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Employment & Immigration Update

Downgrading of Special Non-Immigrant Visas

The Bureau of Immigration (BI), in its Operations Order No. SBM-2014-013A dated 09 May 2014, has prescribed revised guidelines in the downgrading of special non-immigrant visas issued under Section 47(a)(2) of the Philippine Immigration Act of 1940, as amended. The new operating rules are:

1. Foreign nationals holding Section 47(a)(2) visas obtained through the Philippine Economic Zone Authority (PEZA) whose contracts are pre-terminated, or have expired and are no longer endorsed for renewal by the PEZA registered enterprise shall **NOT** be allowed to downgrade their visas and shall be ordered to leave as soon as possible or within 15 days from pre-termination or expiration of their PEZA-authorized period of employment whichever is shorter; Provided that, applications for downgrading filed prior to the expiration of such authorized period of employment shall be allowed by the BI with appropriate notice to the DOJ; and Provided further that, they shall be ordered to leave within 59 days from expiration of their PEZA-authorized period of employment.
2. They shall not be allowed to change their status to any other non-immigrant status without first departing from the country; Provided that those allowed by principle of reciprocity,

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Labor Law Compliance System

The new Labor Law Compliance System (LLCS) developed by the Department of Labor and Employment (DOLE) is aimed at improving work conditions, fostering good employer-employee relations, and enhancing work productivity through voluntary compliance with labor standards. The new LLCS is a mix of developmental and regulatory approaches that will benefit micro, small, and medium enterprises (SMEs).

The LLCS has three approaches: joint assessment, compliance visit, and occupational safety and health. Under the new system, companies may apply to go through joint assessment and get a Certificate of Compliance valid for two years unless there is a complaint. All establishments, regardless of employment size, are covered by joint assessment under which the employer, the labor laws compliance officers (LLCOs), and the workers' representative together verify the company's compliance with general labor, safety and health, and child labor standards.

The DOLE had earlier improved the processes of the LLCS by developing a software system that

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Quick Quotes from Recent SC Decisions

Our Constitution, statutes and jurisprudence uniformly guarantee to every employee or worker tenurial security. What this means is that an employer shall not dismiss an employee except for just or authorized cause and only after due process is observed. Thus, for an employee's dismissal to be valid, the employer must meet these basic requirements of: (1) just or authorized cause (which constitutes the substantive aspect of a valid dismissal); and (2) observance of due process (the procedural aspect). *(Baguio Central University v. Ignacio Gallente, G.R. No. 188267, 02 December 2013).*

It is a settled rule that seafarers are considered contractual employees. Their employment is governed by the contracts they sign every time they are rehired and their employment is terminated when the contract expires. *(Antonio E. Unica v. Anscor Swire Ship Management , G.R. No. 184318, 12 February 2014).*

Quotable Quote

"It is worse to live on your knees than die on your feet."
— Yiddish proverb

Insufficient Notice of Closure

SC Decision: G.R. No. 173154, 09 December2013

Article 297 of the Labor Code provides that before any employee is terminated due to closure of business, the employer must give a one month prior written notice to the employee and to the DOLE. Case law instructs that it is the personal right of the employee to be personally informed of his proposed dismissal as well as the reasons therefore; and such requirement of notice is not a mere technicality or formality which the employer may dispense with. Since the purpose of previous notice is to, among others, give the employee some time to prepare for the eventual loss of his job, the employer has the positive duty to inform each and every employee of their impending termination of employment. In the case at bar, the SC found that the LA, NLRC and CA erred in ruling that petitioner company complied with the notice requirement when it posted various copies of its notice of closure in conspicuous places within the business premises. According to the SC, for something as significant as the involuntary loss of one's employment, nothing less than an individually-addressed notice of dismissal supplied to each worker is proper. ◆

Revocation of bonding company's authority has a prospective application

SC Decision: G.R. No. 189404, 11 December 2013

Paragraph 2, Article 223 of the Labor Code provides that in the case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC in an amount equivalent to the monetary award in the judgment appealed from. The requirement that the appeal bond should be issued by an accredited bonding company is mandatory and jurisdictional. In the case at bar, the respondents filed a surety bond issued by a bonding company which at the time of the surety bond's issuance on 28 June 2002 was still an accredited bonding company. However, the NLRC revoked its accreditation on 16 February 2003. The SC held that this subsequent revocation should not prejudice the respondents who relied on the then subsisting accreditation of the bonding company in good faith, citing a previous ruling in 2009 that a bonding company's revocation of authority is prospective in application. ◆

