor Advisory also sets out the applicable rules on the payment of wages in case of such work suspensions. If the employee does not render work on that day, the accrued leave credits of the employee may be utilized. If the employee does not have accrued leave credits, the employee is not entitled to regular pay, except when there is a favorable company policy, practice, or collective bargaining agreement granting payment of wages on the said day. On the other hand, if the employee renders work on that day, the employee is entitled to full regular pay, provided that he or she worked for not less than six hours. If the employee rendered less than six hours of work, the employee is only entitled to the proportionate amount of the regular pay, without prejudice to an existing company policy or practice more beneficial to the employee. In any case, the employer may provide extra incentives or benefits to employees who report to work on such days.

Further, the Labor Advisory mandates that employees who fail or refuse to work by reason of imminent danger resulting from weather disturbances and similar occurrences should not be subject to any administrative sanction.

EMPLOYERS TO SHOULDER THE COST OF COVID-19 PREVENTION AND CONTROL MEASURES, INCLUDING RT-PCR TESTING FOR NEWLY-HIRED JOBSEEKERS

By: Julia Alexandra D. Chu

Pursuant to Department of Labor and Employment ("*DOLE*") Labor Advisory No. 18, series of 2020, employers, including contractors or subcontractors in the private sector, shall shoulder the cost of COVID-19 prevention and control measures, such as, but not limited to, testing, disinfection facilities, hand sanitizers, personal protective equipment (*i.e.*, face masks), signages, and proper orientation and training of workers on COVID-19 prevention and control. No cost related or incidental to COVID-19 prevention and control measures shall be charged directly or indirectly to workers.

However, in the case of contracts for construction projects as well as for security, janitorial, and other services, the cost of COVID-19 prevention and control measures shall be borne by the principals or clients of the construction or service contractor. Provisions of existing contracts inconsistent with the guidelines in the DOLE Advisory shall be deemed amended accordingly.

As for the cost of COVID-19 testing, DOLE Department Order No. 233, series of 2022 ("*DO 233*") further provides that pursuant to the policy of the State to afford full protection to labor, promote full employment, and guarantee that no person shall be denied equal access to equal employment opportunities, qualified newly-hired jobseekers who are required to secure a negative RT-PCR result among the pre-employment requirements are entitled to a one-time grant of free COVID-19 testing. A newly-hired jobseeker refers to jobseekers qualified by any employer for domestic or foreign employment and compliant with the pre-employment requirements. Newly-hired jobseekers across all sectors, hired after the effectivity of DO 233 and those employed beginning February 1, 2022, but yet to assume position due to lack of negative RT-PCR test results, and compliant with the pre-employment requirements, are qualified to avail themselves of the testing subsidy under DO 233, subject to compliance with the requirements set forth in the issuance. The following preference shall be followed in granting the subsidy: [a] newly-hired jobseekers in private domestic establishments; [b] agency-hired overseas workers set for deployment; and [c] newly-appointed employee in any branch or instrumentality of the government.

LABOR ADVISORY ON THE PERIOD FOR PAYMENT AND/OR RELEASE OF FINAL PAY AND ISSUANCE OF CERTIFICATE OF EMPLOYMENT

By: Mark Joshua L. Faderguya

On January 31, 2020, the Department of Labor and Employment ("*DOLE*") issued Labor Advisory No. 6, series of 2020, which prescribes the period for: [a] the payment and/or the release of the final pay; and [b] the issuance of Certificate of Employment to employees who are terminated from their employment.

Under the Labor Advisory, all employers are advised to release the final pay to its employees within 30 days from the date of separation or termination of employment, unless a more favorable company policy, or individual or collective agreement exists.

