

## PHILIPPINE LAWS & RULES

### CIVIL CODE OF THE PHILIPPINES

**Art. 1159.** Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. (1091a)

**Art. 1306.** The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (1255a)

**Art. 1318.** There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established. (1261)

**Art. 1642.** The contract of lease may be of things, or of work and service. (1542)

**Art. 1644.** In the lease of work or service, one of the parties binds himself to execute a piece of work or to render to the other some service for a price certain, but the relation of principal and agent does not exist between them. (1544a)

**PRESIDENTIAL DECREE NO. 442 - (AS AMENDED)**  
**A DECREE INSTITUTING A LABOR CODE, THEREBY REVISING AND**  
**CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR,**  
**PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND ENSURE**  
**INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE**

**ARTICLE 3. Declaration of basic policy.** — The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure and just and humane conditions of work.

**ARTICLE 4. Construction in favor of labor.** — All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

**BOOK SIX, POST EMPLOYMENT**  
**TITLE I, TERMINATION OF EMPLOYMENT**

**ART. 278. Coverage.** - The provisions of this Title shall to all establishments or undertakings, whether for profit or not.

**ART. 279. Security of tenure.** - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (As amended by Section 34, Republic Act No. 6715, March 21, 1989).

**ART. 280. Regular and casual employment.** - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

**ART. 281. Probationary employment.** - Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An

employee who is allowed to work after a probationary period shall be considered a regular employee.

**ART. 282. Termination by employer.** - An employer may terminate an employment for any of the following causes:

- a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- b. Gross and habitual neglect by the employee of his duties;
- c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- e. Other causes analogous to the foregoing.

**ART. 283. Closure of establishment and reduction of personnel.** - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

**ART. 284. Disease as ground for termination.** - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

**ART. 285. Termination by employee.** - (a) An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.

(b) An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:

1. Serious insult by the employer or his representative on the honor and person of the employee;
2. Inhuman and unbearable treatment accorded the employee by the employer or his representative;
3. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and

4. Other causes analogous to any of the foregoing.

**ART. 286. *When employment not deemed terminated.*** - The *bona-fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

## **TITLE II, RETIREMENT FROM SERVICE**

**ART. 287. *Retirement.*** - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term 'one-half (1/2) month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.

## **BOOK FIVE LABOR RELATIONS**

**ART. 277. *Miscellaneous provisions...***

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the

assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

**BOOK THREE, CONDITIONS OF EMPLOYMENT**  
**TITLE III, WORKING CONDITIONS FOR SPECIAL GROUPS OF EMPLOYEES**  
**CHAPTER III, EMPLOYMENT OF HOUSEHELPERS**

**ART. 141. Coverage.** - This Chapter shall apply to all persons rendering services in households for compensation.

“Domestic or household service” shall mean services in the employer's home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer's household, including services of family drivers.

**ART. 142. Contract of domestic service.** - The original contract of domestic service shall not last for more than two (2) years but it may be renewed for such periods as may be agreed upon by the parties.

**ART. 149. Indemnity for unjust termination of services.** - If the period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.

If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days.

**ART. 150. Service of termination notice.** - If the duration of the household service is not determined either in stipulation or by the nature of the service, the employer or the househelper may give notice to put an end to the relationship five (5) days before the intended termination of the service.

**ART. 151. Employment certification.** - Upon the severance of the household service relation, the employer shall give the househelper a written statement of the nature and duration of the service and his or her efficiency and conduct as househelper.

**ART. 152. Employment record.** - The employer may keep such records as he may deem necessary to reflect the actual terms and conditions of employment of his househelper, which the latter shall authenticate by signature or thumbmark upon request of the employer.

# OMNIBUS RULES IMPLEMENTING THE LABOR CODE

## BOOK SIX Post Employment

### TITLE I Termination of Employment

**ARTICLE 278. Coverage.** — The provisions of this Title shall apply to all establishments or undertakings, whether for profit or not.

**ARTICLE 279. Security of tenure.** — In case of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld from him up to the time of his reinstatement.

**ARTICLE 280. Regular and casual employment.** — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, where the position no longer exists at the time of reinstatement for reasons not attributable to the fault of the employer, the employee shall be entitled to separation pay equivalent to at least one-month salary or to one-month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year. *(Articles 278 to 280 and then Section 5, these are what appeared in the official version)*

**SECTION 5. Regular and casual employment.** — (a) The provisions of written agreements to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be considered to be regular employment for purposes of Book VI of the Labor Code where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

(b) Employment shall be deemed as casual in nature if it is not covered by the preceding paragraph; Provided, That any employee who has rendered at least one year of service, whether such service is continuous or not, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

(c) An employee who is allowed to work after a probationary period shall be considered a regular employee.

**SECTION 6. Probationary employment.** — (a) Where the work for which an employee has been engaged is learnable or apprenticeable in accordance with the standards prescribed by the Department of Labor, the probationary employment period of the employee shall be limited to the authorized learnership or apprenticeship period, whichever is applicable.

(b) Where the work is neither learnable nor apprenticeable, the probationary employment period shall not exceed six (6) months reckoned from the date the employee actually started working.

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just cause or when authorized by existing laws, or when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.

(d) In all cases involving employees engaged on probationary basis, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement.