Liberality of procedural rules should be subject to rules of reason and fair play

SC Decision: G.R. No. 189404, 11 December 2013

In labor cases, strict adherence to the technical rules of procedure is not required. Time and again, evidence has been allowed to be submitted for the first time on appeal with the NLRC in the interest of substantial justice, and the rule that labor officials should use all reasonable means to ascertain the facts in each case speedily and objectively without regard to technicalities of law or procedure have been consistently observed. This liberal policy is qualified by two requirements: **(1)** a party should adequately explain any delay in the submission of evidence; and **(2)** a party should sufficiently prove the allegations sought to be proven. The reason for these requirements is that the liberal application of the rules before quasi-judicial agencies cannot be used to perpetuate injustice and hamper the just resolution of the case. Neither is the rule on liberal construction a license to disregard the rules of procedure. In the case at bar, guided by these principles, the CA grossly erred in ruling that the NLRC did not commit grave abuse of discretion in arbitrarily admitting and giving weight to the respondents' pieces of evidence for the first time on appeal. ◆

Employer's cash appeal bond in a labor case which has been decided with finality in its favor may be utilized by the same employer in another pending labor case against it

SC Decision: G.R. No. 196047, 15 January 2014

In the case at bar, the sole issue presented before the SC was whether or not petitioner complied with the appeal bond requirement under the Labor Code and the NLRC Rules by filing a motion to release the cash bond it posted in an earlier case which had been decided with finality in its favor, with a view to applying the same cash bond to the present pending case. While it is true that the procedure undertaken by the petitioner is not provided under the Labor Code or in the NLRC Rules, the SC answered the question in the affirmative by holding that petitioner substantially complied with the mandatory requirement of posting an appeal bond. The SC pointed out that as shown by the judicial records, the decision of the court in the earlier case had become final and executory more than seven months before the petitioner had to file its appeal in the present case. As such, since the money represented by the cash bond filed in the earlier case is now unencumbered, the employer who posted it should now have unrestricted access to the cash which he may now use as appeal bond in the other pending case. ◆

Regular, Project/Seasonal, Casual Employment

SC Decision: G.R. No. 186439, 15 January 2014

Article 280 of the Labor Code provides for three kinds of employment arrangements, namely: regular, project/seasonal, and casual.

Regular employment refers to that arrangement whereby the employee "has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer." Under this definition, the primary standard that determines regular employment is the reasonable connection between the particular activity performed by the employee and the usual business or trade of the employer; the emphasis is on the necessity or desirability of the

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Penalty of Double Indemnity

SC Decision: G.R. No. 178184, 29 January 2014

In this case, the Labor Arbiter ordered petitioners to reinstate complainants with full backwages and to pay their money claims for unpaid salary, overtime pay, premium pay for holidays and rest days, holiday and service incentive leave pay. In addition, complainants were likewise awarded damages due to the attending bad faith in effecting their termination, double indemnity prescribed by Republic Act No. 8188 for violation of the Minimum Wage Law, and attorney's fee.

Petitioners raised before the SC the legitimacy of the Labor Arbiter's authority to impose the penalty of double indemnity for violations of the Minimum Wage Law, arguing that the authority to issue compliance orders in relation to underpayment of wages is vested exclusively on the Secretary of Labor or the Regional Director and that the Labor Arbiter has no jurisdiction whatsoever, citing Section 12 of Republic Act No. 6727 as amended by Republic Act No. 8188. Ruling petitioners' claim as untenable, the SC held that there is no provision in RA 6727 or RA 8188 which precludes the Labor Arbiter from imposing the penalty of double indemnity against employers, and that Article 217 of the Labor Code gives the Labor Arbiter jurisdiction over cases of termination disputes and those cases accompanied with a claim for reinstatement. The SC cited a 2008 decision which held that an allegation of illegal dismissal deprives the Secretary of Labor of jurisdiction over claims to enforce compliance with labor standards law. ◆

Quick Quotes from Recent SC Decisions

In the absence of specific terms and conditions governing a car plan agreement between the employer and employee, the former may not retain the installment payments made by the latter on the car plan and treat them as rents for the use of service vehicle, in the event that the employee ceases his employment and is unable to complete the installment payments on the vehicle. The underlying reason is that service vehicle was used in the former's business; any personal benefit obtained by the employee from its use is merely incidental. *(Antonio Locsin II v. Mekeni Food Corporation, G.R. No. 192105, 09 December 2013).*