In order to assist the employers in complying with the Labor Advisory, the DOLE enumerated items which would constitute an employee's final pay, namely: [a] unpaid earned salary of the employee; [b] cash conversion of the unused service incentive leaves pursuant to Article 95 of the Labor Code; [c] cash conversions of remaining unused vacation, sick, or other leaves pursuant to a company policy, or individual or collective agreement, if applicable; [d] pro-rated 13th month pay pursuant to Presidential Decree No. 851; [e] separation pay pursuant to Articles 298 to 299 of the Labor Code, company policy, or individual or collective agreement, if applicable; [f] retirement pay pursuant to Article 302 of the Labor Code, if applicable; [g] income tax claim for the excess of taxes withheld, if applicable; [h] other types of compensation stipulated in an individual or collective agreement, if any; and [i] cash bond/s or any kind of deposit/s due for return to the employee, if any.

The Labor Advisory likewise requires employers to issue a Certificate of Employment within three days from the time of the request by the employee concerned.

Issues and disputes arising from or relating to the payment of the final pay or issuance of Certificate of Employment must be filed before the nearest Regional/Provincial/Field Office which has jurisdiction over the workplace for conciliation and other existing enforcement mechanisms.

LABOR ADVISORY ON THE ISSUANCE OF CERTIFICATION REQUIRED FROM NON-PHILIPPINE NATIONALS INTENDING TO ENGAGE IN BUSINESS IN THE PHILIPPINES

By: Angelica T. Abon

On October 24, 2022, the Department of Labor and Employment ("*DOLE*") issued Labor Advisory No. 20, series of 2022, which sets out the process for the issuance of the certification required from non-Philippine nationals intending to engage in business in the Philippines.

Under the Implementing Rules and Regulations of the Foreign Investments Act of 1991, as amended, all non-Philippine nationals intending to engage in micro and small domestic market enterprises with a paid-in equity capital of at least USD100,000, but not equal to or more than USD200,000, shall be required to obtain a certification from the concerned DOLE Regional Office, for purposes of registration with the Securities and Exchange Commission ("*SEC*") and Department of Trade and Industry ("*DTI*").

Under the Labor Advisory, the applicant must first fill-out the Request for Certification Form ("*Request Form*"), a sample of which is attached to the Labor Advisory. The filled-out Request Form must be submitted to the DOLE Regional Office together with the following requirements:

[a] Notarized Undertaking signed by the Owner/President of the company indicating that the majority of the applicant's direct employees shall be Filipinos and that in no case shall the number of Filipino direct employees be less than 15 (a pro-forma undertaking is attached to the Labor Advisory);

[b] Photocopy of the Passport bio-page and if applicable, photocopy of a valid visa of the foreign Owner/President;

[c] Notarized Special Power of Attorney, in case the request is filed by an authorized representative of the applicant; and

[d] Photocopy of one valid government-issued I.D. of the authorized representative.

Upon submission of the Request Form, the applicant will be required to pay the Certification Fee of PhP500. After the submission of the complete requirements, the DOLE Regional Office shall issue the certification in accordance with Republic Act No. 11032, or the Ease of Doing Business Law.

MANDATORY BENEFITS FOR HEALTH WORKERS DURING PUBLIC HEALTH EMERGENCIES PASSED INTO LAW

By: Joe Anthony C. Yarra

On April 27, 2022, Republic Act No. 11712, or the *Public Health Emergency Benefits and Allowances for Health Care Workers Act ("RA 11712")*, was signed into law in recognition of the critical role of health care workers in providing quality health care and ensuring disease prevention in the general population, especially during the pandemic. It seeks to promote the welfare of health care workers through the grant of mandatory benefits and allowances with utmost efficiency.

Health Care and Non-Health Care Workers

While the title of RA 11712 only refers to health care workers, the law also covers non-health care workers. Health care workers and non-health care workers refer to all public and private medical, allied medical, administrative, technical, support, and other necessary personnel, employed by, and assigned in hospitals, health facilities, laboratories, medical or temporary treatment and monitoring facilities, or vaccination sites, including barangay health workers and outsourced personnel hired under institutional or individual contract of service or job order basis, who are similarly exposed to COVID-19 or other threats in times of public health emergencies.

