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Employment & Immigration Update

Doing Business: 2015

The Philippines' ranking in the 2015 World Bank "Doing Business 2015: Going Beyond Efficiency" report climbed to 95th slot out of 189 economies reviewed for regulatory efficiency, compared to its 104th place in the 2014 listing.

The World Bank noted that in the Philippines, improvements in resolving insolvency, getting electricity, registering property, and paying taxes enhanced the country's ranking in 2015, and that "measured against global best practice or distance to frontier (DTF) in business regulations, the country's performance (62.08) puts the Philippines in the same range as Vietnam (64.42) and Indonesia (59.15)."

The Philippines' rank for ease in starting a business is 161 of 189 economies and a 67.23 DTF score, with the World Bank saying that it takes 34 days and 16 procedures to set up a business, while the cost is 16.6% of income per capita while minimum capital is 3.6% of income per capita.

The rankings are based on each economy's DTF scores for the ten topics used in the ranking to indicate improvements in the efficiency of regulatory procedures that "support enterprise, trade, and exchange" to facilitate growth and development. The World Bank explained that the DTF score "shows the distance of each economy to the "frontier" – which represents the best

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Gender Equality in the Workplace

The Philippines ranked 9th among 142 countries for gender equality in the workplace, according to a report published by the World Economic Forum (WEF).

The five Nordic countries, led by Iceland, remained the most gender-equal. They were joined by Nicaragua, Rwanda, Ireland, the Philippines and Belgium in the top ten, while Yemen remained at the bottom of the chart for the ninth year in a row.

Meanwhile, the United States climbed three spots from last year to 20th, after narrowing its wage gap and hiking the number of women in parliamentary and ministerial level positions.

France catapulted from 45th to 16th place, also due to a narrowing gap but mainly to increasing numbers of women in politics, including near-parity in the number of government ministers. With 49% women ministers, France now has one of the highest ratios in the world.

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Quick Quotes from Recent SC Decisions

When judgment has been satisfied, it passes beyond review, and there are no more proceedings to speak of inasmuch as these were terminated by the satisfaction of the judgment. *(Joselito Ma. P. Jacinto v. Edgardo Gumaru, Jr., G.R. No. 191906, 02 June 2014).* ◆

A party will not be allowed to make a mockery of justice by taking inconsistent positions which, if allowed, would result in brazen deception. *(Ma. Consolacion M. Nahas, etc. v. Juanita L. Olarte, G.R. No. 169247, 02 June 2014).* ◆

A contractor is presumed to be a labor-only contractor, unless it proves that it has the substantial capital, investment, tools and the like. However, where the principal is the one claiming that the contractor is a legitimate contractor, the burden of proving the supposed status of the contract rests on the principal. *(Avelino S. Alilin, et al. v. Petron Corporation, G.R. No. 177592, 09 June 2014).* ◆

Quotable Quote

"Don't confuse having a career with having a life. They are not the same." — Hillary Rodham Clinton

Credible witnesses in naturalization proceedings

SC Decision: G.R. No. 202809, 02 July 2014

Jurisprudence dictates that an applicant for naturalization must comply with the jurisdictional requirements, establish his or her possession of the qualifications and none of the disqualifications enumerated under the law, and present at least two character witnesses to support his allegations. In vouching for the good moral character of the applicant for citizenship, a witness, for purposes of naturalization, must be a "credible" person as he becomes an insurer of the character of the candidate.

In consonance with the above dictum, the Court had explained that the "the law requires that a vouching witness should have actually known an applicant for whom he testified for the requisite period prescribed therein to give him the necessary competence to act as such. The reason behind this requirement is that a vouching witness is in a way an insurer of the character of the petitioner because on his testimony the court is of necessity compelled to rely in deciding the merits of his petition. It is, therefore, imperative that he be competent and reliable. And he is only competent to testify on his conduct, character and moral fitness if he has had the opportunity to observe him personally, if not intimately, during the period he has allegedly known him." The law, in effect, requires that the character witnesses be not mere ordinary acquaintances of the applicant, but possessed of such intimate knowledge of the latter as to be competent to testify of their personal knowledge; and that they have each one of the requisite qualifications and none of the statutory disqualifications. ◆

Employment on *pakyaw* or task basis

SC Decision: G.R. No. 195466, 02 July 2014

In the case at bar, the issue revolved around the proper application and interpretation of the labor law provisions on holiday, service incentive leave (SIL), and 13th month pay to a worker engaged on *pakyaw* or task basis.

Rejecting the assertion of petitioner that *pakyawan* or task basis arrangement negates the existence of an employer-employee relationship, the SC held that engagement on *pakyaw* or task basis does not characterize the relationship that may exist between the parties, *i.e.,* whether one of employment or independent contractorship. Article 97(6) of the Labor Code defines wages as "xxx the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered[.]" In relation to Article 97(6), Article 101 of the Labor Code speaks of workers paid by results or those whose pay is calculated in terms of the quantity or quality of their output which includes *pakyaw* work and other non-time work.