The nature of the employment depends on the nature of the activities to be performed by the employee considering the nature of the employer's business, the duration and scope to be done, and, in some cases, even the length of time of the performance and its continued existence. *(Universal Robina Sugar Milling Corporation, et al. v. Fernando Acibo, et al., G.R. No. 186439, 15 January 2014).*

Quick Quotes from Recent SC Decisions

An employee's disability becomes permanent and total when declared by the company-designated physician, or, in the case of absence of such declaration either of fitness or permanent total disability, upon the lapse of the 120– or 240-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physicial fails to arrive at a definite assessment of the employee's fitness or disability. *(Alpha Ship Management Corp., etc., et al. v. Eleosis V. Calo, G.R. No. 192034, 13 January 2014).*

It is well-settled that an act of a court or tribunal can only be considered to be tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment that is equivalent to lack of jurisdiction. *(INC Shipmanagement, Inc., et al. v. Alexander L. Moradas, G.R. No. 178564, 15 January 2014).*

Quotable Quote

"If there were no bad people, there would be no good lawyers." — Charles Dickens

Gross inefficiency

SC Decision: G.R. No. 167286, 05 February 2014

In all cases involving termination of employment, the burden of proving the existence of any of the just causes provided in Article 282 of the Labor Code rests upon the employer. The quantum of proof required in these cases is substantial evidence, that is, such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.

In the case at bar, reversing the appealed decision of the CA, the SC found that the petitioners (school and its administrators) had sufficiently proved the charge of gross inefficiency, which warranted the dismissal of the respondent teacher from the school. The documentary evidence submitted by petitioners pointed to the numerous instances when respondent teacher failed to observe the prescribed standards of performance set by the school in several areas of concern, not the least of which was her lack of adequate planning. Said evidence established that the school administrators informed respondent teacher of her inadequacies as soon as they became apparent; that they provided constructive criticism of her planning process and teaching performance, and that regular conferences were held between respondent teacher and the school administrators in order to address their concerns. Because of her slow progress, the school required respondent to undergo the remediation phase of the evaluation process through a Professional Growth Plan. Despite the efforts of the school administrators, respondent failed to show any substantial improvement in her planning process. Having failed to exit the remediation process successfully, the school was left with no choice but to terminate respondent's employment. ◆

Separation pay may be granted to a validly dismissed employee for causes other than serious misconduct or those reflecting on his moral character

SC Decision: G.R. No. 188747, 29 January 2014

As a general rule and in line with Section 7, Rule I, Book VI of the Omnibus Rules implementing the Labor Code, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay. In exceptional cases, however, the SC has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds". In both instances, it is required that the dismissal **(1)** was not for serious misconduct; and **(2)** did not reflect on the moral character of the employee.

Jurisprudence has expanded the exclusions and elucidated that separation pay shall be allowed as a measure of social justice only in instances where the employee is dismissed for causes other than serious misconduct, willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime against the employer or his family, or those reflecting on his moral character.

In the case at bar, petitioner company questioned the award by the Labor Arbiter of separation pay to the respondent employee who was dismissed for stealing the company's property which amounted to gross misconduct. Although dismissing respondent employee's complaint for lack of merit, the Labor Arbiter awarded separation pay to respondent employee considering the latter's length of service for 21 years without previous derogatory record as warranting the award of separation pay. The NLRC dismissed the appeal interposed by the petitioner company for the latter's failure to append a certification against forum shopping in its memorandum on appeal. Thereafter, the CA reversed the NLRC for committing a grave abuse of discretion when it dismissed the petitioner company's appeal on a mere technicality. The CA, however, proceeded to affirm the decision of the Labor Arbiter awarding separation pay to respondent employee.

Considering all the attendant circumstances in the instant case, the SC, in granting the

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No intra-corporate controversy; circumstances support constructive dismissal

SC Decision: G.R. No. 201298, 05 February 2014

Two circumstances must concur in order for an individual to be considered a corporate officer, as against an ordinary employee or officer, namely: **(1)** the *creation* of the position is under the corporation's charter or by-laws; and **(2)** the *election* of the officer is by the directors or stockholders. It is only when the officer claiming to have been illegally dismissed is classified as such corporate officer that the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts.

