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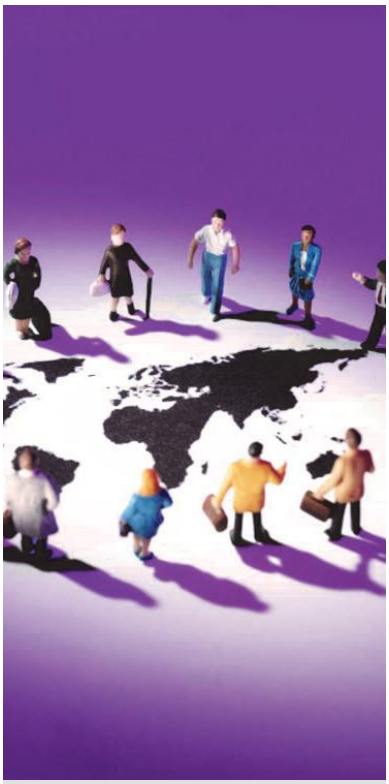
January-March 2015
Volume XIII, Issue 1

Employment & Immigration Update



ILO 2015 Report: World Employment

The World Employment and Social Outlook Trends 2015 Report of the International Labor Organization (ILO) has warned that due to the slow rate of growth of the global economy joblessness in the world will rise from the present 202 million to 212 million by 2019.

While the ILO sees improvement in the United States, Japan and Britain, it sees worsening of the employment situation in Europe, where austerity prevails, and countries in Latin America, Africa and the Middle East hit hard by the plunge in oil prices.

The global unemployment rate started going up in 2009, the ILO said, and with it, social unrest. "There is massive human waste, suffering, and misery stemming out of employment," ILO Director-General Guy Ryder said, as he urged governments to do more about their respective unemployment problems.

In a world where national economies are connected to one another, the Philippines is bound to be affected by what is happening worldwide. It is fortunate that most of our exports go to East Asia (Japan, China, Taiwan, Hong Kong, etc.) and the United States, but the Arab countries in the Middle East are a major provider of work to Overseas Filipino Workers.

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Flexible working conditions

A recent Regus survey involving 16,000 businesses in 88 countries showed that 72% of global businesses reported that increased productivity was a direct result of flexible working practices and 68% of firms revealed that flexible working has led to staff generating increased revenue.

The benefits of flexible working were echoed also in the recent Grant Thornton International social media-based online strategy-setting event dubbed Global Jam with the participation of employees from 107 countries including the Philippines, which showed that people who wanted and were given greater freedom to set their own work schedules was beneficial not just for individuals, but for companies, and should be adopted more widely as part of businesses' future growth strategy. As a result, Grant Thornton is using the feedback of over 13,000 posts from the Global Jam to ensure that every one of its member firms in over 130 countries worldwide develop and implement an agile working policy for staff.

The success of any business relies on the ability to attract and retain talent, and trusting people with the responsibility to make the best decisions for themselves and the business could be a key part of creating this environment.

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Quick Quotes from Recent SC Decisions

There is neither a plaintiff nor a prosecutor in disciplinary proceedings against lawyers. The real question for determination in these proceedings is whether or not the attorney is still a fit person to be allowed the privileges of a member of the bar. Public interest is the primary objective. *[Adelia V. Quiachon v. Atty. Joseph Ador A. Ramos, A.C. No. 9317 (formerly CBD Case No. 12-3615), 04 June 2014].* ◆

Backwages represent reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. *[Philippine Spring Water Resources Inc., et al. v. Court of Appeals, et al., G.R. No. 205278, 11 June 2014].* ◆

Quotable Quote

"Success seems to be connected with action. Successful people keep moving. They make mistakes, but they don't quit." — Conrad Hilton, Hilton Hotels founder (1887-1979)

Work-related injury or illness occuring during term of employment causing the death of a seafarer after his medical repatriation is compensable

SC Decision: G.R. No. 198408, 12 November 2014

While it is true that a medical repatriation has the effect of terminating a seafarer's contract of employment, it is, however, enough that the work-related illness, which eventually becomes the proximate cause of death, occurred while the contract was effective for recovery to be had.

Consistent with the State's policy to afford full protection to labor as enshrined in Article XIII of the 1987 Philippine Constitution, the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), which is deemed incorporated in every seafarer's employment contract, was designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-going vessels. As such, it is a standing principle that its provisions are to be construed and applied fairly, reasonably, and liberally in their favor.

Guided by this principle, the SC, citing its previous 13 October 2014 ruling in G.R. No. 190161, recognized that a medical repatriation case constitutes an exception to the second requirement under Section 20(A)(1) of the 2000 POEA-SEC, *i.e.,* that the seafarer's death had occurred during the term of his employment, in view of the terminative consequences of a medical repatriation under Section 18(B) of the same. In essence, the SC held that under such circumstance, the work-related death need not precisely occur during the term of his employment as it is enough that the seafarer's work-related injury or illness which eventually causes his death had occurred during the term of his employment. ◆

Disease as a ground for termination of employment

SC Decision: G.R. No. 204944-45, 03 December 2014

Disease as a ground for termination of employment is recognized under Article 284 of the Labor Code. For dismissal under Article 284 of the Labor Code and under Book VI, Rule I, Section 8 of the Omnibus Rules Implementing the Labor Code to be valid, two requirements must be complied with **(1)** the employee's disease cannot be cured within six months and his "continued employment is prohibited by law or prejudicial to his health as well as to the health of his co-employees;" and **(2)** certification issued by a competent public health authority that even with proper medical treatment, the disease cannot be cured within six months. The burden of proving compliance with these requisites is on the employer. Non-compliance leads to the conclusion that the dismissal was illegal.

