



GUIDE TO GOING GLOBAL EMPLOYMENT

Philippines



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INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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PHILIPPINES



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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Philippine Peso (PHP). The official languages are English and Filipino.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company cannot directly engage employees in the Philippines unless it establishes a subsidiary or branch in the Philippines. Corporate employers are required to be registered with the Securities and Exchange Commission for corporations and partnerships, the Department of Trade and Industry for single proprietorships and the Philippine Social Security System (or *SSS*; *Republic Act No. 8282, Social Security Act of 1997*), PhilHealth (*Republic Act 7875 National Health Insurance Act of 1995, as amended by Republic Act 9241*), Pag-ibig (*Republic Act 9679, Home Development Fund Law of 2009*), Department of Labor and Employment (or *DOLE, DOLE Department Order No. 198, Series of 2018*), and the Bureau of Internal Revenue (*BIR*) for the withholding of income taxes and national insurance contributions. Likewise, all businesses in the Philippines are required to secure a business permit or municipal license from the city or municipality where their offices are located.

PRE-HIRE CHECKS

Required

There are no regulatory requirements for pre-hire, subject to compliance with immigration laws for employment of foreign expatriates.

Permissible

Philippine labor law leaves it to the management prerogative of employers to provide for pre-hire checks, including but not limited to a National Statistics Office (*NSO*)-issued birth certificate, a National Bureau of Investigation (*NBI*) clearance, a transcript of records for educational verification and previous employer references.

IMMIGRATION

Philippine law allows employers to engage a foreigner to work in the Philippines, provided an employment permit is first secured from the Department of Labor and Employment. An employment permit may be issued after a determination of unavailability of a person in the Philippines who is competent, able and willing at the time of the application to perform the services for which the foreigner is desired. After issuance of an employment permit, the foreign expatriate must also secure a working visa from the Bureau of Immigration.

HIRING OPTIONS

Employee

A regular employee is one who has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer or who has rendered at least 1 year of service, whether such service is continuous or interrupted, with respect to the activity in which they are employed.

If the employment does not fall within the nature of a regular employment, employment may be project, seasonal, casual or fixed-term.

Independent contractor

An independent contractor is one who carries on a distinct and independent business and undertakes to perform the job on their own account and under their own responsibility, according to their own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof. The contractor must likewise have substantial capital or investment in tools, equipment and machineries, work premises and other materials necessary in the conduct of their business.

Agency worker

The law prohibits labor-only arrangements (ie, a relationship where the agency refers employees and the principal merely pays the agency or contractor the salaries of the employees). In a labor-only arrangement, the principal is jointly liable with the agency for any labor claims. An outsourcing arrangement, where the agency directs and controls the employees, is lawful. Such agency may register as an independent contractor under DOLE Department Order No. 174 Series of 2017.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Optional. The parties are free to agree to the terms of the employment contracts, provided these are not contrary to law, morals, good customs, public order or public policy.

Probationary periods

The probationary period may not exceed 6 months from the date the employee started working. An employee must be informed of the standards of regularization at the time of engagement. An employee becomes a regular employee upon completion of the 6 months' probationary period if the employee is not terminated from employment due to failing the performance standards before the end of the probationary period.

Policies

A health and safety statement, a disciplinary procedure, data protection policy and an anti-sexual harassment procedure are mandatory. Highly recommended policies include policies on a grievance procedure, non-competition and an IT/electronic communication policy. It is common for employers to issue an employee handbook.

Third-party approval

Except for employment of foreign nationals, no requirement to lodge employment contract or policies with, or get approval from, any third party.

LANGUAGE REQUIREMENTS

No statutory requirements. English is acceptable.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All employees.

Working hours

The total number of working hours must not exceed 8 hours daily. Normal workdays per week are 6 days.

A Compressed Work Week (CWW) scheme is recognized by law where the normal work week is reduced to 5 days, but the total work hours remain at 48 hours. Hours for a normal work day are not more than 12 hours, without the corresponding overtime pay. However, this scheme must be voluntarily agreed to by both the employer and the employees and must be reported to DOLE.

Employees are entitled to a 1-hour meal break, which is not compensated. It is the duty of the employer to provide each of its employees a rest period of not less than 24 consecutive hours after every 6 consecutive normal work days. If an employee is required to work on their rest day, the employee shall be entitled to an additional pay of 30 percent regular hourly pay.

Overtime

Any work in excess of 8 hours in a day is considered overtime work.

Wages

Basic wage means all the remuneration or earnings paid by an employer to a worker for services rendered on normal working days and hours excluding cost-of-living allowances, profit-sharing payments, premium payments, 13th-month pay or other monetary benefits which are not considered part of or integrated into the regular salary of workers. Wages must first comply with the minimum wage rates prescribed by Philippine law on a regional basis.

Vacation

Entitlement to a 5-day leave with pay for every employee who has rendered at least 1 year of service, known as Service Incentive Leave (SIL). At the employee's choice, SIL is commutable to its money equivalent if not used or exhausted at the end of the year based on the salary rate at the date of commutation.

Sick leave & pay

There is no minimum required by law apart from the SIL.