In the case at bar, the only officers who are specifically listed in Section 1, Article IV, of the By-laws of respondent corporation, and thus with offices that are created under respondent corporation's by-laws, are the following: the President, Vice-President, Treasurer and Secretary. Although there is in the corporate by-laws an enabling clause providing that "the Board may, from time to time, appoint such other officers as it may determine to be necessary or proper", which was the CA's main basis for ruling that the matter was an intra-corporate dispute that was within the trial courts' jurisdiction, the SC found that respondents failed to sufficiently establish that the position of Assistant Vice President for Sales held by petitioner was created by an act of respondent corporation's board and that petitioner was specifically elected or appointed to such position by the directors. No board resolutions to establish such facts form part of the case records. The board of directors has no power to create other corporate offices without first amending the corporate by-laws so as to include therein the newly created corporate office. Also, the mere fact the petitioner was a stockholder of respondent corporation at the time of the case's filing did not necessarily make the action an intra-corporate controversy.

On the other hand, the SC held that the circumstances support the constructive and illegal dismissal claimed by petitioner in his labor complaint. These circumstances were: **(a)** even prior to the charges hurled against him by respondents, petitioner was locked out of his files and records and disallowed use of his office computer and access to personal belongings; **(b)**

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Unfair Labor Practice

SC Decision: G.R. No. 191714, 26 February 2014

In essence, unfair labor practice or ULP relates to the commission of acts that transgress the workers' right to organize. As specified in Articles 248 [now Article 257] and 249 [now Article 258] of the Labor Code, the prohibited acts must necessarily relate to the workers' right to self-organization.

In the case at bar, the SC held that the questioned acts of petitioners, namely : **(1)** sponsoring a field trip to Zambales for its employees, to the exclusion of union members, before the scheduled certification election; **(2)** the active campaign by the sales officer of petitioners against the union prevailing as a bargaining agent during the field trip; **(3)** escorting its employees after the field trip to the polling center; **(4)** the continuous hiring of subcontractors performing respondents' functions; **(5)** assigning union members to the Cabangan site to work as grass cutters; and **(6)** the enforcement of work on a rotational basis for union members, all reek of interference on the part of petitioners

According to the SC, the various acts of petitioners, taken together, reasonably support an inference that such acts were all orchestrated to restrict respondents' free exercise of their right to self-organization. The SC was of the view that petitioners' undisputed actions prior and immediately before the scheduled certification election, while seemingly innocuous, unduly meddled in the affairs of its employees in selecting their exclusive bargaining representative. ◆

Quick Quotes from Recent SC Decisions

The employer has broader discretion in dismissing managerial employees on the ground of loss of trust and confidence than those occupying ordinary ranks. While plain accusations are not sufficient to justify the dismissal of rank and file employees, the mere existence of a basis for believing that managerial employees have breached the trust reposed on them by their employer would suffice to justify their dismissal. *(Grand Asian Shipping Lines, Inc., et al. v. Wilfredo Galvez, et al., G.R. No. 178184, 29 January 2014).*

Resignation is the formal relinquishment of an office, the overt act of which is coupled with an intent to renounce. This intent could be inferred from the acts of the employee before and after the alleged resignation. *(Intel Technology Philippines, Inc. v. National Labor Relations Commission, et al, G.R. No. 200575, 05 February 2014).*

The employer's cause can only succeed on the strength of its own evidence and not on the weakness of the employee's evidence. *(Wilgen Loon, et al. v. Power Master, Inc., et al., G.R. No. 189404, 11 December 2013).*

Quick Quotes from Recent SC Decisions

Contingent fee arrangements "are permitted because they redound to the benefit of the poor client and the lawyer especially in cases where the client has meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for contingent fee to be paid out of the proceeds of the litigation. Oftentimes, the contingent fee arrangement is the only means by which the poor and the helpfless can seek redress for injuries sustained and have their rights vindicated. *(Atty. Emmanuel D. Agustin, et al. v. Alejandro Cruz-Herrera, G.R. No. 174564, 12 February 2014).*

Lawyering is not a moneymaking venture and lawyers are not merchants. Law advocacy, it has been stressed, is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered. *(Atty. Emmanuel D. Augstin, et al. v. Alejandro Cruz -Herrera, supra).*

Quotable Quote

"Forgive your enemies, but never forget their names." — John F. Kennedy

Downgrading of Special Non-Immigrant Visas

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may convert to immigrant visa category without need of departure under Presidential Decree No. 419.