Health facilities and other health-related establishments refer to those duly licensed by the Department of Health ("*DOH*"), including the DOH Central Office, Centers for Health Development, Provincial/City/Municipal Health Offices, and

Local Government Health Offices for COVID-19, and future public health emergency response.

Public Health Emergency

The mandatory benefits under RA 11712 shall be available to health care and non-health care workers, regardless of employment status, for as long as the state of public health emergency exists, *i.e.*, from the time of declaration of the public health emergency until it is lifted by the President. In the case of COVID-19, the benefits retroactively apply from July 1, 2021, and shall remain in effect during the state of public health emergency as declared by the President.

"Public health emergency" is defined as an occurrence or imminent threat of an illness or health condition of national scale that is caused by any of the following: [a] bioterrorism; [b] appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; [c] natural disaster; [d] chemical attack or accidental release; [e] nuclear attack or accident; or [f] an attack or accidental release of radioactive materials.

Moreover, the public health emergency must pose a high probability of any of the following: [a] a large number of deaths or of serious injuries or long-term disabilities in the affected population; [b] widespread exposure to an infectious or toxic agent that poses a significant risk of substantial harm to a large number of people in the affected population; [c] international exposure to an infectious or toxic agent that poses a significant risk to the health of citizens of other countries; or [d] trade and travel restrictions.

Mandatory Benefits and Allowances

The mandatory benefits and allowances granted to eligible workers are set out below:

1. Health Emergency Allowance – the grant of the Health Emergency Allowance ("*HEA*") is based on the number of work hours that the worker reports in a month, wherein he or she is physically present. Thus, hours rendered during work-from-home arrangements are not counted in determining the amount of the HEA. An allowance of at least PhP3,000 is granted to a worker who is deployed in "low risk areas." The allowance increases to at least PhP6,000 if the worker is deployed in "medium risk areas", and PhP9,000 if the worker is deployed in "high risk areas." The HEA shall be released monthly during the state of public health emergency. The worker is entitled to the full amount of the HEA if he or she physically renders services for at least 96 hours in a month, as certified by the head of the health facility or by the latter's authorized representative. Otherwise, the allowance is prorated. The grant of the HEA is on top of the existing benefits that are already being enjoyed by the worker.

2. Grant of Compensation – Fixed compensation is granted to eligible workers who have contracted COVID-19 infection in the line of duty. A compensation of PhP15,000 shall be provided to the worker who contracted mild or moderate COVID-19 infection in the line of duty and who has recovered. For a severe or critical COVID-19 infection, the compensation is PhP100,000. In case of death of the worker due to COVID-19, a compensation of PhP1,000,000 shall be provided to his or her heirs. The compensation shall be given to the beneficiaries not later than three months after the date of diagnosis for outpatient cases or from the date of confinement or death, and upon submission of complete and compliant documentary requirements in support of the claim. This is without prejudice to other existing benefits provided under applicable government insurance systems and their governing laws.

3. PhilHealth Coverage and Regular Testing – PhilHealth shall provide full coverage for the hospitalization costs of the worker due to COVID-19. Only hospitalized and confirmed COVID-19 cases are covered, as supported by a test result performed in accordance with the regulations of the DOH on testing. PhilHealth shall cover direct health care costs based on current standards for the clinical management of COVID-19. The worker is entitled to regular testing, which is also fully covered by PhilHealth, as often as necessary, based on DOH guidelines.

Other Provisions of RA 11712

The entitlement to the above-enumerated mandatory benefits shall not be construed as to reduce any existing benefit and allowance under existing laws, decrees, issuances, executive orders, and agreements between the eligible workers and their employers.

In order to ensure efficiency in the enforcement of the mandatory benefits, the Implementing Rules and Regulations of RA 11712 provide for a grievance mechanism for the resolution of disputes arising from failure to grant the mandatory benefits. The grievance mechanism is commenced by a non-adversarial mediation for the amicable settlement of the dispute. In case mediation fails, the claimant may elevate the dispute to the regional and central grievance boards. The disputes covered by the grievance mechanism are solely limited to issues arising from failure to grant benefits and other issues related to the payment of benefits or allowances under the law.