In determining whether a worker engaged on *pakyaw* or task basis is entitled to holiday and SIL pay, the presence (or absence) of employer supervision as regards the worker's time and performance is the key: if the worker is simply engaged on *pakyaw* or task basis, then the general rule is that he is entitled to a holiday pay and SIL pay. However, if the worker engaged on *pakyaw* or task basis also falls within the meaning of "field personnel" under the law, then he is not entitled to these monetary benefits. Not being a "field personnel," the SC held the CA to be legally correct when it reversed the NLRC's ruling dismissing respondent worker's complaint for holiday and SIL pay for having been rendered with grave abuse of discretion.

The governing law on 13th month pay is PD No. 851. Section 3(e) of the Rules and Regulations Implementing PD No. 851 exempts employees "paid on task basis" without any reference to "field personnel." On this basis, the SC held that the CA legally erred in finding that the NLRC gravely abused its discretion in denying this benefit to the respondent worker. ◆

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On pages 10-11: Photos courtesy of SyCipLaw Corporate Communications Office

Burden of proof in death benefits cases

SC Decision: G.R. No. 191034, 01 October 2014

In a Rule 45 review of a CA ruling rendered pursuant to Rule 65, the SC determines the legal correctness of the CA decision based on its determination of the presence or absence of grave abuse of discretion in the NLRC decision that the CA reviewed, not on the basis of whether the NLRC decision on the merits of the case was correct. A *certiorari* proceeding is a limited remedy aimed solely at the correction of acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion; it does not, and cannot, address mere errors of judgment.

Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. As a claimant for death benefits, respondent-father of the deceased seafarer has the burden of proving that the seafarer's death **(1)** is work-related; and **(2)** happened during the term of the employment contract. Unarguably, respondent has discharged this burden of proof.

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Medical expenses, sickness allowance and disability benefits of seafarers

SC Decision: G.R. No. 204101, 02 July 2014

The case at bar essentially raised the question – whether the seafarer's medical expenses and sickness allowance should be deducted from his disability benefits. Underlying this question of deductibility is another legal question of whether these benefits – medical expenses, sickness allowance and disability benefits – are separate and distinct from one another.

Section 20-B (2), paragraph 2, of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) imposes on the employer the liability to provide, at its cost, for the **medical treatment of the repatriated seafarer for the illness or injury that he has suffered on board** the vessel until the seafarer is declared fit to work or the degree of his disability is finally determined by the company designated physician. This liability for medical expenses is conditioned upon the seafarer's compliance with his own obligation to report to the company-designated physician within three days from his arrival in the country

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Retrenchment must be due to business losses or reverses which are serious, actual and real

SC Decision: G.R. No. 188753, 01 October 2014

There are substantive requirements relating to the losses or reverses that must underlie a retrenchment. That these losses are serious relates to their gravity and that they are actual and real relates to their veracity and verifiability. Likewise, that a retrenchment is anchored on serious, actual, and real losses or reverses is to say that the retrenchment is done in good faith and not merely as a veneer to disguise the illicit termination of employees. Equally significant is an employer's basis for determining who among its employees shall be retrenched. Apart from these substantive requirements are the procedural requirements imposed by Article 283 of the Labor Code.

Thus, the SC has outlined the requirements for a valid retrenchment, each of which must be shown by clear and convincing evidence, as follows: **(1)** that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; **(2)** that the employer served

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Quick Quotes from Recent SC Decisions

In labor cases, the rules on the degree of proof are enforced not as stringently as in other cases in order to better serve the higher ends of justice. This lenity is intended to afford to the employee every opportunity to level the playing field. *(Mega Magazine Publications, Inc., et al. v. Margaret A. Defensor, G.R. No. 162021, 16 June 2014).* ◆

The law and jurisprudence allow the award of nominal damages in favor of an employee in a case where a valid cause for dismissal exists but the employer fails to observe due process in dismissing the employee. On the other hand, financial assistance is granted to a dismissed employee as a measure of equity or social justice, and is in the nature or takes the place of severance compensation. *(Licap Marketing Corp., et al. v. Lanny Jean B. Baquial, G.R. No. 192011, 30 June 2014).* ◆

Quotable Quote

"It is better to keep your mouth shut and appear stupid than to open it and remove all doubt." — Mark Twain

Quick Quotes from Recent SC Decisions

When another employee is soon after appointed to a position which the employer claims to have been abolished, while the employee who had to vacate the same is transferred against her will to a position which does not exist in the corporate structure, there is evidently a case of illegal constructive dismissal. *(Girly G. Ico v. Systems Technology Institute, Inc., et al., G.R. No. 185100, 09 July 2014).* ◆

The court or tribunal exercising quasi-judicial functions is bereft of any right or personality to question the decision of an appellate court reversing its decision. *(Republic of the Philippines, represented by the Honorable Secretary of Labor and Employment (DOLE) v. Namboku Peak, Inc., G.R. No. 169745; Phil-Japan Workers Union, etc., et al. v. Phil-Japan Industrial Manufacturing Corporation, G.R. No. 170091, 18 July 2014).* ◆

Quotable Quote

"The law in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread." — Anatole France

Permanent and total disability

SC Decision: G.R. No. 195832, 01 October 2014

Permanent disability transpires when the inability to work continues beyond 120 days, regardless of whether or not he loses the use of any part of his body. In comparison with the concept of permanent disability, **total disability** means the incapacity of an employee to earn wages in the same or similar kind of work that he was trained for, or is accustomed to perform, or in any kind of work that a person of his mentality and attainments can do. It does not mean absolute helplessness.