**SECTION 7. Termination of employment by employer.** — The just causes for terminating the services of an employee shall be those provided in Article 283 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits, and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

**SECTION 8. Disease as a ground for dismissal.** — Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by competent public health authority that the disease is of such nature of at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave of absence. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health.

**SECTION 9. Termination pay.** — (a) An employee shall be entitled to termination pay equivalent to at least one month's salary for every year of service a fraction of at least six (6) months being considered as one whole year, in case of termination of his employment due to the installation of labor-saving devices or redundancy.

(b) Where the termination of employment is due to retrenchment to prevent losses and in case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, or where the employment is prohibited by law or is prejudicial to his health or to the health of his co-employees, the employee shall be entitled to termination pay equivalent to at least one-half month's pay for every year of service, a fraction of at least six months being considered as one

whole year.

(c) The termination pay provided in the Section shall in no case be less than the employee's one month pay.

**SECTION 10. Basis of termination pay.** — The computation of the termination pay of an employee as provided herein shall be based on his latest salary rate, unless the same was reduced by the employer to defeat the intention of the Code, in which case the basis of computation shall be the rate before its deduction.

**SECTION 11. Termination of employment by employee.** — The just causes for putting an end to the employer-employee relationship by the employee shall be those provided in Article 286 of the Labor Code.

**SECTION 12. Suspension of relationship.** — The employer-employee relationship shall be deemed suspended in case of suspension of operation of the business or undertaking of the employer for a period not exceeding six (6) months, unless the suspension is for the purpose of defeating the rights of the employees under the Code, and in case of mandatory fulfillment by the employee of a military or civic duty. The payment of wages of the employee as well as the grant of other benefits and privileges while he is on a military or civic duty shall be subject to special laws and decrees and to the applicable individual or collective bargaining agreement and voluntary employer practice or policy.

**SECTION 13. Retirement.** — In the absence of any collective bargaining agreement or other applicable agreement concerning terms and conditions of employment which provides for retirement at an older age, an employee may be retired upon reaching the age of sixty (60) years.

**SECTION 14. Retirement benefits.** — (a) An employee who is retired pursuant to a bona-fide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy shall be entitled to all the retirement benefits provided therein or to termination pay equivalent to at least one-half month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year.

(b) Where both the employer and the employee contribute to the retirement plan, agreement or policy, the employer's total contribution thereto shall not be less than the total termination pay to which the employee would have been entitled had there been no such retirement fund. In case the employer's contribution is less than the termination pay the employee is entitled to receive, the employer shall pay the deficiency upon the retirement of the employee.

(c) This Section shall apply where the employee retires at the age of sixty (60) years or older.

**BOOK V**  
**Labor Relations**

**RULE XIV**  
**Termination of Employment**



**SECTION 1. Security of tenure and due process.** — No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

**SECTION 2. Notice of dismissal.** — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

**SECTION 3. Preventive suspension.** — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

**SECTION 4. Period of suspension.** — No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

**SECTION 5. Answer and hearing.** — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

**SECTION 6. Decision to dismiss.** — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

**SECTION 7. Right to contest dismissal.** — Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the Commission.

**SECTION 8. Period to decide.** — Cases involving the dismissal of a worker shall be decided by the Labor Arbiter within 20 working days from the date of submission of such cases for decision.

**SECTION 9. Reinstatement pending hearing.** — The Secretary may suspend the effects of the termination pending resolution of the case in the event of a prima facie finding that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

**SECTION 10. Certification of employment.** — A dismissed worker shall be entitled to receive, on request, a certificate from the employer specifying the dates of his engagement and termination of his employment and the type or types of work on which he is employed.

**SECTION 11. Report of dismissal.** — The employer shall submit a monthly report to the Regional Office having jurisdiction over the place of work all dismissals effected by him during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the date of commencement and termination of employment, the positions last held by them and such other

information as may be required by the Department for policy guidance and statistical purposes.

**BOOK III  
CONDITIONS OF EMPLOYMENT**

**RULE XIII  
Employment of Househelpers**

**SECTION 1. General statement on coverage.** — (a) The provisions of this Rule shall apply to all househelpers whether employed on full or part-time basis.

(b) The term "househelper" as used herein is synonymous to the term "domestic servant" and shall refer to any person, whether male or female, who renders services in and about the employer's home and which services are usually necessary or desirable for the maintenance and enjoyment thereof, and ministers exclusively to the personal comfort and enjoyment of the employer's family.

**SECTION 4. Employment contract.** — The initial contract for household service shall not last for more than two (2) years. However, such contract may be renewed from year to year.

**SECTION 14. Indemnity for unjust termination of service.** — If the period for household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.

If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days.

**SECTION 15. Employment certification.** — Upon the severance of the household service relationship, the househelper may demand from the employer a written statement of the nature and duration of the service and his or her efficiency and conduct as househelper.

**SECTION 16. Funeral expenses.** — In case of death of the househelper, the employer shall bear the funeral expenses commensurate to the standards of life of the deceased.

**SECTION 17. Disposition of the househelper's body.** — Unless so desired by the househelper or by his or her guardian with court approval, the transfer or use of the body of the deceased househelper for purposes other than burial is prohibited. When so authorized by the househelper, the transfer, use and disposition of the body shall be in accordance with the provisions of Republic Act No. 349.

**SECTION 18. Employment records.** — The employer may keep such records as he may deem necessary to reflect the actual terms and conditions of employment of his househelper which the latter shall authenticate by signature or thumbmark upon request of the employer.