A CAUTIONARY TALE ON PROBATIONARY EMPLOYMENT

By: Reena Alekssandra M. Acop

Probationary employment is an arrangement where an employee is placed on trial by the employer for a period of time, not to exceed six months, to allow the employer to determine whether the employee is fit for regularization. Probationary employment is beneficial for employers as it allows them to address problems in the employment relationship before regularization. Probationary employees may also be terminated for failure to qualify as regular employees in accordance with reasonable standards made known to the employee. However, employers must exercise caution in hiring probationary employees by ensuring that they notify the employee of his or her probationary status and the reasonable standards that would qualify the employee to be regularized at the time of the employee's engagement. Failure of the employer to comply with these obligations may result in a finding that the probationary employee is a regular employee, who may only be dismissed for just and authorized causes.

In *Edna Luis B. Simon v. The Results Companies and Joselito Sumcad (G.R. Nos. 249351-52, 29 March 2022)*, despite working for the employer for only two months, the employee was awarded back wages equivalent to almost eight years of work.

In this case, the employee was asked to stop reporting to work after working for only two months with the company. The Labor Arbiter and the National Labor Relations Commission ruled that the employee was illegally dismissed, but regarded the employee as a probationary employee and, thus, awarded back wages equivalent to the remaining months of her probationary period of employment. On appeal, the Court of Appeals ruled that the employee was a regular employee, but it found that she failed to prove the fact of her dismissal. Thus, the Court of Appeals ordered that the employee be reinstated to her former position without payment of back wages.

Both parties filed an appeal with the Supreme Court, which ruled that the employee was a regular employee. The Supreme Court held that to validly place an employee under probationary status,

the employer must comply with two requirements: [a] communicate the regularization standards to the probationary employee; and [b] make such communication at the time of the probationary employee's engagement. If the employer fails to comply with these two requirements, the employee is deemed a regular employee, and not a probationary employee. "An employer is deemed to have made known the regularization standards when it has exerted reasonable efforts to apprise the employee of what he or she is expected to do or accomplish during the trial period of probation. The exception to the foregoing is when the job is self-descriptive in nature, such as in the case of maids, cooks, drivers, and messengers."

Having admitted that the employee was its probationary employee, it was incumbent upon the employer to prove that it communicated to the employee the standards under which she would qualify as a regular employee. However, the employer neither presented any evidence to prove this, such as a policy handbook, operations manual, or performance appraisal document. Neither did the employer allege that it informed the employee of the criteria for regularization.

The Supreme Court ruled that the employee was illegally dismissed from employment. While the rule is that the employer bears the burden of proof to prove that the employee's dismissal was for a just or authorized cause, the employee must first establish by substantial evidence that indeed he or she was dismissed. Here, to prove the fact of her dismissal, the employee alleged that the Operations Manager verbally informed her not to report to work anymore. In support of her allegation, she presented the photocopy of her SMS conversation with her supervisor, wherein the latter explained that it was the company's managers who decided to terminate her. The Supreme Court accepted this as proof of the employee's dismissal. Moreover, as the employer did not present a copy of the employee's resignation letter, or any evidence that she went on AWOL, the Supreme Court did not consider the employer's allegations of voluntary resignation or abandonment.

The Supreme Court awarded the employee with separation pay in lieu of reinstatement as reinstatement was no longer possible because the employee had already reached the retirement age. The computation of back wages was directed to be from the time of the employee's illegal dismissal on December 13, 2012, up to the time she reached compulsory retirement age on August 19, 2020.

IS FAILURE TO DISCLOSE A PREVIOUS EMPLOYMENT A JUST CAUSE FOR THE TERMINATION OF AN EMPLOYMENT?