In disability compensation, it is not the injury that is compensated; it is the incapacity to work resulting in the impairment of one's earning capacity.

Thus, while respondent was entitled to **temporary total disability** benefits during his treatment period (because he could not totally work during this whole period), it does not follow that he should likewise be entitled to **permanent total disability** benefits when his

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Doing Business: 2015

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performance observed on each of the "Doing Business" indicators.

In dealing with construction permits, the Philippines ranked 124th with a DTF score of 66.8%. A builder will have to wait 74 days and submit to 24 procedures, while the cost is about 1.2% of warehouse value.

However, there were some regulatory positives for the Philippines. Based on the report, of the 22 economies that require a zoning permit, the Philippines has a faster turnaround for approvals. It takes only five days to issue a zoning clearance that a builder needs to get a construction permit compared to some countries which had a waiting time of 45 days.

In getting electricity, the Philippines ranked 16th and a high DTF score of 90.59. It will only take 42 days and fulfill four procedures to avail of electricity. The cost is however high at 90.6% of income per capita.

Outside the ranked categories, there are also other concerns in the business environment. According to the World Bank, since the government's registries are not centralized, verifying collateral or assets is a time-consuming nightmare. "In the fragmented collateral registry system for chattel mortgages in the Philippines, finding out whether an asset is mortgaged requires submitting a request to more than a hundred registries," said the report.

Singapore topped the 2015 World Bank listing, having sustained the No. 1 slot for the past two years although its DTF score slightly dipped to 88.27 from 88.30. Malaysia ranked 18th in 2015, its DTF increased from 76.84 to 78.83. Thailand ranked 26th with a DTF score of 75.27 from 74.87.

Vietnam and Brunei were in the 78th and 101th slot with DTF scores of 64.42 and 61.26, respectively. Indonesia occupied 117th slot while Myanmar was in 177th. Both countries' DTF score were 59.15 and 43.55, higher than previous.

The report said many economies in the region has made it easier for businesses to pay taxes in the past year.

"Since 2005, the East Asia and the Pacific Region has narrowed the gap with global good practices," said Rita Ramalho, who heads the "Doing Business" report as lead author in the World Bank Group. Ramalho added: "Consistent regulatory reforms have improved the ease of doing business in the region in the past decade, and contributed to more business opportunities for local entrepreneurs."

[Source: Manila Bulletin Business 10302014, at pp. B1 and B12] ◆

Validity of quitclaims

SC Decision: G.R. No. 167225, 22 October 2014

Not all quitclaims are *per se* invalid or against public policy. A quitclaim is invalid or contrary to public policy only: **(1)** where there is clear proof that the waiver was wrangled from an unsuspecting or gullible person; or **(2)** where the terms of settlement are unconscionable on their face. In instances of invalid quitclaims, the law steps in to annul the questionable waiver. Indeed, there are legitimate waivers that represent the voluntary and reasonable settlements of laborers' claims that should be respected by the Court as the law between the parties. Where the party has voluntarily made the waiver, with a full understanding of its terms as well as its consequences, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking, and may not later be disowned simply because of a change of mind. A waiver is essentially contractual.

In the case at bar, the SC, reversing the CA, found that the requisites for the validity of respondent-employee's Affidavit of Release/Quitclaim were satisfied. The SC held: **Firstly,** respondent-employee acknowledged in his quitclaim that he had read and thoroughly understood the terms of his quitclaim and signed it of his own volition. Being a radio broadcaster and production manager, he occupied a highly responsible position in the company. It would be implausible that he could be easily duped into simply signing away his

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Employees' right to security of tenure and employers' right to dismiss erring employees in the legitimate exercise of management prereogative

The law and jurisprudence guarantee to every employee security of tenure. The textual and the ensuing jurisprudential commitment to the cause and welfare of the working class proceed from the social justice principles of the Constitution that the Court zealously implements out of its concern for those with less in life. Thus, the Court will not hesitate to strike down as invalid any employer act that attempts to undermine workers' tenurial security. All these the State undertakes under Article 279 (now Article 293) of the Labor Code which bar an employer from terminating the services of an employee, except for just or authorized cause and upon observance of due process.

In protecting the rights of the workers, the law, however, does not authorize the oppression or self-destruction of the employer. The constitutional commitment to the policy of social justice

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Gender equality in the workplace

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Britain dropped eight spots to 26th place, amid changes in income estimates. Among other large economies, Brazil stood at 71st place, Russia at 75th, China at 87th and India at 114, the report showed.

But the WEF report said that while women are rapidly closing the gender gap with men in areas like health and education, inequality at work is not expected to be erased until 2095.

The organization, which yearly gathers the global elite in the plush Swiss ski resort of Davos, said that the worldwide gender gap in the workplace had barely narrowed in the past nine years.

Since 2006, when the WEF first began issuing its annual Global Gender Gap Reports, women have seen their access to economic participation and opportunity inch up to 60% of that of men's, from 56%. According to the WEF, based on this trajectory, with all else remaining equal, it will take 81 years for the world to close this gap completely.