In the case at bar, there was no evidence showing that respondent-employee was accorded due process. After informing petitioner-employer of her lung cancer, respondent was not given the chance to present medical certificates. Petitioner-employer immediately concluded that respondent could no longer perform her duties because of chemotherapy. It did not ask her how her condition would affect her work. Neither did it suggest for her to take a leave, even though she was entitled to sick leaves. Worse, it did not present any certificate from a competent public health authority. What petitioner-employer did was to inform respondent-employee that her contract would no longer be renewed, and when she did not agree, her salary was withheld. Thus, the CA correctly upheld the finding of the NLRC that for failure of the petitioner-employer to comply with due process, respondent was illegally dismissed. ◆

PLC Employment and employee benefits multi-jurisdictional guide: Philippines Q&A

Practical Law Company's *Employment and employee benefits: Philippines Q&A Guide* is now available to access online or download as PDF at http://global.practicallaw.com/3-595-1385. The Guide provides an overview of key practical issues and was contributed by SyCipLaw Employment & Immigration Department Head **Luisito V. Liban**. Content is accurate as of January 1, 2015. ◆

Administrative disciplinary case against employee not filed by the proper disciplinary authority is a violation of due process

SC Decision: G.R. No. 208261, 08 December 2014

Section 16 of the Uniform Rules on Administrative Cases in the Civil Service (URACCS) requires in administrative disciplinary proceedings that the disciplinary authority furnish the employee concerned a formal charge specifying the latter's acts and/or omissions complained of, and directing him to answer the charges stated therein.

In the case at bar, it is undisputed that petitioner was the one that appointed respondent-employee to her position as an Evaluation Specialist and assigned her to petitioner's Property and Procurement Department. Adhering to the well-settled principle that the power to remove or to discipline is lodged in the same authority on which the power to appoint is vested, only petitioner has the power to discipline or remove respondent-employee for any transgressions she may have committed. As a corporate entity, petitioner may only act through its Board of Directors as a collective body, which is vested with the power and responsibility to exercise all corporate powers under the law. Simply put, petitioner is the proper disciplinary authority of

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Dismissal was too severe a penalty for infraction

SC Decision: G.R. No. 208890, 08 December 2014

"Willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work" is one of the just causes to terminate an employee under Article 296 (a) [formerly Article 282(a)] of the Labor Code. In order for this ground to be properly invoked as a just cause for dismissal, the conduct must be willful or intentional, willfulness being characterized by a wrongful and perverse mental attitude. It is the employer who bears the burden of proving, through substantial evidence, that the aforesaid just cause was the basis of the employee's dismissal from work; failing which, the dismissal should be adjudged as illegal.

In the case at bar, as culled from the records, aside from the administrative complaint for serious misconduct filed against petitioner by his immediate superior, the latter also filed a criminal complaint for grave oral defamation for the utterances petitioner made arising from

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How a conflict between two disability assessments in maritime compensation cases—the assessment of the company-designated physician and that of the seafarer's chosen physician—should be resolved

SC Decision: G.R. No. 210634, 14 January 2015

In the case at bar, the SC reiterated its previous rulings that there is a procedure to be followed regarding the determination of liability for work-related death, illness or injury in the case of overseas Filipino seafarers. The procedure is spelled out in the 2000 Philippine Overseas Employment Agency-Standard Employment Contract (POEA-SEC), the execution of which is a *sine qua non* requirement in deployments for overseas work.

The procedure is as follows: when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness for work shall be determined by the company-designated physician. The physician has 120 days, or 240 days, if validly extended, to make the assessment. If the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, the opinion of a third doctor agreed to jointly by the employer and the

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Quick Quotes from Recent SC Decisions

Terminations due to disease do not entail any wrongdoing on the part of the employee. It also does not purely involve the employer's willful and voluntary exercise of management prerogative – a function associated with the employer's inherent right to control and effectively manage its enterprise. Rather, terminations due to disease are occasioned by matters generally beyond the worker's and the employer's control. *[Marlo A. Deoferio v. Intel Technology Philippines, Inc., et al., G.R. No. 202996, 18 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. *[Libcap Marketing Corp., et al. v. Lanny Jean B. Baquial, G.R. No. 192011, 30 June 2014].* ◆

Quick Quotes from Recent SC Decisions

The Court recognizes the right of the employers to discipline their employees for serious violations of company rules after affording the latter due process and if the evidence warrants. Such right, however, should be exercised in consonance with sound discretion putting into mind the basic elements of justice and fair play. *[Colegio De San Juan De Letran-Calamba v. Engr. Deborah P. Tardeo, G.R. No. 190303, 09 July 2014]* ◆

It is the burden of the employer to prove that a person whose services it pays for is an independent contractor rather than a regular employee with or without a fixed term. That a person has a disease does not *per se* entitle the employer to terminate his or her services. Termination is the last resort. At the very least, a competent public health authority must certify that the disease cannot be cured within six (6) months, even with appropriate treatment. *[Fuji Television Network, Inc. v. Arlene S. Espiritu, G.R. No. 204944-45, 03 December 2014].* ◆