By: Franhzi T. Ferraris

With the restrictions brought about by the COVID-19 pandemic lifted, people are on the lookout for employment opportunities. Employers are in search of capable employees who can contribute to the recovery and growth of the company. Screening job applicants is a crucial step to ensure that the right person for the job is hired. But what if prior to new employment, the employee fails to disclose his or her previous employment? Is such omission a just cause for termination?

In *Nancy Claire Pit Celis v. Bank of Makati (A Savings Bank), Inc.* (G.R. No. 250776, June 15, 2022), the Supreme Court ruled that it may not be a just cause for the termination of an employment.

The employee in this case was hired, in 2013, as an Account Officer for the Bank of Makati's Pasay City Branch. In 2017, the employer discovered that the employee was previously employed in the Rural Bank of Placer, Surigao del Norte, and was involved in a case involving embezzlement of funds. The employee did not disclose this previous employment in her job application. Acting on this information, the employer proceeded to terminate her employment on the following grounds: [a] violation of the employer's Code of Conduct and Discipline (for knowingly giving false or misleading information in applications for employment as a result of which employment is secured); and [b] serious misconduct, fraud or willful breach of trust, and loss of confidence under Article 297 of the Labor Code.

The Labor Arbiter and the National Labor Relations Commission ruled in the employee's favor, finding that she did not violate the employer's Code of Conduct because withholding information in her job application supposedly does not amount to giving false or misleading information. On the other hand, the Court of Appeals reversed the ruling of the labor tribunals and ruled that the employee's act of not disclosing information on her previous employment was, in effect, giving false information.

On appeal, the Supreme Court held that the employee's omission in indicating her past employment was not tantamount to giving false information in her job application with the employer. Considering the different interpretations on the Code of Conduct adopted by the lower tribunals and the Court of Appeals, the Supreme Court's decision was anchored on the Constitutional policy of "giving protection to labor and resolving doubtful labor provisions or contracts in favor of workers". The Supreme Court ruled that in order for there to be a violation of "giving false or misleading information" under the employer's Code of Conduct, there must be an overt or positive act, such as providing false information in the application for employment. Since the employee only omitted her past employment, she could not have violated the said provision. In addition, the Supreme Court found that the penalty of dismissal was too harsh a penalty. It ruled that "there must be a reasonable proportionality between the offense and the penalty." Given that the case only involves an omission to disclose one's previous employment in a job application, the termination of employment here cannot be justified.

IN ORDER TO BE COMPENSABLE, IS IT NECESSARY TO ESTABLISH A DIRECT CAUSAL RELATION BETWEEN THE SICKNESS AND THE EMPLOYEE'S WORKING CONDITIONS?

By: Paul Nathan A. Beira

Reasonable connection, not direct causation. This is the essence of the Supreme Court's decision in *Social Security System v. Violeta A. Simacas* (G.R. No. 217866, 20 June 2022), wherein it awarded employees' compensation benefits under Presidential Decree No. 626 ("*PD 626*") to Mrs. Violeta A. Simacas, the wife of deceased employee Mr. Irnido Simacas, who died of prostate cancer.

Mr. Simacas was employed for 15 years as a fabrication helper at a manufacturing company. He became sick and his symptoms worsened, leading to his retirement in 2010. On the same year, after spending months in the hospital, Mr. Simacas died of "Cardiopulmonary Arrest probably secondary to Metastatic Prostatic Adenocarcinoma". His wife then filed a claim with the Social Security Commission ("*SSS*") for employees' compensation benefits under PD 626.

The SSS denied the claim, saying "that prostatic adenocarcinoma or prostate cancer was not considered an occupational disease and had no causal relationship with Irnido's job as a fabrication helper." The SSS further claimed that Mrs. Simacas did not submit any evidence to show a causal link between Mr. Simacas' work and the sickness which ultimately caused his death.

The Court of Appeals reversed the decision of the SSS, ruling that it was impossible for Mrs. Simacas to have proved the aforementioned causal link because "the specific cause for prostate cancer is medically unknown" and, since PD 626 is a social legislation, "the implementing authorities must adopt a liberal attitude in deciding compensability claims."