[Source: The Philippine Star 10292014 at pp. 1 and 4] ◆

Quick Quotes from Recent SC Decisions

The employer is obliged to reinstate the dismissed employee and to pay his wages during the period of appeal of the decision in the latter's favor until the reversal of the decision. *(Crisanto F. Castro, Jr. v. Ateneo De Naga University, et al., G.R. No. 175293, 23 July 2014).* ◆

Not every form of control that a hiring party imposes on the hired party is indicative of employer-employee relationship. Rules and regulations that merely serve as guidelines towards the achievement of a mutually desired result without dictating the means and methods of accomplishing it do not establish employer-employee relationship. *(Royale Homes Marketing Corporation v. Fidel P. Alcantara [deceased], substituted by his heirs, G.R. No. 195190, 28 July 2014).* ◆

Quotable Quote

"May you have the hindsight to know where you've been,

The foresight to know where you're going,

And the insight to know when you've gone too far."

— Irish Wishes

Labor and Employment News

PH, US ink deal protecting Fil-Am workers' rights

Through a memorandum of understanding signed on 22 October 2014 between the Philippines' Department of Foreign Affairs (DFA) and the United States National Labor Relations Board (NLRB), the Philippines and the US strengthened bilateral efforts to protect the rights of Filipino workers in the United States by raising their and their employers' awareness of their labor rights and responsibilities. Under the agreement, Filipino workers, their employers and Filipino business owners in the United States will be provided with information guidance and access to education regarding their rights and responsibilities under the National Labor Relations Act. The memorandum is the third agreement the Philippines has entered into with US labor agencies. The previously signed agreements were with the Wage and Hour Division and the Occupational Safety and Health Administration of the Department of Labor. The NLRB is an independent agency responsible for enforcing the US National Labor Relations Act, the primary law governing

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Types of regular employees

SC Decision: G.R. No. 200857, 22 October 2014

Under Article 280 (now Article 294) of the Labor Code, there are two kinds of regular employees, namely, **(1)** those who were engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and **(2)** those casual employees who became regular after one year of service, whether continuous or broken, but only with respect to the activity for which they have been hired.

The primary standard in determining regular employment is the **reasonable connection** between the particular activity performed by the employee and the employer's business or trade. This connection can be ascertained by considering the nature of the work performed and its relation to the scheme of the particular business or the trade in its entirety.

Guided by this test, the SC, in the case at bar, concluded that respondents' work as janitors, service crews and sanitation aides, are necessary or desirable to the petitioner's business of providing janitorial and manpower services to its clients as an independent contractor.

Although the respondents were assigned as contractual employees to the petitioner's various clients, under the law, they remain to be the petitioner's regular employees, who are entitled to all the rights and benefits of regular employment, *i.e.,* **(a)** safe and healthful working conditions; **(b)** labor standards such as service incentive leave, rest days, overtime pay, holiday pay, 13th month pay and separation pay; **(c)** social security and welfare benefits; **(d)** self-organization, collective bargaining and peaceful concerted action; and **(e)** security of tenure. ◆

Burden of proof in death benefits cases

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In the usual course, such proof would have rendered the petitioners-employers automatically liable, except that the same provision of the POEA-SEC allows an exemption from liability for death benefits if the employer can successfully prove that the seafarer's death was caused by an injury directly attributable to his deliberate or willful act. That the death of the seafarer was due to his willful act is a matter of defense that the employer has to prove. In legal parlance, the employer carries the burden of proof to establish its claim that it should not be held liable.

Whether it is the employer or the seafarer, the quantum of proof necessary to discharge their respective burdens is substantial evidence, *i.e.,* such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.

Since respondent-father of the deceased seafarer has initially discharged his burden of proof, the petitioners-employers, in order to avoid liability, must similarly establish their defense. If the petitioners-employers are able to establish their defense by substantial evidence, the burden now rests on respondent-father of the deceased seafarer to overcome the petitioners-employers'defense. In other words, the burden of evidence now shifts to the deceased seafarer's heirs.

While the rules of evidence are not controlling in the proceedings of the labor tribunals, a structured approach as described above is necessary if the courts were to observe the limitations to their own power of review. Otherwise, resort to the courts will amount to the review of the intrinsic merits of the NLRC's ruling, in effect a review on appeal that statutory law does not (and, hence, the courts cannot) provide. ◆

Entitlement to both retirement benefits and separation pay upon severance of employment

SC Decision: G.R. No. 185449, 12 November 2014

In the case at bar, the SC ruled that in the absence of an express or implied prohibition against it, collection of both retirement benefits and separation pay upon severance of employment is allowed. This is grounded on the social justice policy that doubts should always be resolved in favor of labor rights.

Under the Retirement Plan provision in the parties' Collective Bargaining Agreement (CBA), a worker who is at least 50 years old and with at least 15 years of service, and who has been recommended by the President of the Union for early retirement and duly approved by the Human Resources Director, shall be entitled to lump sum retirement benefits. At the time of the termination of respondent employee, she was already 57 years of age and had been in the

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Medical expenses, sickness allowance and disability benefits of seafarers

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for diagnosis and treatment. The medical treatment is aimed at the speedy recovery of the seafarer and the restoration of his previous healthy working condition.