Maternity/parental leave & pay

Maternity leave

A female employee who has paid at least 3 monthly contributions to the Social Security System (SSS) in the 12-month period immediately preceding the semester of her childbirth, miscarriage or emergency termination of pregnancy shall be granted full pay for 105 days regardless of whether she gave birth via caesarean section or natural delivery. The SSS shall reimburse the employer of the applicable SSS maternity benefit. Any difference between the employee's actual salary and the applicable SSS maternity benefit shall be borne by the employer.

Paternity leave

A married male employee, regardless of his employment status, is permitted not to report for work for 7 days but to continue to earn his gross monthly compensation on the condition that his spouse has delivered a child or suffered a miscarriage for the purpose of lending support to his partner during her period of recovery and/or in nursing of the newly born child.

Parental leave or solo parent leave

A solo parent employee who has rendered service of at least 1 year is entitled to a parental leave or solo parental leave of not more than 7 working days every year.

Leave for victims of violence against women and children

An employee who is a victim of violence (ie, physical, sexual or psychological) is entitled to a paid leave of up to 10 days.

Special leave benefit for women

A female employee is entitled to 2 months with full pay from her employer based on her gross monthly compensation following surgery caused by gynecological disorders, provided that she has rendered continuous aggregate employment service of at least 6 months over the last 12 months.

Other leave/time off work

Employees may also be entitled to leave for other purposes if it is granted by the employer under a company policy or employment contract.

DISCRIMINATION & HARASSMENT

Against women

It is unlawful for an employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex. (*Labor Code of the Philippines, Art. 135*)

The Labor Code of the Philippines likewise considers it unlawful for an employer to require, as a condition for or continuation of employment, a woman employee to not get married or to stipulate expressly or tacitly that, upon marriage, a woman employee shall be deemed resigned or separated. (*Labor Code of the Philippines, Art. 136*)

Sexual harassment is also prohibited. (*Anti-Sexual Harassment Act of 1995*)

Against persons with disability

No persons with disabilities shall be denied access to opportunities for suitable employment. A qualified employee with disabilities shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as a qualified able-bodied person. (*Republic Act No. 2010911*)

Based on age

It is unlawful for an employer to do any of the following:

- Print or publish, or cause to be printed or published, in any form of media, any notice of advertisement relating to employment suggesting preferences, limitations, specifications and discrimination based on age
- Require the declaration of age or birthdate during the application process
- Decline any employment application because of the individual's age
- Discriminate against an individual in terms of compensation, terms and conditions or privileges of employment on account of age
- Deny promotion or opportunity for training because of age
- Forcibly lay off an employee or worker because of old age
- Impose early retirement on the basis of age (*Section 5 (a) of Republic Act No. 10911*)

WHISTLEBLOWING

Employers have the duty to protect the complainant of gender-based sexual harassment from retaliation. (*Safe Spaces Act, Republic Act No. 11313*).

It shall be unlawful for an employer to refuse to pay or to reduce the wages and benefits, discharge, or in any manner discriminate against any employee who has filed any complaint or instituted any proceeding regarding wages, or has testified or is about to testify in such proceedings. (*Article 118, Labor Code of the Philippines*).

BENEFITS & PENSIONS

13th month pay

Employers are required to pay their rank-and-file employees thirteenth-month pay, equivalent to 1/12 of the basic salary within a calendar year, regardless of the nature of their employment, provided that they worked for at least one (1) month during a calendar year.

Retirement pay

An employee, upon reaching the age of 60 years or more, but not beyond 65 years which is hereby declared the compulsory retirement age, who has served at least 5 years in the establishment is entitled to a retirement pay equivalent to at least 1/2 month salary for every year of service, a fraction thereof of at least 6 months being considered a whole year.

DATA PRIVACY

When an employer collects and processes personal information of its employees, especially sensitive personal information, the employer must comply with applicable guidelines on the adoption of organizational, physical and technical security measures and the registration thereof with the National Privacy Commission. The data subject must have given their consent prior to the collection, or as soon as practicable and reasonable. An employer's collection of personal information from its own employees does not require the employee's prior written consent, provided the personal information collected and the processes applied to such information are only to the extent necessary for compliance with legal requirements prescribed for an employer-employee relationship.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

In a share deal, employment continues.

In an asset deal, the parties may agree to assume the employment agreements, which requires employee consent. Alternatively, employees may be terminated and rehired, which would result in the seller being liable for separation pay the amount of which depends on the grounds for termination (i.e. redundancy, retrenchment or closure of business).

EMPLOYEE REPRESENTATION

It is the right of the employees to form, join or assist in the formation of a labor organization of their own choosing for purposes of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for purposes of collective bargaining, or for their mutual aid and protection.

Apart from unions, there are no works councils or other collective groups.

TERMINATION

Grounds

Employees may only be terminated either for just or authorized causes as enumerated in the Labor Code. The burden of proof is with the employer or the employer will be liable for re-instatement with back pay.