On appeal, the Supreme Court upheld the decision of the Court of Appeals, ruling that "for a non-communicable disease [such as prostate cancer] to be compensable [under PD 626], substantial evidence must be presented to prove that the risk of contracting the illness was aggravated by the employee's working conditions. It suffices that the evidence presented establish a reasonable work connection [between the disease and the employee's working conditions]. It is not necessary that a direct causal relation be proven."

Applying the "reasonable work connection" test mentioned above, the Supreme Court cited medical journal articles on prostate cancer to show that there is a probability that Mr. Simacas' work increased the risk of contracting prostate cancer. The Supreme Court took note of the findings in the aforementioned journal articles that exposure to chromium "revealed a small but significant increase in prostate cancer risk."

The Supreme Court correlated this finding to Mr. Simicas' work as a fabrication helper, citing another journal article which contains findings that "[w]orkers engaged in the manufacturing or handling stainless steel are exposed to chromium in varying degrees." In addition, with the aid of findings of medical experts as published in the cited journal articles, the Supreme Court held that working as a fabrication helper increases one's risk of contracting prostate cancer, thereby warranting an award of employee compensation benefits under PD 626. The Supreme Court ruled that "while Presidential Decree No. 626 has not incorporated 'the presumption of compensability and the theory of aggravation prevalent under the Workmen's Compensation Act[,]' it continues to be 'an employees' compensation law or a social legislation which should be liberally construed in favor of labor."

The Supreme Court further ruled that "as the official agents charged by law to implement social justice guaranteed by the Constitution, the ECC and the SSS should adopt a liberal attitude in favor of the employee in deciding claims for compensability especially where there is some basis in the facts for inferring a work connection with the illness or injury, as the case may be."

COVID-19 TESTING REQUIREMENT FOR EMPLOYEES

By: Ara Patrice P. Rillera

With the decreasing number of positive COVID-19 cases, more employees are now returning to on-site work and new COVID-19 testing protocols are in place.

The Inter-Agency Task Force for the Management of Emerging Infectious Diseases ("*IATF*") provided guidelines for COVID-19 testing requirements for unvaccinated and partially vaccinated employees through its Resolutions No. 148-B and 149. Also, the National COVID-19 Immunization Program opened to the general public nationwide. In order to support the full vaccination of the Philippine population, the IATF declared that upon sufficient proof of a confirmed vaccination schedule, all workers to be vaccinated during work hours shall not be considered as absent during that period.

In areas where there are sufficient supplies of COVID-19 vaccines as determined by the National Vaccines Operation Center, all establishments and employers in the public and private sector shall require their eligible employees, who are tasked to do on-site work, to be vaccinated against COVID-19.

Eligible employees who remain to be unvaccinated may not be terminated solely by reason thereof. However, they shall be required to undergo RT-PCR tests regularly, at their own expense, for purposes of on-site work; provided that antigen tests may be resorted to when RT-PCR capacity is insufficient or not immediately available.

All partially vaccinated employees, or those who have only received their first dose in the public and private sector tasked to do on-site work, need not undergo regular RT-PCR tests at their own expense, as long as their second dose is not yet due pursuant to the interval prescribed for the brand of vaccine received as their first dose.

According to the Department of Health, the interval of doses varies per vaccine. Vaccines which have already been issued an Emergency Use Authorization by the Philippine Food and Drug Administration have the following dosage and frequency:

Vaccine	Dosage	Interval between 1st and 2nd dose
Sinovac	2 doses	4 weeks (28 days)
AstraZeneca	2 doses	4 to 12 weeks
Gamaleya Sputnik V	2 doses	3 weeks
Bharat BioTech	2 doses	28 days
Janssen	1 dose	-

Regular RT-PCR or antigen tests are still required for partially vaccinated employees when all the on-site employees/workers of an establishment are required to undergo such tests under the Alert Level System Guidelines. Under the IATF Guidelines on the Nationwide Implementation of Alert Level System for COVID-19 Response, as of February 27, 2022, full vaccination of on-site employees is required under all Alert Levels except Alert Level 1.