Conditions when a seafarer may pursue an action for total and permanent disability benefits

SC Decision: G.R. No. 211211, 14 January 2015
SC Decision: G.R. No. 206285, 04 February 2015

Under present jurisprudence, a seafarer may have basis to pursue an action for total and permanent disability benefits when:

(1) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
(2) 240 days had elapsed without any certification issued by the company-designated physician;
(3) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen

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Pregnancy out of wedlock by an employee of a Catholic educational institution is not a valid cause for termination of her employment

SC Decision: G.R. No. 187226, 28 January 2015

In this case, petitioner's employment as an Assistant to the Director of the Lay Apostolate and Community Outreach Directorate of respondent Catholic educational institution was terminated on the ground of serious misconduct and conduct unbecoming of an employee of a Catholic school for engaging in pre-marital sexual relations and getting pregnant as a result thereof, citing Section 94(e) of the 1992 Manual of Regulations for Private Schools (MRPS) which prescribes "disgraceful or immoral conduct " as a ground for dismissal in addition to the just causes for termination of employment provided under Article 282 of the Labor Code.

Prior to her termination, in response to a directive that she submit a letter of resignation, petitioner through her counsel sent a letter on 04 June 2003 to the Directress of respondent Catholic school stating that pre-marital sex between two consenting adults without legal impediment to marry each other who later on married each other does not fall within the

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Accessibility Law (*Batas Pambansa Blg.* 344)

Under the Accessibility Law, public and private buildings, including schools, airports, shopping and recreation centers, are required to have features such as sidewalks, ramps and railings to enhance the mobility of differently-abled persons.

The Magna Carta for Disabled Persons also requires the government to ensure the attainment of a barrier-free environment to allow Persons With Disabilities (PWDs) access to public and private buildings. The government is required to allocate funds for the provision of these architectural and structural features in government buildings and facilities.

The law also requires the Department of Social Welfare and Development (DSWD) to create a program to assist marginalized differently-abled persons in using public transport facilities.

Other laws require that voting precincts be accessible to the differently-abled, and that all government agencies and offices reserve at least one percent of all positions for them. They are

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Mobile Training Laboratories

An innovative training modality on wheels that hopefully will soon make pit stops in some of the country's far flung communities to provide skills training, the Mobile Training Laboratories are products of a groundbreaking collaborative project between the Technical Education and Skills Development Authority (TESDA) and the Philippine Amusement and Gaming Corporation (PAGCOR) to bring technical vocational training programs to barangays of the poorest provinces as a way of fighting poverty.

With PAGCOR's Php50 million donation, 40 mobile training laboratories will soon roll out in provinces initially identified as among the priority areas for intervention because of the lack of access to technical vocational (or "tech-voc") education. The project targets to produce 23,100 graduates of various tech-voc courses to be offered such as appliance repair, cellphone repair, plumbing, electrical installation and maintenance, small engine repair, cookery, bread and pastry production, and food processing.

The mobile training laboratory (or "mobile lab") is a compact box loaded on top of a trailer. Four movable boxes will be placed inside the compact box – two to three boxes for tools, equipment and training package, and a box for multimedia equipment and its accessories per area. The compact box when loaded, weighs more or less two tons, which could be pulled by an ordinary passenger jeepney.

Each mobile lab shall have a complete set of training tools, training specific equipment and

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ILO 2015 Report: World Employment

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Our own government would do well to heed the ILO's call on governments to do more about their unemployment problems. The National Statistics Office places our labor force at 64% of the 62 million people 15 years old and over. It estimates the unemployment rate at 6.8% and underemployment at 18.4%.

Directly related to joblessness is poverty. During his five-day pastoral visit to the Philippines, Pope Francis repeatedly called on people – not just the government – to feel for the poor and do something for them. Contrary to what some officials may think, the Pope had the Philippines very much in mind when he called for more aid and compassion to the poor and for a stop to corruption which perpetuates poverty.

The Philippine government cites its spending for social services – 36.6% of the Php2.6 trillion national budget for 2015 – in its efforts to reduce poverty in the country. The Department of Social Welfare and Development gets a big part of the budget – Php100 billion. And Php62 billion will go to its Conditional Cash Transfer (CCT) program which doles out monthly amounts to poor families all over the country.

If the government could focus as much attention on the problem of unemployment – as the ILO is urging the governments of the world to do – it might be a greater and a more permanent solution to the problem of poverty in our country.

[Source: Editorial, Joblessness in the world and in the Philippines, Manila Bulletin 01222015 at page 10] ◆

Flexible working conditions

(Continued from page 1)

When a business can adopt flexible working policies which provide a more attractive option to an individual with commercial needs, you can grow a more agile business that statistics suggest could lead to greater productivity. Getting this right means that organizations and companies can help deliver better work-life balance and commercial success; consequently, developing a global business culture where the quality of work is more important than where it is done.

[Source: Francesca Lagerberg, Trust in your people to reap the benefits of flexible working, Manila Bulletin Classifieds/Careers 01252015 at page D-4] ◆

Labor and Employment News

DOLE sets safety inspection of work sites

The Department of Labor and Employment (DOLE) will conduct a nationwide inspection of all ongoing construction projects following two fatal workplace-related accidents in Bulacan and Taguig. The review will cover all the contractors and subcontractors, which already passed the Labor Law Compliance System (LLCS) inspection and have existing construction projects.

