

# **“EMPLOYER-EMPLOYEE RELATIONSHIP: PRE- AND POST- EMPLOYMENT”**

**1<sup>ST</sup> MAPSA HRMD-SUMMIT 2019  
ST. SCHOLASTICA'S COLLEGE  
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# **I. INTRODUCTION**

**“GOD CREATED MAN IN HIS IMAGE;  
XXX; MALE AND FEMALE HE  
CREATED THEM. GOD BLESSED  
THEM, SAYING: XXX FILL THE  
EARTH AND SUBDUE IT. HAVE  
DOMINION OVER THE FISH**

**THE FISH OF THE SEA, THE BIRDS OF THE AIR, AND ALL THE LIVING THINGS THAT MOVE ON THE EARTH (GEN 1:27-28).**

**“THE LORD GOD THEN TOOK MAN AND SETTLED HIM IN THE GARDEN OF EDEN, TO CULTIVATE AND CARE FOR IT.” (GEN 2: 15)**

**CREATOR'S PLAN** – CREATED MAN AND ENTRUSTED TO HIM THE TASK OF SUBDUING THE EARTH AND EXERCISING DOMINION OVER ALL THINGS (CSDC # 255).

**WORK** – PART OF THE ORIGINAL STATE OF MAN (CSDC # 256).

## **II. STATE'S RESPONSE FOR THE PROTECTION OF LABORERS.**

**SEC. 3, ART. XIII, 1987 CONSTITUTION**

**“THE STATE SHALL AFFORD FULL PROTECTION TO LABOR XXX AND PROMOTE FULL EMPLOYMENT AND EQUALITY OF EMPLOYMENT OPPORTUNITIES FOR ALL.**

**“IT SHALL GUARANTEE THE RIGHTS OF ALL WORKERS TO SELF-ORGANIZATION, COLLECTIVE BARGAINING AND NEGOTIATIONS, AND PEACEFUL CONCERTED ACTIVITIES, INCLUDING THE RIGHT TO STRIKE IN ACCORDANCE WITH LAW.**

**“THEY SHALL BE ENTITLED TO SECURITY OF TENURE, HUMANE CONDITIONS OF WORK, AND A LIVING WAGE. THEY SHALL ALSO PARTICIPATE IN POLICY AND DECISION-MAKING PROCESS AFFECTING THEIR RIGHTS AND BENEFITS AS MAY BE PROVIDED BY LAW.”**

**PRESIDENTIAL DECREE NO. 442,  
LABOR CODE OF THE PHILIPPINES-  
TOOK EFFECT ON NOVEMBER 1, 1974-  
ENACTED TO AFFORD PROTECTION  
TO LABOR.**

**MANAGEMENT PREROGATIVE-** inherent right to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees [See: [G.R. No. 198534](#)].



## **EMPLOYMENT CONTRACT – CONSENSUAL**

### **FOUR-FOLD TEST- USE TO PROVE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP**

- (a) SELECTION/ENGAGEMENT OF THE EMPLOYEE;**
- (b) PAYMENT OF WAGES;**
- (c) POWER OF DISMISSAL; and,**
- (d) POWER TO CONTROL OVER MEANS AND METHODS BY WHICH WORK IS TO BE ACCOMPLISHED ( *Encyclopedia Britannica vs. NLRC*, 264 SCRA 1).**

### **III. KINDS OF EMPLOYEES (ART. 280, LABOR CODE)**

**(a) REGULAR EMPLOYEES – ENGAGED  
TO PERFORM ACTIVITIES USUALLY  
NECESSARY OR DESIRABLE IN THE  
USUAL BUSINESS OR TRADE OF THE  
EMPLOYER.**