As for public transportation services in the road, rail, maritime, and aviation sectors, full vaccination of their eligible workers is a condition for continuing their operations.

The frequency of regular RT-PCR tests for purposes of on-site work shall be determined by the employer, but it should be at least once every two weeks.

Only the presentation of a medical clearance issued by the Municipal Health Office, City Health Office, and/or Provincial Health Office, or a birth certificate, as the case may be, shall serve as sufficient and valid proof of ineligibility for vaccination.

LABOR ADVISORY ON WORKING CONDITIONS OF DELIVERY RIDERS IN FOOD DELIVERY AND COURIER ACTIVITIES

By: Dece Christine C. Fulache

The growing reliance towards digital courier services, including food delivery, has become evident when the COVID-19 pandemic started. This sector in the service industry continued to operate while adapting to the current set-up of nationwide lockdowns and various quarantine levels. To this extent, delivery riders are considered as "non-medical frontliners" facing the same risks as healthcare providers. Thus, the Philippine Government has implemented various policies and measures to ensure that the welfare of the citizens, including the labor sector, is protected.

In line with its mandate to protect workers and promote their welfare, the Department of Labor and Employment ("*DOLE*") issued Labor Advisory No. 14, series of 2021 on July 28, 2021 to set out guidelines on general labor standards, occupational and safety and health standards, as well as better working conditions, for delivery riders in food and courier activities using digital platform.

Under the Labor Advisory, a digital platform company refers to any person or entity who owns, manages and/or operates a location-based digital platform which allocates work to individuals in a specific geographical area in food delivery services and courier services. A delivery rider, on the other hand, refers to any accredited person who, through the digital platform, receives the order from the merchant or the parcel from the customer, delivers the same and gets paid therefor.

The Labor Advisory reiterates the tests of employment relationship as consistently laid down in Supreme Court decisions. These are the: [a] the four-fold test, [b] the economic reality test, and [c] the independent contractor test. It also states that the relationship between the delivery riders and digital platform company shall be based on the principle of primacy of facts by applying the above-mentioned three tests. Further, employers shall consider the following factors: [a] flexibility of work including working time; [b] control through technology, and [c] use of equipment and other inputs.

Pursuant to the Labor Code and other labor laws, the Labor Advisory restates the minimum benefits to be received by delivery riders who are deemed employees, as follows: [a] minimum wage; [b] holiday pay; [c] premium pay; [d] overtime pay; [e] night shift differential; [f] service incentive leave; [g] thirteenth-month pay; [h] separation pay; [i] retirement pay; [j] occupational safety and health standards; [k] social benefits, such as SSS, PhilHealth, Pag-IBIG; and [l] other benefits under existing laws.

Delivery riders who are deemed employees shall also enjoy the right to security of tenure, self-organization, and collective bargaining.

For delivery riders who are deemed independent contractors or freelancers, the terms and conditions of their engagement shall be governed by their respective contract or agreement with the digital platform company. The Labor Advisory provides the following minimum provisions that should be stipulated in the said contract or agreement: [a] payment of fair and equitable compensation, which shall not be lower than the prevailing minimum wage rate; [b] facilitation of registration and coverage under the SSS, PhilHealth and Pag-IBIG; [c] compliance with applicable occupational safety and health standards such as but not limited to the use of standard protective helmet and personal protective equipment (PPEs), and attendance to regular trainings and seminars on road and traffic rules and road safety to be arranged by the digital platform company in coordination with relevant government agencies; and [d] arrangement with concerned local government unit and/or merchants or group of merchants in setting up designated waiting areas for delivery riders.

In order to be valid, the contract or agreement shall be knowingly and voluntarily agreed upon, without any force, duress, or improper pressure or any other circumstances vitiating consent.