The following are the just causes for the termination of employment by the employer:

- Serious misconduct or willful disobedience by an employee of the lawful order of their employer or representative in connection with their work
- Gross and habitual neglect of duties by an employee
- Fraud or willful breach by an employee of trust reposed in them by the employer or its duly authorized representative
- Commission of a crime or offense by an employee against the person of their employer or any immediate member of their family or their duly authorized representative
- Other causes analogous to the foregoing

The following are the authorized causes of termination:

- Installation of a labor-saving device or automation
- Redundancy
- Retrenchment (ie, downsizing)
- Closure or cessation of operation of the establishment or undertaking

Employees subject to termination laws

All employees, with no distinction as to rank or status.

Prohibited or restricted terminations

Substantive due process mandates that an employee can only be dismissed based on just or authorized causes. On the other hand, procedural due process requires further that the employee can only be dismissed after the employee has been given an opportunity to be heard.

Further, pregnancy or number of children shall not be a ground for termination from employment. (*Republic Act No.10354*)

Third-party approval for termination/termination documents

Not required.

Mass layoff rules

There are no specific mass layoff rules. Layoff, used interchangeably with retrenchment, is a valid ground for termination if the following are present:

- Retrenchment is reasonably necessary and likely to prevent business losses
- Losses, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent
- Expected or actual losses is proven by sufficient and convincing evidence
- Retrenchment is in good faith for the advancement of its interest and not to defeat or circumvent employees' right to security of tenure
- For redundancy, business must show that employees are in excess given current business situation of a company
- For both redundancy and retrenchment, there must be fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age and financial hardship for certain workers

Notice

For termination based on just cause, there is no statutory advance notice period; for termination based on authorized causes, there is a statutory notice period to both the employee and the Department of Labor and Employment of at least 30 days prior to termination.

In addition, for termination of employment based on just cause, the procedure to be followed is as follows:

- A first written notice must be served on an employee specifying the ground for termination, a detailed narration of facts and circumstances that will serve as basis for the charge against the employee, and a directive that the employee is given opportunity to submit a written explanation within a reasonable period
- A hearing or conference during which an employee is given ample opportunity to be heard and to defend themselves with the assistance of the employee's representative if desired
- A 2nd written notice served to the employee indicating that
 - All circumstances involving the charge against an employee have been considered and
 - The grounds have been established to justify the severance of their employment
- For termination of employment based on authorized causes, requirements of due process are deemed complied with upon the service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least 30 days before the effective date of the termination, specifying the ground or grounds for termination

Statutory right to pay in lieu of notice or garden leave

Not provided for under Philippines law.

Severance

Severance pay or separation pay is the employer's statutory obligation in cases of legal termination due to authorized causes under Articles 297 or 298 of the Labor Code of the Philippines. Separation pay is equivalent to at least 1 month's pay or at least 1 month's pay for every year of service, whichever is higher – a fraction of 6 months considered 1 year. However, if the ground for termination is retrenchment to prevent serious losses, closure of business or disease, the separation pay shall be equivalent to at least 1 month's pay or 1/2 month's pay for every year of service, whichever is higher – a fraction of 6 months considered 1 year.

Financial assistance is an act of social justice in lieu of re-instatement in illegal dismissal cases where the employee is ordered to be re-instated but re-instatement is not feasible or as an employment benefit granted in a collective bargaining agreement or company policy.

POST-TERMINATION RESTRAINTS

An employer, in the exercise of its management prerogative, may insist on an agreement with an employee for certain prohibitions to take effect after the termination of the employer-employee relationship.

Non-competes

The employer and employee are free to stipulate in an employment contract prohibiting the employee within a certain period from and after termination of their employment from

- Starting a similar business, profession or trade or
- Working in an entity that is engaged in a similar business that might compete with the employer There must be a limitation as to time, place and trade. Courts have found a 2-year prohibition reasonable.

Customer non-solicits

A non-solicitation clause may be a stipulation agreed upon by the employer and employee in an employment contract.

Employee non-solicits

A non-recruitment or anti-piracy clause is a stipulation that may be agreed upon by the employer and employee in an employment contract.

WAIVERS

Waivers, release and quitclaims are valid and binding on the parties when the agreement is voluntarily entered into and represents a reasonable settlement.

REMEDIES

Discrimination

A complaint for violation on the prohibition against discrimination may be filed before the National Labor Relations Commission (NLRC) for damages and/or the Courts for penal sanctions.

Unfair dismissal

An employee may lodge a formal complaint before the NLRC on any claim for illegal dismissal specifically alleging and substantiating that the dismissal lacked any cause for termination or did not comply with due process as provided by the Labor Code.

Failure to inform & consult

In reference to employee termination proceedings, failure to comply with procedural due process of notice and hearing allows an employee to lodge a complaint for damages. If termination is deemed illegal because it was not based on just or authorized cause, the remedy is re-instatement with back pay.

CRIMINAL SANCTIONS

Criminal penalties may be imposed for violations of the Labor Code of the Philippines and relevant Special Laws as provided therein, such as but not limited to illegal recruitment, sexual harassment, child labor, non-remittance of SSS, PhilHealth and Pag-Ibig contributions, and violations of collective bargaining agreements amounting to unfair labor practices.

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