3. Applications for downgrading of Section 47(a)(2) visas filed and pending with any BI Office by foreign nationals whose contracts are pre-terminated, or have expired and are no longer endorsed for renewal, by the PEZA-registered enterprise upon the issuance of this Order shall be **DENIED** forthwith and the foreign national shall be directed to leave the country within 15 days therefrom; Provided, that those who have overstayed shall be directed to pay the amount of PhP10,000.00 as and by way of Immigration Arrears Release Certificate (IARC) and; Provided, further, that those who overstayed for more than six months shall be placed in the BI's Blacklist.
4. Copies of Orders To Leave of Section 47(a)(2)/PEZA visa holders shall be furnished the Secretary of Justice.
5. The Alien Certificate of Registration Identification Card (ACR I-Card), if any, of a previous Section 47(a)(2)/PEZA visa holder shall be cancelled and/or deactivated.

All previous issuances inconsistent herewith are hereby repealed and/or modified accordingly. ◆

Labor Law Compliance System

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established a coordinated program which has been able to protect 100,000 children from child labor. Educational assistance has been given to some 50,350 children and a decent livelihood to their parents.

[Source: Manila Bulletin Editorial, 07 January 2014, p. 10] ◆

Separation pay may be granted to a validly dismissed employee for causes other than serious misconduct or those reflecting on his moral character

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petition and in reversing and setting aside the CA decision, held that the award of separation pay or any other kind of financial assistance to respondent employee, under the nomenclature of compassionate justice, is not warranted. A contrary rule would have the effect of rewarding rather than punishing an erring employee, disturbing the noble concept of social justice. According to the SC, that respondent employee rendered 21 years of service to the petitioner company will not save the day for him. ◆

No intra-corporate controversy; circumstances support constructive dismissal

(Continued from page 5)

when petitioner attempted to furnish the respondents with his reply to the charges, respondents refused to accept the same on the ground that it was filed beyond the 48-hour period which they provided in their memo; **(c)** subsequent to the service of respondents' memo, there were continued refusals of the respondents to allow petitioner's entry into the company premises to retrieve his personal belongings which compelled petitioner to seek the assistance of the officials of his barangay who advised him to file a labor or replevin case to recover his belongings. The SC cited a 2011 ruling which held that "constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit." ◆

Image Credit:
Photos on cover: Images courtesy of Microsoft Office.

Regular, Project/Seasonal, Casual Employment

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employee's activity. Thus, when the employee performs activities considered necessary and desirable to the overall business scheme of the employer, the law regards the employee as regular.

By way of an exception, paragraph 2, Article 280 of the Labor Code also considers regular a casual employment arrangement when the casual employee's engagement has lasted for at least one year, regardless of the engagement's continuity. The controlling test in this arrangement is the length of time during which the employee is engaged.

Project employment contemplates an arrangement whereby "the employment has been fixed for a specific project or undertaking whose completion or termination has been determined at the time of the engagement of the employee." Two requirements need to be satisfied to remove the engagement from the presumption of regularity of employment, namely: **(1)** designation of a specific project or undertaking for which the employee is hired; and **(2)** clear determination of the completion or termination of the project at the time of the employee's engagement. The services of the project employees are legally and automatically terminated upon the end or completion of the project as the employee's services are coterminous with the project.

Unlike in a regular employment under Article 280 of the Labor Code, however, the length of time of the asserted "project" employee's engagement is not controlling as the employment may, in fact, last for more than a year, depending on the needs or circumstances of the project. Nevertheless, this length of time (or the continuous rehiring of the employee even after the cessation of the project) may serve as a badge of regular employment when the activities performed by the purported "project" employee are necessary and indispensable to the usual business or trade of the employer. In this latter case, the law will regard the arrangement as regular employment.

Seasonal employment operates much in the same way as project employment, albeit it involves work or service that is seasonal in nature or lasting for the duration of the season. As with project employment, although the seasonal employment arrangement involves work that is seasonal or periodic in nature, the employment itself is not automatically considered seasonal so as to prevent the employee from attaining regular status. To exclude the asserted "seasonal" employee from those classified as regular employees, the employer must show that: **(1)** the employee must be performing work or services that are seasonal in nature; and **(2)** he had been employed for the duration of the season. Hence, when the "seasonal" workers are continuously and repeatedly hired to perform the same tasks or activities for several seasons or even after the cessation of the season, this length of time may likewise serve as badge of regular employment. In fact, even though denominated as "seasonal workers," if these workers are called to work from time to time and are only temporarily laid off during the off-season, the law does not consider them separated from the service during the off-season period. The law simply considers these seasonal workers on leave until re-employed.