In case of any complaint or grievance on the part of the delivery riders and/or the digital platform company, such shall be settled through conciliation, mediation, inspection, or arbitration, pursuant to existing rules and regulations.

PROJECT EMPLOYMENT ARRANGEMENTS IN THE PHILIPPINES

By: Dece Christine C. Fulache

In *Toyo Seat Philippines Corporation v. Annabelle C. Velasco, et al.* (G.R. No. 240774, March 03, 2021), the Supreme Court reiterated that workers may be considered project employees regardless of the nature of the work they perform, as long as the essential elements of project employment are alleged and proven. These essential elements are: [a] that they were hired for a specific project or undertaking; and [b] the completion or termination of the project or undertaking for which they were hired has been determined at the time of their engagement.

The decision echoed the indicators of project employment, as provided in Department of Labor and Employment ("*DOLE*")

Department Order No. 19, series of 1993, as follows: [a] the duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable; [b] such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring; [c] the work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged; [d] the employee, while not employed and awaiting engagement, is free to offer his services to any other employer; [e] the termination of his employment in the particular project/undertaking is reported to the DOLE Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions; and [f] an undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

Discrete and Determinable Start and End Dates

In *Toyo Seat*, the employees were contracted to work for the manufacture of car seats for certain car models. The first project was the J68C project, which was completed ahead of the earlier estimated date because of low demand. The employees were then contracted to work on the second project, the J68N project, which was extended, because of fluctuations in demand for the new car model and the delayed arrival of the raw materials for the car seats. The J68C and J68N projects did not perfectly correspond to the periods set out in the employment contracts signed by employees but were either shortened or extended according to the economic forces of supply and demand.

At first glance, it may not have met the essential requisite that the completion or termination of the project should be determined at the time of engagement of the employee. However, there were other factual circumstances which indicated otherwise. First, the employment contracts clearly state that their employment is coterminous with the actual duration of the project; and as such, their engagement may be terminated at an earlier date if the project is finished ahead of schedule. Furthermore, the employment contracts clearly indicate that they are being engaged as project employees. Also, the Court of Appeals and the labor tribunals consistently found that the employees were not constrained, forced, or pressured to sign the project employment contracts. Second, in the project extensions, the employer had issued notices of extension to the employees concerned, wherein the new end dates of the project were clearly indicated.

The Supreme Court was convinced that the employer's projects had discrete and determinable start and end dates which are nevertheless adjusted frequently due to several factors (such as consumer demand, arrival of raw materials, *etc.*). The completion of the projects were certain, even though the exact date thereof was dependent upon several economic factors.

Separate Contracts on Separate Projects

Another point that the Court made in *Toyo Seat* is the fact that the employer entered into separate contracts for the subsequent projects, taken together with the reference in said contracts to the previous project contract. This constitutes substantial evidence that the employees' engagement in the subsequent project was a mere contingency measure meant to optimize manpower utilization. This was also made to allow respondents to continue working while the previous project remained idle. Moreover, the employer only resorted to simultaneous engagements when there was low volume of orders for a certain project.

The Supreme Court contrasted this with other instances when the project employment was being used to circumvent security of tenure either because workers were hired ostensibly as project employees but were assigned to non-project tasks and were regularly re-hired to the same position, or company projects without separate contracts and under different job descriptions.

Engagement for Specific Undertaking, Not Nature of Activity

The nature of the business of the employer, among others, also determines whether the employment is project-based or not. In *Toyo Seat*, the employer's business model is based on "projects which are distinct, separate, and identifiable from each other." Since it manufactures products on a project basis, consequently, it may hire project employees to cope with the demands of its current projects.

Indeed, the essence of the distinction between project and regular employment lies not in the nature of the activity performed, but in the engagement for a specific undertaking with a reasonably determinable time frame which is determined at the time of hiring and communicated to the employee.

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This bulletin contains a summary of the legal issuances discussed above. It was prepared by SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) to update its clients about recent legal developments.