Since the seafarer is repatriated to the country to undergo treatment, his inability to perform his sea duties would normally result in depriving him of compensation income. To address this contingency, Section 20-B (3), paragraph 1, of the POEA-SEC imposes on the employer the obligation to provide the seafarer with **sickness allowance that is equivalent to his basic wage** until the seafarer is declared fit to work or the degree of his permanent disability is determined by the company-designated physician. The period for the declaration should be made within the period of 120 days or 240 days, as the case may be.

Once a finding of permanent (total or partial) disability is made, Section 20-B (6) of the POEA-SEC requires the employer to pay the seafarer **disability benefits for his permanent total or partial disability** caused by the work-related illness or injury. In practical terms, a finding of permanent disability means a permanent reduction of the earning power of a seafarer to perform future sea or on board duties; permanent disability benefits look to the future as a means to alleviate the seafarer's financial condition based on the level of injury or illness he incurred or contracted.

The separate treatment of, and the distinct considerations in, these three kinds of liabilities only mean that the POEA-SEC intended to make the employer liable for each of these three kinds of liabilities. Significantly, too, while Section 20 of the POEA-SEC did not expressly state that the employer's liabilities are cumulative in nature, it does not also state that the compensation and benefits are alternative or that the grant of one bars the grant of the others. Without doubt, medical expenses, sickness allowance and disability benefits are separate and distinct from one another. ◆

Retrenchment must be due to business losses or reverses which are serious, actual and real

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written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; **(3)** that the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher; **(4)** that the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and **(5)** that the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status (*i.e.,* whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers. ◆

Labor and Employment News

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relations between the employers and employees in the private sector. The measure guarantees workers the right to join together, with or without a union, to improve their wages and working conditions. Employers and employees alike are protected from unfair labor practice.

[Source: Philippine Daily Inquirer News 10272014 at page A6] ◆

Minimum wage fixing for domestic workers

Per Resolution No. 02 Series of 2014 dated 10 November 2014 of the National Wages and Productivity Commission (NWPC), Section 16 of the Rules of Procedure on Minimum Wage Fixing for Domestic Workers on Quorum and Voting Requirements was amended to provide that the affirmative vote of the majority of the members constituting the quorum shall be necessary to carry an action or decision of the Board in any wage issues, subject to the conditions stated in the resolution.

[Source: Philippine Daily Inquirer News 12122014 at page M3] ◆

Labor and Employment News

Hearing loss at work now compensated

Workers will now be able to file claims for more work-related hearing loss. The Employees' Compensation Commission (ECC), in its Board Resolution No. 14-10-32, expanded the list of its compensable occupational disability related to hearing. The revised rule now includes Noise Induced Hearing Loss (NIHL) or the permanent decline in their sense of hearing due to exposure to workplaces with "harmful noise levels in the higher frequencies." It also includes acoustic trauma from any contact to sudden burst of sound and hearing loss caused by any physical trauma like motor vehicles accidents. Before the new policy amendment, only workers, who become totally deaf, could file for claims at the ECC.

[Source: Manila Bulletin 10222014 National News at page 4]. ◆

Quotable Quote

"Lost time is never found again." — Benjamin Franklin

Permanent and total disability

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disability was assessed by the company-designated physician after his treatment. He may be recognized to have **permanent disability** because of the period he was out of work and could not work [in this case, more than 120 days], but the extent of his disability (**whether total or partial**) is determined, not by the number of days that he could not work, but by the **disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages.**

It is the doctor's findings that should prevail as he/she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. His/her declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.

In light of these distinctions, to confuse the concept of **permanent** and **total** disability is to trigger a situation where disability would be determined by simply counting the duration of the seafarer's illness. This system would inevitably induce the unscrupulous to delay treatment for more than 120 days to avail of the more favorable award of permanent total disability benefits. ◆

Validity of quitclaims

(Continued from page 5)

rights. Besides, the language and content of the quitclaim were clear and uncomplicated such that he could not claim that he did not understand what he was signing. **Secondly,** the settlement pay of Php311,922.00 was credible and reasonable considering that respondent-employee did not even assail such amount as unconscionably low, or even state that he was entitled to a higher amount. **Thirdly,** that respondent-employee was required to sign the quitclaim as a condition to the release of the settlement pay did not prove that its execution was coerced. Having agreed to part with a substantial amount of money, petitioner-company took steps to protect its interest and obtain its release from all obligations once it paid respondent-employee his settlement pay, which it did in this case. **And, lastly,** that respondent-employee signed the quitclaim out of fear of not being able to provide for the needs of his family and for the schooling of his children did not immediately indicate that he had been forced to sign the same. Dire necessity should not necessarily be an acceptable ground for annulling the quitclaim, especially because it was not at all shown that he had been forced to execute it. Nor was it even proven that the consideration for the quitclaim was unconscionably low, and that he had been tricked into accepting the consideration.