[Source: Manila Bulletin News 02062015 at page 2]. ◆

Job Fairs set nationwide

DOLE has set a series of job fairs nationwide to provide more employment to young graduates and other job seekers. Those interested can check the schedule of the job fairs in the DOLE's website. Last year, DOLE initiated a total of 2,018 job fairs with at least 761,000 applicants vying for 4.6 million vacancies being offered by 31,823 registered employers. Based on DOLE data, a total of 134,581 applicants were hired on-the-spot last year.

[Source: The Philippine Star Business 02132015 at page B-4]. ◆

Labor and Employment News

Employee turnover rate in BPO sector slows

Employee turnover rate among Philippine business process outsourcing companies last year reached 20%, the lowest since 2007, as more companies were able to adopt strategies and compensation mixes that helped minimize talent movements. These were the results of a survey conducted by Towers Watson, a leading global professional services company. According to the survey, the latest attrition rate among the 80 companies polled was a big improvement from the 33% in 2011, 24% in 2012, and 26% in 2013.

[Source: Philippine Daily Inquirer Business 02192015 at page B2-1] ◆

Employment bill

The Committee on Rural Development of the House of Representatives has approved House Bill No. 4333 seeking the creation of an Employment Assistance Fund (EAF) in rural areas to provide temporary employment for qualified heads of family or single adult members of poor households, citing the need for the government to create a Rural Employment Assistance Program to arrest the growing

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Definition of Missing Persons under Employees' Compensation Commission (ECC) Board Resolution No. 14-07-20

DOLE-ECC Circular No. 15-01-20 dated 20 January 2015 provides the following guidelines which should be considered in the grant of ECC benefits:

1. The word "missing" refers to unknown fate or there is no trace of whereabouts of a worker, employee and uniformed personnel while he/she is in the performance of his/her duties during calamities or fatal events.
2. The worker, employee or uniformed personnel was not seen or heard from after the lapse of four years from the occurrence of the incident.
3. The disappearance of the worker, employee or uniformed personnel gives rise to presumption of death.
4. The death of the worker, employee or uniformed personnel arises out of and in the course of employment.

Image courtesy of markuso at FreeDigitalPhotos.net

[Source: The Philippine Star Classifinder 02182015 at page B-16] ◆

Immigration Circulars

(Continued from page 9)

Immigration Memorandum Circular No. SBM-2015-002: Under this circular, corporations/ partnerships/sole proprietorships filling petitions for conversion to pre-arranged employment visa (commercial) under Section 9(g) of the Philippine Immigration Act of 1940, as amended, (Commonwealth Act No. 613), in relation to Section 20(a) of the said Act, are required to submit a Certification as Annex A to the petition or application regarding the number of foreign employees under its employment as of the time of filing of the petition or application for pre-arranged employment visa (commercial), in addition to existing documentary requirements.

[Source: The Philippine Daily Inquirer 02212015 at page A14] ◆

Accessibility Law (*Batas Pambansa Blg.* 344)

(Continued from page 4)

entitled to priority access to government-mandated assistance projects and scholarship and livelihood opportunities. They also get a 20% discount on land, air and sea transportation, food and medicines, medical and dental services, and hotels, sports and other recreational centers. They get a 5% discount on groceries and basic commodities.

Sad to note, however, the National Council on Disability Affairs has reported that only 40 out of 1,200 local government agencies screened have met the minimum requirements as stated in *Batas Pambansa Blg.* 344.

[Source: Leila B. Salaveria,, Philippine Daily Inquirer News, 01262015, p.A7] ◆

Mobile Training Laboratories

(Continued from page 5)

sufficient number of training packages (curriculum, learning materials, assessment tools, mock-ups for a particular training program) and appropriate multimedia equipment and accessories. These training resources will complement the available training resources of the tech-voc institutions implementing the training programs in partnership with the local government units.

The project is all about skills development and workforce development. By teaching young people critical industry skills, the mobile training laboratory will help them get a head start on future careers and make them more attractive for future positions.

[Source: Manila Bulletin Business News, 02222015, at pB-5] ◆

Dismissal was too severe a penalty for infraction

(Continued from page 3)

the incident before the Manila City Prosecutor's Office. In the honest belief that issuing a letter of apology would incriminate him in the said criminal case, petitioner wrote to respondents and voluntarily communicated that he was willing to issue the required apology, but only had to defer the same in view of his legal predicament. As seen by the Court, the tenor of petitioner's letters, and the circumstances under which they were taken, exhibited petitioner's good faith, which negated the theory that his failure to abide by respondents' directive to apologize was attended by a "wrong and perverse mental attitude rendering the employee's act inconsistent with proper subordination," which would warrant his termination from employment.

Even on the assumption that there was willful disobedience, still, the SC found the penalty of dismissal too harsh, According to the SC, not every case of insubordination or willful disobedience by an employee reasonably deserves the penalty of dismissal. The penalty to be imposed on an erring employee must be commensurate with the gravity of his offense. The case of an employee who is compelled to apologize for a previous infraction but fails to do so is not one which would properly warrant his termination, absent any proof that the refusal was made in brazen disrespect of his employer. ◆

How a conflict between two disability assessments in maritime compensation cases—the assessment of the company-designated physician and that of the seafarer's chosen physician—should be resolved

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seafarer may be obtained whose decision shall be final and binding on them. It has been ruled that the procedure in the 2000 POEA-SEC must be strictly followed; otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands.