Casual employment, the third kind of employment arrangement, refers to any other employment arrangement that does not fall under any of the first two categories, *i.e.*, regular or project/seasonal.

In the case at bar, the SC considered the workers involved as regular seasonal employees of petitioner sugar milling corporation. ◆

Employment Law Alliance's Global Handbooks

The Employment Law Alliance has free downloadable handbooks for employers. "The Global Employer Handbook" contains labor and employment law information worldwide, while "The Global Business Immigration Law Handbook" contains key business immigration law information worldwide.

Visit the Employment Law Alliance website (www.employmentlawalliance.com) to access and download the eBook. Download is free but registration is required. ◆

SyCipLaw News

2014 Awards and Rankings

SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) is the National Law Firm for the Philippines of the 2014 International Financial Law Review Asia Awards and the 2014 Who's Who Legal Awards. This is the ninth year in a row and the 13th time that the firm has received the recognition from IFLR.

SyCipLaw is also ranked as a top tier firm by the 2014 Chambers Global, Chambers Asia-Pacific, Asia-Pacific Legal 500 and Asialaw Profiles rankings.

Several partners of the firm, including those coming from the Human Resource Practice Group (HRPG) were also individually ranked. Lozano A. Tan and Leslie C. Dy are ranked in Chambers Asia-Pacific. Mr. Tan is also mentioned in the Asia-Pacific Legal 500 rankings. ◆

Quotable Quote

"You don't have to get it right all the time. You just have to get it right 51% of the time, and that will carry you through." — Winston Churchill

SyCipLaw News

Luisito V. Liban is new Head of HRPG

Luisito V. Liban has been appointed as the new head of the firm's Human Resource Practice Group. (HRPG). Mr. Liban takes over the HRPG from Lozano A. Tan who continues to serve as head of the firm's Personnel Committee. Concurrently, Mr. Liban sits in the firm's Executive Committee.

Mr. Liban specializes in labor and employment, litigation, and special projects. His transactions include the acquisition of Mirant's power plant assets in the Philippines by Crimson Power and the merger of Sanofi-Synthelabo Philippines, Inc. and Aventis Philippines. He sits as director of various corporations and is a member of the International Bar Association. ◆

Quotable Quote

"Kindness in words creates confidence, kindness in thinking creates profoundness, kindness in giving creates love." — Lao-Tzu

Non-Compete Clauses

The indiscriminate use of non-compete clauses limits the ability of workers to seek better jobs in their chosen professions. One study found that workers switch jobs less frequently when they are restricted by such clauses and earn less money than similarly qualified workers who are not bound by such agreements. Experts have also found that jurisdictions where courts do not enforce non-compete clauses tend to have more entrepreneurship than jurisdictions where the clauses are recognized.

Proponents argue that there is nothing wrong with non-compete agreements because most workers willingly agree to them. This assumes, preposterously, that employees have the same bargaining power as their employers. Indeed, some workers may not even realize they are agreeing to such conditions because the clauses are tucked deep inside employment documents. This is particularly true among young people and lower-skilled workers who, unlike senior executives, cannot afford lawyers to negotiate agreements on their behalf. These workers take entry-level jobs precisely because such jobs give them the experience they need to move on to more challenging and rewarding work.

Some business groups have argued that non-compete clauses are needed to make sure people do not trade in, and illegally profit from, the intellectual property of their former employers. But there are better ways to prevent the theft of trade secrets – by, for instance, suing former workers for violating non-disclosure agreements aimed at protecting sensitive documents and corporate strategy.

That would require a trip to court. But so would enforce non-compete agreements that seem increasingly harmful to both individuals and the economy as a whole.

[Source: The New York TimesEditorial at p. 17 of The Philippine Star, 13 June 2014] ◆

Project Wired

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Bureau of Educational and Cultural Affairs of the United States Department. Supporters are the National Council on Disability Affairs, Alyansa ng may Kapinsanang Pinoy (AKAP-PINOY) Inc., DLS-CSB-SDEAS, Vox Populi Center for Development Co., and Nova Foundation for Differently-abled Persons.

Its partner companies are Bid Ocean Asia, E-Lance Philippines, J.P. Morgan Chase & Co., Genasthim Innovative Learning Pte. Ltd., 88DB Philippines, and Top Marketing Force.