With the quitclaim having been freely and voluntarily signed, petitioner-company was released and absolved from any liability in favor of respondent-employee. Suffice it to say that the quitclaim is ineffective in barring recovery of the full measure of an employee's rights only when the transaction is shown to be questionable and the consideration is scandalously low and inequitable. Such is not true here. ◆

Employees' right to security of tenure and employers' right to dismiss erring employees in the legitimate exercise of management prerogative

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cannot be understood to mean that every labor dispute shall automatically be decided in favor of labor. The constitutional and legal protection equally recognizes the employer's right and prerogative to manage is operation according to reasonable standards and norms of fair play.

Accordingly, except as limited by special law, an employer is free to regulate, according to his own judgment and discretion, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, layoff of workers and the discipline, dismissal and recall of workers. As a general proposition, an employer has free reign over every aspect of its business, including the dismissal of his employees as long as the exercise of its management prerogative is done reasonably, in good faith, and in a manner not otherwise intended to defeat or circumvent the rights of workers. ◆

Employment Law Alliance's *Global Employer Handbook*

SyCip Salazar Hernandez & Gatmaitan has updated the Philippine Chapter of the *Global Employer Handbook*. Published by the Employment Law Alliance (ELA), the Handbook is a free online resource that features important, practical and current information on labor and employment laws around the world.

Visit the ELA website at www.employmentlawalliance.com to register and access this free resource. Registered users have access to information on hiring, disciplining and terminating employees; vacation, sick, family and medical leaves; layoffs, workplace redundancies, reductions in force and severance pay; required legal postings; workplace privacy, surveillance and monitoring; labor and trade unions, works councils, union organizing and collective bargaining; employment applications, references and background investigations; employee relocation and global transfers; wages, hours, overtime, compensation and benefits; worker's compensation, employee injuries and health and safety; unfair competition, covenants not to compete and trade secret protection; maintaining personnel records; unemployment compensation; and discrimination and harassment; and lie detector and fingerprint testing.

The Philippine Chapter was reviewed and updated by SyCipLaw senior partner Dante T. Pamintuan with associate Efren Dominique M. Chatto II. Content is accurate as of December 2014.

ELA is the world's largest network of labor and employment lawyers with leading employment, labor and immigration attorneys in more than 135 countries, all 50 US states, and each Canadian province. SyCipLaw is the exclusive Philippine member of ELA. ◆

Entitlement to both retirement benefits and separation pay upon severance of employment

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service for more than 34 years. The exchange of correspondence between respondent employee and petitioner company's Human Resources Director also showed that the latter offered, recommended and approved the grant of early retirement in favor of the former.

Retirement benefits and separation pay are not mutually exclusive. Retirement benefits are a form of reward for an employee's loyalty and service to an employer and are earned under existing laws, CBAs, employment contracts and company policies. On the other hand, separation pay is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment and is recoverable only in instances enumerated under Articles 283 and 284 of the Labor Code or in illegal dismissal cases when reinstatement is not feasible. In the case at bar, Article 283 clearly entitles respondent employee to separation pay apart from the retirement benefits she received from petitioner company. ◆

Strengthening Tripartism

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Regional Tripartite Certification Committee.

Under IRR Rule VIII, the DOLE Secretary may, from time to time, call a national, regional, or industrial tripartite conference of representatives of government, workers and employers, and other interested groups as appropriate, for the consideration and adoption of a voluntary code of principles designed to promote decent work for all, industrial peace based on social justice, and to harmonize labor movement relations with established priorities in economic and social development. IRR Rule VIII also states that national and regional ITCs shall pursue self-regulation through the development of a Voluntary Code of Good Practices to establish voluntary minimum standards on the social and employment aspects of the industry to allow the industry social partners to self-regulate their engagement and cultivate a culture of social responsibility, provided that these are not below the minimum labor standards. ◆

Labor and Employment News

Kasambahay Law beneficiaries reach 105,000

The DOLE Bureau Workers with Special Concerns (BWSC) has disclosed that as of October 2014, 10,000 new household service workers (HSWs) are now enjoying social benefits such as membership in the Social Security System (SSS), joining the 95,000 who have already been previously enrolled. It was also reported that 121 *kasambahays* were assisted in addressing their request for assistance, which they filed at the National Conciliation and Mediation Board to collect their unpaid or underpaid wages and other withheld benefits from their erring employers.

[Source: Manila Bulletin 12152014 at page 15] ◆

Quotable Quote

"More knowledge may be gained of a man's real character, by a short conversation with one of his servants, than from a formal and studied narrative, begun with his pedigree and ended with his funeral." — Samuel Johnson

SyCipLaw News

Legal 500 Asia Pacific 2015 Rankings

SyCipLaw has been recommended by the Legal 500 Asia Pacific 2015 rankings as a top tier firm in banking & finance; capital markets; corporate and M&A; dispute resolution, including in Cebu and Davao; immigration; intellectual property; law firms in Cebu; law firms in Davao; projects and energy; real estate and construction; and TMT.

The firm has also been recommended in aviation; employment; shipping; and tax.