In this case, petitioner seafarer and respondent marine agency are covered by the provisions of the same 2000 POEA-SEC. It is the law between them, and they are bound by the mechanism for determining liability for a disability benefits claim. Petitioner seafarer, however, **preempted** the procedure when he filed on 03 December 2010 a complaint for permanent disability benefits based on his chosen physician's assessment, which was made one month **before** the company-designated doctor issued the final disability grading on 03 January 2011, the 213th day of petitioner seafarer's treatment. For failure of petitioner seafarer to observe the procedure provided by the POEA-SEC, the assessment of the company doctor should prevail. ◆

Administrative disciplinary case against employee not filed by the proper disciplinary authority is a violation of due process

(Continued from page 3)

petitioner's employees, and as such, formal charges against its employees in administrative disciplinary proceedings should emanate from it, through its Board of Directors.

However, in this instance, the Formal Charge, as well as the Memorandum, did not come from petitioner through its Board of Directors, but merely from a lawyer in petitioner's Corporate Investigation Unit and the Officer-In-Charge of petitioner's Human Resource and Development Department, respectively. Records are bereft of any showing that the latter were authorized by petitioner's Board of Directors to issue the aforesaid documents. As such, the Formal Charge and the Memorandum are null and void. Consequently, respondent-employee's removal from petitioner without a valid formal charge was done in violation of her right to due process, warranting the dismissal of the instant administrative disciplinary case against her, without prejudice to its re-filing, pursuant to Section 48 of the URACCS. ◆

Gender Equality

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In terms of having regular employment, women in India, Bangladesh and China have made the biggest strides towards gender equality since 2007.

[Source: Reuters, Business World, 02272015 at pages SI/1 and SI/3] ◆

Labor and Employment News

(Continued from page 6)

unemployment rate in the country which is the highest in the Association of Southeast Asian Nations (ASEAN) region.

[Source: Manila Bulletin National News 03102015 at page 6] ◆

Training standards for seafarers

Circular No. 2016-06 of the Maritime Industry Authority (MARINA) has outlined the documentary and procedural requirements for the issuance and revalidation of Filipino seafarers' Certificate of Proficiency (COP), in line with efforts to improve training and competency standards in the maritime industry and with standards on maritime training by an agency of the European Union. Under the circular, seafarers are also required to undergo refresher training or assessment every five years, particularly in personal survival techniques and fire prevention and fire fighting.

[Source: BusinessWorld The Nation 01052015 at page S1/11] ◆

Quotable Quote

"Glory is fleeting, but obscurity is forever." — Napoleon Bonaparte

Bureau of Immigration (BI) News

CA upholds DOJ power over erring BI personnel

The Court of Appeals (CA) has upheld a Department of Justice (DOJ) resolution which found several personnel of the BI stationed at the Clark International Airport in Pampanga guilty of grave misconduct, conduct prejudicial to the best interest of the service, dishonesty and gross neglect of duty. The CA held that the Secretary of the DOJ has authority over the erring BI personnel in view of the specific grant of power under Section 47 of the Administrative Code of 1987 to heads of departments, agencies and instrumentalities, provinces and cities. The BI is under the DOJ. The DOJ investigating panel found the erring BI personnel to have engaged in facilitating illegal transactions by allowing passengers to enter and exit the country without the necessary travel documents, including those who have been issued Hold Departure Orders (HDOs) and Watch List Orders (WLOs).

[Source: Manila Bulletin National News 01192015 at page 7]. ◆

Conditions when a seafarer may pursue an action for total and permanent disability benefits

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under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(4) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;
(5) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;
(6) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;
(7) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and
(8) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods. ◆

Pregnancy out of wedlock by an employee of a Catholic education institution is not a valid cause for termination of her employment

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contemplation of "disgraceful or immoral conduct" and "serious misconduct" of the MRPS and the Labor Code. In a letter dated 11 June 2003, the Directress informed petitioner that her employment with respondent Catholic school was terminated on the ground of serious misconduct, stressing that "pre-marital sexual relations between two consenting adults with no impediment to marry, even if they subsequently married, amounts to immoral conduct" and pointing out that respondent Catholic school "finds unacceptable the scandal brought about by the petitioner's pregnancy out of wedlock as it ran counter to the principles that (respondent Catholic school) stands for and teaches its students." Thereupon, petitioner filed a complaint for illegal dismissal with the NLRC.

The Labor Arbiter (LA) dismissed the complaint filed by the petitioner. The LA found that there was a valid ground for the petitioner's dismissal; that petitioner's pregnancy out of wedlock is considered as a "disgraceful and immoral conduct; and that as an employee of a Catholic educational institution, the petitioner is expected to live up to the Catholic values taught by respondent Catholic school to its students. The NLRC affirmed the LA decision. On appeal to the Court of Appeals (CA), the CA upheld the NLRC's conclusion that petitioner's pregnancy out of wedlock is considered as a "disgraceful and immoral conduct" and thus, a ground for dismissal under Section 94(e) of the 1992 MRPS.