[Source: Sara Grace C. Fojas, Employment for PWDs, p.G2, Manila Bulletin, 10 March 2014] ◆

Labor and Immigration Circulars

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Recent BI Circulars and Issuances are:

1. Immigration Administrative Circular No. SBM-2014-001 dated 04 February 2014 on Prescribed Periods for Lifting of Entries from the Blacklist;
2. Operations Order No. SBM-2014-009 dated 21 February 2014 on Rules and Guidelines on Authorized Stay of Chinese Nationals who entered into the country on Sponsorship by Accredited Travel and Tour Operators;
3. Operations Order No. SBM-2014-010 dated 21 February 2014 on Rules and Guidelines Governing Holders of Section 47(1)(2) Visa upon the Expiration of PEZA-Authorized Period of Employment;
4. Operations Order No. SBM-2014-012A dated 9 May 2014 Prescribing the Revised Operating Rules and Guidelines in the Temporary Visitor's Visa Extension of Chinese Nationals subject of the 22 January 2014 and 03 April 2014 Letters (LML-L-22A14-175 and LML-L-3D14-473, respectively) of DOJ Secretary Leila M. De Lima;
5. Operations Order SBM-2014-017 dated 12 May 2014 on Immigration Transactions of Bureau of Immigration-Philippine Economic Zone Authority (BI-PEZA) Extension Office. ◆

Immigration News

New Immigration Airport Procedures. The Bureau of Immigration (BI) will be implementing beginning 01 March 2014 a new arrival and departure process wherein passengers will only have to fill out an "immigration card" once, either upon arrival or departure. This will reduce the number of processes that arriving and departing passengers have to undergo at various international ports in the country and will lessen the long queues at the airports. *[Manila Bulletin, 22 February 2014 p.4]* ◆

Aliens need exit clearance. The BI has warned foreigners that the policy requiring an emigration clearance certificate (ECC) before they leave the ocuntry will be strictly enforced. There are two types of ECC that can be secured at any BI satellite office in the country and airports. The ECC-A is being issued to foreigners who have tourist visas extending for more than six months. The ECC-B, on the other hand, is given to holders of immigrant and non-immigrant visas with valid alien certificate of registration identity cards (ACR I-Cards). *[Philippine Daily Inquirer, 15 January 2014, p. A5]* ◆

Persons under WatchList Order Cannot Travel. The BI has declared that individuals placed under WatchList Order will no longer be allowed to travel. If the person is an alien his passport will be seized. It will only be returned to him after he is cleared of criminal and civil charges. Previously, only those under the Hold Departure Order issued by the court are prevented from leaving the country. If the person is a subject of a warrant of arrest, he will be arrested if he shows up at the airport and turned over to police authories. A foreign national who is in the blacklist shall not be denied departure provided he has no pending cases. *[Manila Bulletin, 16 April 2014, p. 8]* ◆

Visa-Free Privilege. To attract more tourists and potential investors, nationals of seven more countries will now enjoy visa-free privilege to enter the Philippines and stay for a period of 30 days. Accordigng to the DFA, these countries are Belize, Croatia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. This brings to 157 the number of countries with visa-free privileges. Nationals of countries who may enter visa-free can avail themselves of the privilege by presenting a national passport valid for at least siz months beyond the contemplated period of stay and a return ticket to the country of origin or onward ticket to the next country of destination. *[Manila Bulletin, 16 April 2014, p. 16]* ◆

BI to honor Interpol Travel Document. The BI has agreed to honor and recognize the Interpol travel document (ITD) issued by the International Criminal Police Organization (Interpol) for its officials and agents in lieu of the regular e-passport to effectively carry out its task of searching and arresting transnational criminals. This agreement will help BI in going after foreign criminals hiding in our country and taking them immediately under Interpol custody will help us lessen the costs of their custody in our country, said BI Commissioner Siegred Mison. The Interpol is a police agency of the United Nations extending mutual police assistance to member countries. *[Manila Bulletin 06102014 p.2]* ◆

Visa Stickers. The BI is now using security visa stickers to intensify the drive against under-the-table transactions in the agency. BI Commissioner Siegfred Mison said the stickers bear micro line prints and optical variable device designed to make it virtually impossible for counterfeiters to duplicate. The sticker will be posted on the temporary visitor's visa, special study permit visa and long-stay visitor visa extension. The BI will also install 200 new electronic passport readers which will facilitate inspection and verification of travel documents at immigration counters and help detect fake travel papers. *[Manila Bulletin, 18 July 2014, p. 6]* ◆

Multilaw's How to Hire and Fire

Multilaw's Labour and Employment practice group produced a new 2014 edition of "How to Hire and Fire: A Global Guide." The free eBook reflects the law in each jurisduction as of 01 January 2014. Jurisdictions covered include Argentina, Canada, European Union, Germany, Hong Kong, India, Indonesia, Japan, Malaysia, and Oman, among others.The Philippine chapter was written by HRPG partner Leslie C. Dy.