**(b) NON-REGULAR EMPLOYEES:**

**(b.1) PROBATIONARY EMPLOYEE**

**(b.2) FIXED TERM OR CONTRACTUAL EMPLOYEE**

**(b.3) PROJECT EMPLOYEE**

**(b.4) SEASONAL EMPLOYEE**

**(b.5) CASUAL EMPLOYEE**

## **IV. RIGHTS OF EMPLOYEES**

### **A. CONDITIONS OF WORK**

#### **1. WORKING HOURS - ARTS. 83-84.**

**GENERAL RULE: EIGHT (8) HOURS**

***PRANGAN VS. NLRC*, 289 SCRA 142  
MANAGEMENT PREROGATIVE TO  
CHANGE WORKING HOURS.**

## **EXCEPTIONS:**

**(1.a) OVERTIME – BEYOND 8 HOURS  
(ART. 87)**

**(1.b) NIGHT SHIFT DIFFERENTIAL –  
WORK PERFORMED BETWEEN 10:00  
PM TO 6:00 AM. (ART. 86)**

**NOTE: UNDERTIME NOT OFFSET BY  
OVERTIME (ART. 88)**

**SLIDING FLEXI-TIME CAN BE ADOPTED.**

**2. MEAL BREAKS (ART. 85) – SIXTY  
MINUTES FOR REGULAR MEALS. ONE  
H O U R M E A L B R E A K N O T  
COMPENSABLE**

### **3. WEEKLY REST PERIOD/DAY OFF**

**IMPORTANCE: A RIGHT. SEE GEN. 2:2.  
(CSDC # 284)**

**REST DISPOSES MAN TO TURN HIS  
THOUGHTS TO THINGS HEAVENLY,  
AND TO WORSHIP GOD (*RERUM  
NOVARUM*,# 41 )**

# **GENERAL RULE : REST PERIOD OF TWENTY-FOUR HOURS**

**EXCEPTIONS: ART. 92, LABOR CODE**

**4. **WAITING TIME** – CONSIDERED AS A  
WORKING TIME.**



## **5. LEAVES – MANDATED LEAVES:**

**(5.a) SERVICE INCENTIVE LEAVE – HAS RENDERED 1 YEAR OF SERVICE, LEAVE OF FIVE (5) DAYS WITH PAY. COMMUTABLE TO MONEY EQUIVALENT IF NOT USED**

**(5.b) MATERNITY LEAVE – ART. 133.  
WOMAN EMPLOYEE WHO HAS REN-  
DERED SERVICE FOR AT LEAST 6  
MONTHS FOR THE LAST 12 MONTHS.  
LEAVE IS 2 WKS. BEFORE EXPECTED  
DELIVERY AND 4 WKS. AFTER  
NORMAL DELIVERY. APPLICABLE TO  
MARRIED OR UNMARRIED AND HER  
FIRST 4 DELIVERIES.(amended by  
Social Security Law )**

**SEC 14-A.- FEMALE EMPLOYEE WHO HAS PAID 3 MONTHLY CONTRIBUTION, IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE SEMESTER OF CHILD BIRTH OR MISCARRIAGE – 100% AVE. SALARY CREDIT FOR **60 DAYS – NORMAL.**  
**CAESARIAN – 78 DAYS (SS Law).****

**(5.C) PATERNITY LEAVE – RA NO. 8187-  
MARRIED MALE EMPLOYEE  
COHABITING W/ SPOUSE IS ENTITLED  
TO **7 DAYS LEAVE W/ PAY**. PURPOSE  
IS TO LEND SUPPORT TO WIFE.  
AVAILABLE FOR FIRST 4 DELIVERIES**

**(5.d) SOLO PARENT LEAVE –**

**RA NO. 8972.SOLO PARENT WHO HAS  
RENDERED ONE YR. SERVICE  
ENTITLED TO 7 DAYS LEAVE WITH PAY  
EVERY YEAR. ENJOYS A FLEXIBLE  
WORK SCHEDULE.**

**B. WAGES – REMUNERATION, MOST IMPORTANT MEANS FOR ACHIEVING JUSTICE IN WORK RELATIONSHIP. JUST WAGE IS THE LEGITIMATE FRUIT OF WORK. THEY COMMIT GRAVE INJUSTICE WHO REFUSE TO PAY A JUST WAGE.**

**SALARY IS THE INSTRUMENT THAT PERMITS THE LABORER TO GAIN ACCESS TO GOODS OF THE EARTH – THE PRINCIPLE OF UNIVERSAL DESTINATION OF GOODS (CSDC # 171-184).**

**TO GUARANTEE LABORER’S RIGHT TO A LIVING WAGE, R.A. ACT NO. 6727, “WAGE RATIONALIZATION ACT” WAS ENACTED.**

**RA NO. 9504 – EXEMPTS MINIMUM  
WAGE EARNERS FROM INCOME TAX.**

**C. WAGE AUGMENTATION**

**(1) OVERTIME PAY**

**(2) PREMIUM PAY**



**(3) HOLIDAY PAY**

**(4) NIGHT SHIFT DIFFERENTIAL**

**(5) THIRTEENTH MONTH PAY**

**(6) BONUSES**

**NOTE: PROHIBITION AGAINST NON-DIMINUTION OF BENEFITS (ART. 100, LABOR CODE)**

**D. MANDATED BENEFITS:**

**(1) SOCIAL SECURITY SYSTEM**

**COMPULSORY FOR ALL PRIVATE  
SECTOR EMPLOYEES NOT OVER 60  
YRS. OLD.**

**-SHALL TAKE EFFECT ON FIRST DAY OF  
EMPLOYMENT, PROBATIONARY OR  
REGULAR.**

**(2) PHIL HEALTH  
COMPULSORY FOR ALL EMPLOYEES.**

**(3) PAG-IBIG- AFFORDABLE HOUSING  
LOANS**

**- SAVINGS – RIGHT TO WITHDRAW TOTAL  
ACCUMULATED VALUE OF CONTRIBUTIONS  
AFTER 10<sup>TH</sup>/15<sup>TH</sup> YR OF MEMBERSHIP (SEC.  
6,PD 1752, AS AMENDED)**