Petitioner thereafter filed her appeal to the Supreme Court (SC), and obtained a reversal of the CA decision. The SC ruled that "pre-marital sexual relations between two consenting adults who have no impediment to marry each other, and, consequently, conceiving a child out of wedlock, gauged from a purely public and secular view of morality, does not amount to a disgraceful or immoral conduct under Section 94(e) of the 1992 MRPS". In support of its conclusion and reversal of the CA decision, the SC held that the totality of the circumstances surrounding the conduct alleged to be disgraceful or immoral must be assessed against the prevailing norms of conduct, and that public and secular morality should determine the prevailing norms of conduct, not religious morality.

Admittedly, the petitioner is employed in an educational institution where the teaching and doctrines of the Catholic Church, including that on pre-marital sexual relations, is strictly upheld and taught to the students; that her indiscretion, which resulted in her pregnancy out of wedlock, is anathema to the doctrines of the Catholic Church. However, viewed against the prevailing norms of conduct, the petitioner's conduct cannot be considered as disgraceful or immoral; such conduct is not denounced by public and secular morality. It may be an unusual arrangement, but it certainly is not disgraceful or immoral within the contemplation of the law.

Also, according to the SC, there is no substantial evidence to prove that the petitioner's pregnancy out of wedlock caused grave scandal to respondent Catholic school and its students. The SC further held that petitioner's dismissal is not a valid exercise of respondent Catholic school's management prerogative. ◆

Immigration Circulars

Immigration Administrative Circular No. SBM-2015-001: This circular contains the revised rules on the re-stamping of new visa imprints in the passports of foreign nationals granted legal resident status under Republic Act No. 7919, as amended. A 7919 visa holder who applies for the re-stamping of the new R.A. No. 7919 security visa imprint must submit the following: **(a)** duly accomplished R.A. No. 7919 re-stamping form; **(b)** photocopy of passport pages showing bio-data page, latest admission as 7919 visa holder, old R.A. No. 7919 visa imprint, and new/amended name of the applicant, if any; and **(c)** photocopy of ACR I-Card (front and back). A 7919 visa holder who applies for the re-stamping of the new R.A. No. 7919 security visa imprint shall submit his application in person. If the 7919 visa holder cannot file his application in person due to illness, infirmity or old age, he may execute a Special Power of Attorney authorizing a representative to appear and act on his behalf.

[Source: The Philippine Star News 03112015 at page 12]

(Continued on page 6)

SyCipLaw Davao at 20

SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) opened its regional office in Davao City in June 1995. Mindanao was on the rise at the time and Davao City was its busiest and most progressive city. Founding a regional office in Davao City earned for the firm the distinction of becoming the first truly national law firm in the country.

SyCipLaw Davao was established at the 2nd floor of the Anthony Building along J.P. Laurel Avenue, Bajada, Davao City. **Dante T. Pamintuan** was SyCipLaw Davao's first resident partner, with **Carlos Roberto Z. Lopez** and **Dominador Maphilindo O. Carrillo** as its first associates.

In the past 20 years, SyCipLaw Davao has been part of the progressively increasing economic development of Davao City as the main trade, commerce, and industry hub of Mindanao. The Davao Office has been serving not only the legal concerns of Manila-based clients in Mindanao, but also addressing the growing demands of local industries for specialized and cutting edge legal knowledge best provided by a firm with extensive experience in various fields, capable of addressing specialized issues, and with a deep bench of legal knowledge.

Today, SyCipLaw Davao continues to provide effective counselling and top-notch assistance to its wide range of clients. SyCipLaw Davao has been retained by Philippine and foreign clients to handle various legal matters including for corporate services; litigation, arbitration, and dispute resolution; employment, immigration & labor relations; and the protection and enforcement of intellectual property rights.

The SyCipLaw Davao Office is now located at the Penthouse, 17th Floor of the Landco Corporate Centre at J.P. Laurel Avenue, Bajada, Davao City. Mr. Carillo currently serves as SyCipLaw Davao's resident partner, while both Mr. Pamintuan and Mr. Lopez are based in the Makati Office. Assisting Mr. Carillo are associates **Izabel F. Seriña**, **Elaine B. de los Santos**, and **Vincent C. Juan**.

Some of SyCipLaw Davao's alumni include: Edgar Dl. Bernal (10th placer, 1996 Bar), Aaron Philip Cruz (7th Placer, 1998 Bar), Charmian K. Gloria, Geraldine Quimosing-Tiu, Randy Peter Ceniza (6th Placer, 1999 Bar), Gary Teves, Emily Zen Chua, Hanniyah Sevilla, Vicente Dumbrigue, and Janette Ancog (4th Placer, 2010 Bar). ◆

Bureau of Immigration (BI) News

BI improves services to hit Php3-B record

BI's revenue collection last year breached the Php3 billion mark, Php36.6 million higher than its 2013 revenue collection of Php2.9 billion. The successful revenue collections were attributed to the various innovations introduced during the past years which encouraged foreign visitors to pay fees and other liabilities promptly. Among these were the purchase of more passport readers and computer sets installed at the Ninoy Aquino International Airport terminals and other major ports of the country to facilitate the entry and exit of aliens, training of additional personnel on value-formation and customer service to provide them with skills in dealing with stakeholders and relocation of field offices to shopping malls to make it convenient for foreigners to do business. Also, foreigners appreciated the new policy of cutting to a short period of time getting documents through the implementation of the one-way processing scheme avoiding papers from moving back and forth.