Visit the Multilaw website (www.multilaw.com/hire-and-fire/) to access and download the eBook. ◆

SyCipLaw News

Ronald Mark C. Lleno admitted to Partnership

The firm's Human Resource Practice Group is pleased to announce the admission of Ronald Mark C. Lleno to the partnership. Mr. Lleno is a litigator and has handled cases before all court levels, including the Court of Tax Appeals and the Supreme Court. His experience ranges from tax litigation to environmental practice, and has represented clients such as Qatar Airways, Imperial Tobacco, and Mitsubishi Corporation. ◆

Welcome New Lawyers

SyCipLaw welcomes its new lawyers: Roshni V. Balani, Vera Marie H. Bautista, Marie Nickie H. Bolos, Camille Maria L. Castolo, Efren Dominique M. Chatto II, Catherine D. Dela Rosa, Carlos P. Garcia, Charles David A. Icasiano, Ferdinand Richard Michael M. Manotoc, Anna Loraine M. Mendoza, Eden Catherine B. Mopia, Mae Grace June C. Nillama, Mark Xavier D. Oyales, Sittie Amirah K. Pendatun, Ana Katarina B. Rodriguez, Martin Kristoffer F. Roman, Michael T. Tiu, and Kristine Camille Y. Umali. Mr. Oyales, Ms. Mopia, and Mr. Tiu placed 2nd, 4th, and 7th in the 2013 Bar examinations. ◆

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Project Wired

A new alternative employment for persons with disabilities (PWDs) is presented through Project WIRED (Work Innovation through Resource Enabled Development), which advocates disability-inclusive approaches in work settings. It aims to use technology and internet as a strategy to train persons with disabilities (PWDs) in a work-from-home model. They are trained as virtual assistants, online freelancers, home-based agents who provide customer service, transcriptionists and online tutors. Because of this initiative, the mobility and work accessibility issues for PWDs are addressed. Websites who offer work-from-home setups are Elance, oDesk, and Freelancer Technology.

Project WIRED is funded by the Alumni Engagement Innovation Fund and sponsored by the

(Continued on page 8)

DOLE tests program for jobless youth

In partnership with the Asian Development Bank and the Canadian International Development Agency, the DOLE is set to implement *JobStart Philippines* which would provide on-the-job-training for the youth to ensure their employment. Youths aged 18 to 24 years old, who are either currently not working or have less than a year of work experience, are not entrolled in an educational or training program and have at least completed a high school education, can access technical and similar skills training and on-the-job opportunities that will improve their chances in finding jobs. At least 74 employers have initially pledged internships for the youth beneficiaries in their companies. The beneficiaries will receive stipends of between P200 to P300 during their training and 75 percent of the minimum wage during their six-month internship.

On the other hand, employers will receive P9,000 training fee per intern they will accommodate.

[Source: Philippine Star Metro, p.19, 18 June 2014] ◆

Labor and Immigration Circulars

DOLE Circulars recently issued are:

1. Department Order No. 136-14 Series 2014 dated 28 February 2014 on Guidelines for the Implementation of Globally Harmonized System (GHS) in Chemical Safety Program in the Workplace;
2. Department Order No. 137-14 Series 2014 dated 28 March 2014 on Guidelines in the Implementation of the Department of Labor and Employment Integrated Livelihood and Emergency Employment Programs;
3. Department Advisory No. 1 Series of 2014 on Occupational Safety Tips to Protect Both Household Helpers and their Employers from Domestic Work Hazards;
4. DOLE-DEPED-TESDA-CHED Joint Guidelines on the Implementation of the Labor and Management Component of Republic Act No. 10533 (Enhanced Basic Education Act of 2013) dated 30 May 2014.

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Publisher's Note: *Employment & Immigration Update is published by the HRPG of SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) as part of its services to its clients and is not intended for public circulation to non-clients. It is intended to provide general information on legal topics current at the time of printing. Its contents do not constitute legal advice and should in no circumstances be relied upon as such. Specific legal advice should be sought in particular matters. Reproduction of this Update or any portion thereof is not authorized without the prior written consent of SyCipLaw.*