**(4) RETIREMENT- ART 287, LABOR CODE,  
AMENDED BY RA 7641**

**- 60 YRS. BUT NOT BEYOND 65 YRS.  
OLD, COMPULSORY RETIREMENT**

**- RETIREMENT PAY =  $\frac{1}{2}$  MONTH SALARY  
PER YEAR OF SERVICE**

***CAPITOL WIRELESS VS. CONFESSOR,***  
**G.R. NO. 117174, NOV. 13, 1996 - ½**  
**MONTH SALARY MEANS 22.5 DAYS; 15**  
**DAYS PLUS CASH EQUIVALENT OF 5**  
**DAYS SERVICE INCENTIVE LEAVE.**

**E. SECURITY OF TENURE – ART. 279,  
LABOR CODE.**

**SEC. 1, ART. III, 1987 CONSTITUTION –  
“NO PERSON SHALL BE DEPRIVED OF  
LIFE, LIBERTY OR PROPERTY  
WITHOUT DUE PROCESS OF LAW.”**

**WORK IS A PROPERTY RIGHT.**

**POST- EMPLOYMENT**

**MANAGEMENT PREROGATIVE**

**xx TO DISCIPLINE AND/OR DISMISS ERRING  
EMPLOYEES**



## **JUST CAUSES FOR TERMINATION;**

- 1. SERIOUS MISCONDUCT OR WILLFUL DISOBEDIENCE;**
- 2. GROSS OR HABITUAL NEGLIGENCE OF DUTIES;**
- 3. FRAUD OR WILLFUL BREACH OF TRUST;**

**4. COMMISSION OF CRIME AGAINST  
EMPLOYER OR IMMEDIATE MEMBER  
OF FAMILY OR REPRESENTATIVE;**

**5. ANALOGOUS CAUSES.**

## **AUTHORIZED CAUSES:**

- 1. INSTALLATION OF LABOR SAVING DEVICE;**
- 2. REDUNDANCY;**
- 3. RETRENCHMENT;**
- 4. DISEASE**

**NOTE: EMPLOYEE ENTITLED TO SEPARATION PAY EQUIVALENT TO 1 MONTH FOR EVERY YEAR OF SERVICE OR ½ MONTH PAY FOR EVERY YEAR OF SERVICE, WHICHEVER IS HIGHER (ART. 283, LABOR CODE).**

**NOTE: TWO NOTICE RULE MANDATORY**

## **ACTUAL CASES:**

- 1.) CONSTRUCTIVE DISMISSAL AFTER FILING RESIGNATION LETTER**
- 2.) PROBATIONARY PERIOD WITHOUT BEING REGULARIZED**
- 3.) INCOMPETENCE BUT WITH ENDORSEMENT BY PRIEST**
- 4.) TERMINATION ON THE GROUND OF IMMORALITY**

## **SUPREME COURT CASES:**

**1. SAN FELIPE NERI SCHOOL OF MANDALUYONG, INC., ET AL  
VS. NLRC, ET AL, G.R. No. 78350 September 11, 1991.**

**2. FUNGO VS. LOURDES SCHOOL, G.R. No. 152531, JULY 27, 2007**

**3. COLEGIO DE SAN JUAN DE LETRAN VS. DELA ROSA-MERIS,  
G.R. No. 178837, September 1, 2014**

**4. NATIONAL LABOR RELATIONS COMMISSION, ST. JUDE  
CATHOLIC SCHOOL, ET AL. VS. MA. BERNADETTE S.  
SALGARINO, G.R. No. 164376, July 31, 2006,**

# CONCLUSION

REFLECT TO THE THEME OF THE SUMMIT:  
“NURTURING HUMAN CAPITAL IN MAPSA”

ETYMOLOGICAL DEFINITION OF NURTURE -breeding,  
upbringing,“

from Old French *norture, nourreture*

“food, nourishment; education, training,“

from Latin *nutritia* “a nursing, suckling,” from  
Latin *nutrire* “to nourish, suckle” (see [nourish](#)).

- **MAPSA - AN ASSOCIATION OF CATHOLIC SCHOOLS AND AS SUCH PLAYS A VITAL ROLE IN NURTURING/NOURISHING, FEEDING HUMAN CAPITAL IN ACCORDANCE WITH THE DIFFERENT ENCYCLICALS ISSUED BY THE ROMAN CATHOLIC CHURCH LIKE “RERUM NOVARUM” (CONDITION OF LABOR) BY POPE LEO XIII, “QUADRAGESIMO ANNO” (RECONSTRUCTION OF SOCIAL ORDER) OF POPE PIUS XI, “MATER ET MAGISTRA” (CHRISTIANITY AND SOCIAL PROGRESS) OF POPE JOHN XXIII AND LABOREM EXERCENS (ON HUMAN WORK) BY POPE JOHN PAUL II.**



**IN *LABOREM EXERCENS*, HIS HOLINESS, POPE JOHN PAUL II SAID:**

**“WORK IS A GOOD THING FOR MAN- A GOOD THING FOR HIS HUMANITY- BECAUSE THROUGH WORK MAN NOT ONLY TRANSFORMS NATURE, ADAPTING IT TO HIS OWN NEEDS, BUT HE ALSO ACHIEVES FULFILLMENT AS A HUMAN BEING AND INDEED, IN A SENSE, BECOMES MORE A HUMAN BEING.”**

**MARAMING SALAMAT PO!**

atty. liza