[Source: Manila Bulletin National News 03102015 at page 6] ◆

SyCipLaw News

Chambers Global 2015 Rankings

Chambers Global 2015 has ranked SyCipLaw as Band 1 in corporate & finance; and projects, infrastructure & energy. In addition, six of the firm's lawyers were ranked by the publication.

The firm's complete Chambers Global 2015 rankings, including those of ranked lawyers, are available for viewing at www.chambersandpartners.com/global/firm/3072/sycip-salazar-hernandez-gatmaitan.

Most of the firm's Law Firm Networks were also ranked by Chambers Global. Law Firm Networks ranked include **Employment Law Alliance**, **First Law International**, **Interlex Group**, **Multilaw**, **Pacific Rim Advisory Council**, **World Law Group**, and **World Services Group**.

The complete Chambers Global 2015 Guide may be accessed at the following link: www.chambersandpartners.com/guide/global/2. ◆

Quotable Quote

"Wisdom is the reward you get for a lifetime of listening when you'd have preferred to talk." — Doug Larson, Olympic gold medalist (1902-1981)

SyCipLaw is 2015 IFLR Philippine Law Firm of the Year

SyCip Salazar Hernandez & Gatmaitan received again the National Law Firm of the Year for the Philippines at the IFLR Asia Awards 2015. Managing Partner **Rafael A. Morales** received the award on behalf of the firm.

The awarding ceremony was held on March 11, 2015 at the JW Marriott Hong Kong. Also representing the firm at the ceremony were partners **Marievic G. Ramos-Añonuevo**, **Simeon Ken R. Ferrer** (head of corporate services), **Rocky Alejandro L. Reyes** (head of special projects), **Rose Marie M. King-Dominguez**, and **Arlene M. Maneja**.

The firm has also been shortlisted for the Philippine Law Firm of the Year awards of the Chambers Asia-Pacific Awards 2015. The awards reflect notable achievements, including outstanding work, impressive strategic growth, and excellence in client service, in the past year of national and international law firms across the Asia-Pacific region on the basis of research for the upcoming edition of Chambers Asia-Pacific.

The awards ceremony will take place on 04 May 2015. ◆

SyCipLaw Lawyers Elected as IBP Officers

SyCipLaw Partner **Anthony W. Dee** and Associate **Rosevee R. Paylip-Guiang** were elected as officers of their respective Integrated Bar of the Philippines (IBP) chapters last 28 February 2015. Mr. Dee was elected vice president of the IBP Makati Chapter and Ms. Paylip-Guiang, who is based in the firm's Subic office, was elected to the board of directors of IBP Zambales.

Anthony W. Dee has represented numerous clients in all court levels and has extensive experience in the practice areas of litigation and arbitration. He was involved in the expropriation of parcels of land and rights of way for the Quezon Power Project, and was part of the team that handled the land issues in connection with the North Luzon Expressway Project.

He is also extensively involved in corporate rehabilitation and rescues, and has considerable experience in trademark infringement cases.

Rosevee R. Paylip-Guiang provides legal advice and opinions in corporate restructurings, capital markets, private equity, corporate governance, contract law, and on all other legal aspects of commercial transactions.

She sits as corporate secretary of various corporations and is also a consultant to the Korean Community Association in Subic and the Korean Chamber of Commerce in Subic.

For more information on the IBP, please visit www.ibp.ph. Visit www.ibpmakati.com for information on the IBP Makati Chapter. ◆

ELA's Internatonal Background Checks Summaries

SyCipLaw has updated the Philippine Chapter of the Employment Law Alliance's International Background Checks Summaries, a free online resource guide that provides general requirements and practices for conducting background checks on potential employees in selected countries around the world.

Go to www.employmentlawalliance.com/registration to access this resource.

The Philippine Chapter was updated by Partner **Rodelle B. Bolante**. Content is accurate as of January 2015. ◆

SyCipLaw Admits Four New Partners

SyCip Salazar Hernandez & Gatmaitan is pleased to announce the admission of **Maria Jennifer Z. Barreto**, **Melyjane G. Bertillo-Ancheta**, **Hiyasmin H. Lapitan**, and **Jose Florante M. Pamfilo** to the partnership.

Maria Jennifer Z. Barreto's practice experience is in corporate and business law. She has done significant work in natural resources, especially in mining and renewable energy. She has acted as counsel to investors in various Philippine mining projects, such as the Rapu-Rapu Polymetallic Mining Project and the Far South East Gold–Copper Porphyry Project, and on investments in hydro, wind, coal and biomass power projects, including the acquisition of the 600MW coal-fired thermal power plant in Masinloc, Zambales and the hydroelectric power station of Agusan Power Corporation in Agusan del Norte, Mindanao.

Ms. Barreto lectures on accounting for the Finance and Accounting Department of the Ateneo de Manila University's School of Management.