In addition, seven of its lawyers are listed in the elite "Leading Lawyers" list and 23 more are recommended in the editorial. Among those mentioned are EID lawyers Luisito V. Liban, Lozano A. Tan, Rodelle B. Bolante, and Russel L. Rodriguez. ◆

Quotable Quote

"Victory at all costs, victory in spite of all terror, victory however long and hard the road may be; for without victory there is no survival."
— Sir Winston Churchill

WLG Fall 2014 Conference in Manila

SyCip Salazar Hernandez & Gatmaitan hosted the World Law Group (WLG) Member Firm Leaders' Summit on 15 October 2014 and Fall 2014 Conference on 16-18 October 2014. The Conference gathered 100 delegates and guests from 37 countries, including Belgium, Brazil, Canada, Denmark, Germany, Korea, Poland, Sweden, Switzerland, Taiwan, and the United States.

The Member Firm Leaders' Summit featured Thomson Reuters' Ranajit Dam as luncheon speaker, while the Fall Conference program was a blend of plenary sessions, business development and committee meetings, networking breaks, and legal updates.

At the opening plenary session, keynote speaker David J. Nicol of Metro Pacific Investment Corporation followed WLG President Emer Gilvarry's welcome remarks by sharing his experiences in working in Asia and his thoughts on ASEAN Integration and the WLG.

Two plenary sessions were organized and facilitated by SyCipLaw partners. The plenary session on ASEAN Integration, facilitated by partner Arlene M. Maneja, featured San Miguel Corporation's Ferdinand Constantino and Ayala Corporation's Solomon Hermosura with Chandler & Thong-ek's Jessada Sawatdipong and Rodyk & Davidson's Gerald Singham. While the plenary session on Millennials in the Workplace was facilitated by partner Carlos Roberto Z. Lopez and included inputs from ABS-CBN Broadcasting Corporation's Donald Patrick Lim, IT & Business Process Association of the Philippines' Jose Mari Mercado, Thomson Reuters' Peter Buenaseda, and Herzog Fox & Neeman's Meir Linzen. Surprise Millennial reactor John Paul V. de Leon, a senior associate of the firm, rounded up the session.

Founded in 1988, the WLG is one of the top-tier and most respected international law firm associates. It currently has member firms in 52 countries. Altogether, these member firms are located in 300+ offices in major commercial center worldwide, and have 15,500+ lawyers in all key practice and industry areas. Visit www.theworldlawgroup.com for more information.

SyCipLaw is the exclusive Philippine member of the WLG. ◆

New Corporate Services Head

SyCip Salazar Hernandez & Gatmaitan is pleased to announce the appointment of Simeon Ken R. Ferrer as the new head of the firm's Corporate Services Department. His four-year term began on 01 December 2014, after the retirement of Emmanuel C. Paras, who continues to serve the firm as Of Counsel.

Mr. Ferrer's practice areas include banking, finance and securities, foreign investments, mergers and acquisitions, and corporations. He has assisted Philippine and foreign banks and other financial institutions in connection with equity, debt and derivative securities issues, as well as securitization transactions by Philippine corporations and the Republic of the Philippines.

The firm's Corporate Services Department assists both domestic and foreign clients in setting up business vehicles in the Philippines, such as subsidiaries, branches, representative offices, and regional headquarters. It also renders corproate services and provides general business law advice to support clients' operations and compliance needs. ◆

SyCipLaw Lawyers Awarded 2014 Asian Company Secretary of the Year

SyCip Salazar Hernandez & Gatmaitan congratulates Emmanuel C. Paras and Simeon Ken R. Ferrer for receiving Corporate Governance Asia's 2014 Asian Company Secretary of the Year award in recognition of their roles as corporate secretaries of SM Investments Corporation and Meralco, respectively.

The award highlights the pivotal role of company secretaries in any business in any part of the world. During the awarding ceremony last December in Hong Kong, a total of 40 outstanding corproate secretaries were recognized from the Philippines, Malaysia, Thailand, China, Taiwan, Singapore, Hong Kong, and Indonesia. Other Philippine awardees include Jasmine Oporto of Aboitiz Group, Solomon Hermosura of Ayala Corporation and Manila Water, Edmund L. Tan of BDO Unibank, Inc., Corazon I. Manalo of Chinabank, Antonio Picazo of Metro Pacific Investments Corporation, Maria Lourdes C. Rausa-Chan of PLDT, Ma. Celia H. Fernandez-Estavillo of RCBC, and Joel Raymond R. Ayson of Security Bank. ◆

New Senior Associates

SyCipLaw is pleased to announce the promotion of the following as Senior Associates effective 01 January 2015:

From left to right: Bhong Paulo A. Macasaet, Joan Mae S. To, Leah C. Abutan, Easter Princess U. Castro, Joanna Marie O. Joson, Diana Grace L. Uy, Maria Viola B. Vista, Barbara Anne A. Gandionco, and John Christian Joy A. Regalado.

Let us extend our congratulations and support to all of them. ◆

SyCipLaw in the News

IFLR1000 2015 Financial and Corporate Rankings

The IFLR1000 2015 Financial and Corporate Rankings ranked SyCipLaw as Tier 1 in banking; energy and infrastructure; project finance; capital markets; M&A; and restructuring & insolvency. ◆

Asialaw Profiles 2015 Rankings

The Asialaw Profiles 2015 rankings highly recommends SyCipLaw in banking & finance; capital markets; construction & real estate; corporate/M&A; dispute resolution; energy & natural resources; intellectual property; investment funds; IT, telco & media; labor & employment; private equity; project finance; shipping, maritime & aviation; and tax.

The firm is also listed as active in competition & antitrust; financial services regulatory; insurance; and restructuring & insolvency. ◆

Quotable Quote

"Good judgment comes from experience, and a lot of experience comes from bad judgment." — Will Rogers

SyCip Salazar Hernandez & Gatmaitan

Managing Partner: Rafael A. Morales

Employment and Immigration Department (EID) Head: Luisito V. Liban

Of Counsel, Editor-in-Chief: Juan C. Reyes, Jr.

Of Counsel: Lozano A. Tan

Partners: Dante T. Pamintuan, Leslie C. Dy, Amer Hussein N. Mambuay, Rodelle B. Bolante, Marianne M. Miguel, Russel L. Rodriguez, Marietta A. Tibayan, Ronald Mark C. Lleno, Maria Jennifer Z. Barreto

Senior Associates: Ruben P. Acebedo II, Easter Princess U. Castro, Barbara Anne A. Gandionco, Joanna Marie O. Joson, Maria Viola B. Vista

Associates: Austin Claude S. Alcantara, Vera Marie H. Bautista, Carlos P. Garcia, George Matthew T. Habacon, Ferdinand Richard Michael M. Manotoc, Anne Loraine M. Mendoza, Eden Catherine B. Mopia, Emmar Benjoe B. Panahon, Sittie Amirah K. Pendatun, Martin Kristoffer F. Roman, Kristine Camille Y. Umali

Coordinators: Susan P. Añonuevo, Katherine Mae P. Sarmiento, Eden Marie Gem B. Silvela, Evelyn L. Valerio

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Strengthening Tripartism

On 07 October 2014, the Department of Labor and Employment issued DOLE Department Order No. 140-14 prescribing the Implementing Rules and Regulations of Republic Act No. 10395, An Act Strengthening Tripartism, Amending for the Purpose Article 275 of Presidential Decree No. 442, Otherwise Known as the Labor Code of the Philippines, As Amended.

Rule II of the Tripartism Law IRR states the following Declaration of Policy:

a) the State shall declare and promote tripartism as a State policy in labor-management relations; thus, workers and employers shall, as far as practicable, be represented in decision, consultative and policy-making bodies of the government;
b) the State shall adhere to the principles of international law that "employers and workers shall be represented on an equal footing in bodies through which consultations are undertaken"; and
c) the State shall institutionalize tripartism by providing for a continuing forum for tripartite advisement and consultation in encouraging reforms in government, empowering workers' and employers' organizations, enhancing their respective rights, attaining industrial peace and improving productivity.

The IRR creates a National Tripartite Industrial Peace Council (NTIPC), an NTIPC Tripartite Monitoring Body on the Application of International Labor Standards, a Tripartite Executive Committee, and a Secretariat. The sub-committees of the NTIPC at the National Level are the National Industry Tripartite Council (National ITC), the National Tripartite Advisory Committee, the National Tripartite Efficiency and Integrity Board, and the National Tripartite Certification Committee; while the sub-committees of the NTIPC at the Local Level include the Regional Tripartite Industrial Peace Council, the Provincial/City/Municipal TIPCs, the Regional/Local ITCs, the Regional Tripartite Monitoring Body on the Application of International Labor Standards, Regional Tripartite Efficiency and Integrity Board, Tripartite Monitoring Team on Compliance with Labor Standards and DOLE Department Order 18-A, Series of 2011, the Regional Inter-Agency Coordinating and Monitoring Committee and the

(Continued on page 9)

Recent Immigration Advisory and Circulars

(1) Joint Memorandum Circular No. 2014-001 signed on 13 October 2014 embodying the Implementing Rules and Regulations of the Memorandum of Agreement between the Bureau of Immigration (BI) and the Cagayan Economic Zone Authority ;

(2) Memorandum Circular No. SBM-2014-017 dated 27 October 2014 instituting the BI's Reward and Incentive Program known as "*Sa Immigration Magsumbong*" granting monetary incentive to any person who shall report to the BI any overstaying foreign national and such report shall result in the apprehension of such foreign national;

(3) Memorandum Circular No. SBM-2014-018 dated 05 November 2014 prescribing the Rules Governing the issuance of Special Student Permit (SSP) applicable to non-resident foreign students who come to the Philippines for the purpose of taking up a non-degree or short course of study and who do not qualify for admission as a non-immigrant under Section 9 (f) of Commonwealth Act No. 613 (the Philippine Immigration Act of 1940), as amended;

(4) Notice dated 15 December 2014 concerning the Annual Report (AR) 2015, directing all registered aliens to report in person within the first 60 days of every calendar year; and

(5) Immigration Operations Order No. SBM-14-059-A dated 29 December 2014 regarding Submission of Bureau of Quarantine (BOQ) Medical Clearance for Visa Applications of Certain Foreign Nationals. ◆

Publisher's Note: *Employment & Immigration Update is published by the Employment & Immigration Department 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.*