Melyjane G. Bertillo-Ancheta specializes in securities regulation, including securities registration and listing, and banking and finance. Her transactional work includes the financing of projects under the Philippine Government's Public-Private Partnership program, specifically the infrastructure project for public schools and the NAIA Expressway project. She has worked on several international securities offerings of Philippine companies, including Petron Corporation's 2013 issuance of undated subordinated capital securities. In 2014, she worked on the domestic liability management transaction of the Republic of the Philippines which involved offers to exchange eligible bonds and subscribe for new ROP bonds.

Ms. Bertillo-Ancheta also has a Master's degree in business Administration from the Ateneo Graduate School of Business.

Hiyasmin H. Lapitan is a member of the firm's special projects; tax; banking, finance and securities; and corporate services departments. She specializes in insurance law and has broad experience in investments in, and regulation of, this sector. Her recent projects include the structuring of the transfer of the insurance portfolio of a non-life insurance company; the licensing of a newly-formed insurance agency; the development, equity structuring, construction, and financing of a 50 MW geothermal power generation project in the Visayas region; the sale of interests in commonly-owned facilities of petroleum companies; the reorganization of a group of advertising agencies; and the formation of a joint venture for the supply of bulk water.

Jose Florante M. Pamfilo's practice areas include investments, mergers and acquisitions, and the energy and international trade law sectors. His projects have included the sale of a controlling stake in a publicly-listed dairy manufacturing company; the sale by a Dutch bank of its Philippine trust and investment unit; and financing for the acquisition of a controlling stake in one of the Philippines' leading sugar mills. He has represented clients before the Appellate Body and dispute settlement panel of the World Trade Organization on a GATT dispute.

Mr. Pamfilo received his Master of Laws from the University of Michigan Law School as a DeWitt Fellow and was admitted to the New York State Bar in 2012. ◆

SyCipLaw in the News

Chambers Asia Pacific 2015 Rankings

Chambers Asia-Pacific 2015 has ranked SyCipLaw as Band 1 in banking & finance; capital markets; corporate/M&A; real estate; dispute resolution; arbitration; employment; intellectual property; projects, infrastructure & energy; and tax.

Lawyers ranked include **Lozano A. Tan** and **Leslie C. Dy** for employment.

The firm's complete Chambers Asia-Pacific 2015 rankings, including those of ranked lawyers, are available for viewing at www.chambersandpartners.com/asia/firm/3072/sycip-salazar-hernandez-gatmaitan.

The complete Chambers Asia-Pacific 2015 guide may be accessed at www.chambersandpartners.com/guide/asia/8. ◆

Chambers New Faces Asia

SyCipLaw Partner **Vida M. Panganiban-Alindogan** is included in Chambers' New Faces Asia 2015, a compilation of individuals who are appearing for the first time as an "Up-and-Coming" lawyer or as an "Associate to Watch" in the Chambers Asia-Pacific Guide. Ms. Panganiban-Alindogan is a member of the firm's Intellectual Property Department. ◆

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PHL Employment Outlook

A survey made by the Bangko Sentral ng Pilipinas (BSP) showed that more jobs are expected to be made available in the second quarter as local firms continue to expand. The BSP said, "Consistent with expectations of sustained growth of the economy, the employment outlook index for the quarter increased to 25.6% from 24.1% last quarter." BSP further explained, "This indicated expectations of an overall increase in the number of new employees for the second quarter of the year."

The survey showed construction companies were the most upbeat in their hiring intentions for the 2nd quarter, followed by industry firms and those involved in wholesale and retail trade. Among sub-sectors, agriculture, fishery and forestry recorded stronger expansion plans while those of manufacturing were steady from a quarter ago.

The BSP also reported that the business confidence index slid to 45.2% in the 1st quarter from 48.3% in the 4th quarter last year, amid the seasonal slowdown in activity following the holiday season in the 4th quarter and concerns regarding the effects of the typhoons that hit the country late last year. However, the sentiment for the 2nd quarter was seen at 58.2% due to the second harvest season and an expected influx of tourists during the summer season.

[Source: Kathleen A. Martin, BSP still bullish on employment prospects in Phl, The Philippine Star Business 03022015 at pages B-1 and B-4] ◆

Gender Equality

According to the MasterCard Worldwide Index of Women's Advancement, women in Asia and the Pacific are fast becoming as active in the workplace as men in most countries in the region, but lag behind men in securing leadership roles in business and politics despite being better educated.

The gender equality index ranked New Zealand, Australia, the Philippines and Singapore as the best countries for women, while India, Bangladesh and Sri Lanka performed the worst. Female university students outnumber male students in 10 of the 16 countries surveyed, including China, Thailand and Sri Lanka.

Georgette Tan, MasterCard spokeswoman for the Asia-Pacific region, said "companies with more women in leadership outperform those who do not" and "they are beginning to understand why integrating talented women into leadership structures is imperative for sustainable economic growth and innovation in both developed and developing markets."

The index, compiled following surveys with 8,235 women, measures gender parity based on employment, education and leadership opportunities.

It showed that New Zealand and the Philippines are the only two countries with more than 50 female business and government leaders and business owners for every 100 of their male counterparts.

Thai women have made the most significant progress in obtaining business leadership roles since the index began in 2007, while the ratio of female-to-male politicians in the Philippines has doubled over the last nine years, results showed.

Although women in most countries in the Asia-Pacific region are better-educated than men, female students in India, South Korea and Bangladesh have fewer opportunities when it comes to secondary and university education, the index showed.

(Continued on page 7)

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.*