B. Employment of non-resident aliens

18. A, a non-resident Chinese, went to your office asking for legal advice because he intends to work for a local telecommunications company. What advice will you tell him so that he may lawfully engage in gainful employment in the Philippines. Discuss fully.

I will explain to A that as a general rule, all foreign nationals who intend to engage in gainful employment in the Philippines shall apply for an Alien Employment Permit or AEP (*Sec. 1, D.O. No. 146-15).*

However, he may be **exempted** from securing an AEP if he falls under any of the following categories of aliens:

- All members of the diplomatic service and foreign government officials accredited by and with reciprocity agreement with the Philippine government;
- Officers and staff of international organizations of which the Philippine government is a member and their legitimate spouses;
- Owners and representatives of foreign principals whose companies are accredited by the POEA who come to the Philippines for a limited period and solely for interviewing Filipino applicants for employment abroad;
- Foreign nationals who come to the Philippines to teach, present and/or conduct research studies in universities and colleges;
- Permanent resident foreign nationals, and probationary or temporary resident visa holders;
- Refugees and Stateless persons recognized by DOJ; and
- Foreign nationals granted exemption by law *(D.O. No. 186-17, Sec. 2).*

Meanwhile, if he falls under any of the following categories who are **excluded** from securing an AEP, he may instead secure a Certificate of Exclusion from the Regional Office:

- Members of the governing board with voting rights only and do not intervene in the management of the corporation or in the day to day operations of the enterprise;
- Corporate officers
- President and Treasurer, who are part-owner of the company;
- Those providing consultancy services who do not have employers in the Philippines;
- Intra corporate transferee who is a manager, executive, or specialist and an employee of the foreign service supplier for at least one year continuous employment prior to deployment to a branch, subsidiary affiliate or representative office in the Philippines;
- Contractual service supplier who is a manager, executive, or specialist of a foreign service supplier which has no commercial presence in the Philippines: (i) who enters the Philippines temporarily to supply a service pursuant to a contract between his/her employer and a service consumer in the Philippines; (ii) must possess the appropriate educational and professional qualifications; and (iii) must be employed by the foreign service supplier for at least one year prior to the supply of service in the Philippines;
- Representative of the Foreign Principal/Employer assigned in the Office of Licensed Manning Agency (OLMA) *(D.O. No. 186-17, Sec. 3-4).*

III. LABOR STANDARDS

A. Conditions of Employment

COVERAGE

19. Who are covered by the Labor Code provisions on Working Conditions and Rest Periods?

The Labor Code provisions on Working Conditions and Rest Periods apply to employees in all establishments and undertaking whether for profit or not, but not to:

- Government employees;
- Managerial employees including members of the managerial staff;
- Field personnel
- Members of the family of the employer who are dependent on him for support
- Domestic helpers
- Persons in the personal service of another;
- Workers paid by result *(LABOR CODE, Art. 82).*

HOURS OF WORK

Normal hours of work; hours worked

20. What is the normal hours of work?

Article 83 of the Labor Code provides that the normal hours of work of any employee shall not exceed eight (8) hours a day. Health personnel in cities and municipalities with a population of at least one million (1,000,000) or in hospitals and clinics with a bed capacity of at least one hundred (100) shall hold regular office hours for eight (8) hours a day, for five (5) days a week, exclusive of time for meals *(LABOR CODE, Art. 83).*

Meal periods

21. O was employed as a bank teller in K Bank. She was required to work daily for a period of eight straight hours.

a. Is this schedule allowed by law?
b. In case O was only given a meal break of 15 minutes, can he claim compensation for the shorter meal period?

a. As a general rule, the schedule is not allowed. Article 85 of the Labor Code provides that it shall be the duty of every employer to give his employees not less than sixty (60) minutes time-off for their regular meals *(LABOR CODE, Art. 85).*

b. Yes, he can claim compensation. A meal period of less than twenty (20) minutes may be given by the employer provided that such shorter meal period is credited as compensable hours worked of the employee in the following cases:
   i. Where the work is non-manual work in nature or does not involve strenuous physical exertion;
   ii. Where the establishment regularly operates not less than sixteen (16) hours a day;
   iii. In case of actual or impending emergencies or there is urgent work to be performed on machineries, equipment or installations to avoid serious loss which the employer would otherwise suffer; and
   iv. Where the work is necessary to prevent serious loss of perishable goods *(IRR OF THE LABOR CODE, Sec. 7, Rule I)*.

Night-shift differential

22. X works in a call center which operates twenty-four (24) hours a day. His shift starts at 4:00 P.M. until 1:00 A.M. of the following day. Is he entitled to any additional compensation for work performed during this shift?

Yes, X is entitled to a night differential pay. Under Article 86 of the Labor Code, every employee shall be paid a night shift differential of not less than ten percent (10%) of his regular wage for each hour of work performed between 10:00 o'clock in the evening to six o'clock in the morning. In the case of X, he is entitled to night shift differential for work performed from 10:00 pm until 1:00 am of the day following (LABOR CODE, Art. 86). *(LABOR CODE, Art. 86)*.

Overtime work

23. DEF Foundation is a non-profit organization dependent for its existence on contributions and donations from well-wishers. B, an office clerk therein, renders work from 7:00 A.M to 8: 00 P.M. from Monday to Friday. While admitting that it does not fall under the exceptions, DEF Foundation argued that it had not given overtime pay because it should be exempt as a charitable institution.

a. Is B entitled to overtime pay?
b. What is the rate of additional compensation for overtime pay?

a. Yes, B is entitled to overtime pay. Article 82 of the Labor Code that the provisions on Working Conditions and Rest Periods shall apply to employees in all establishments and undertakings whether for profit or not, subject only to certain exceptions mentioned therein. Thus, the provisions are equally applicable to non-profit institutions *(LABOR CODE, Art. 82).*

b. Article 87 of the Labor Code provides that work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, an additional compensation equivalent to his regular wage plus at least twenty-five percent (25%) thereof. Work performed beyond eight hours

on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus at least thirty percent (30%) thereof *(LABOR CODE, Art. 87)*.

Note: Undertime work on any particular day shall not be offset by overtime work on any other day *(LABOR CODE, Art. 88)*.

Computation of additional compensation (rates only); facilities vs. supplements

24. U, an employee of KKD Corporation, works from 8:00 A.M. to 5:00 P.M. on Monday to Friday. On June 12, she worked from 8:00 A.M. to 8:00 P.M. What are the additional compensations she is entitled to? Discuss each entitlement and the respective rates applicable.

U is entitled to holiday pay and overtime pay. For holiday pay, the rule is that work performed on a regular holiday merits at least twice (200%) the wage rate of the employee. Meanwhile, with respect to the overtime pay, work in excess of eight (8) hours performed on a regular holiday shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday plus at least 30% thereof. Thus, the following formula is applicable: Compensation = [(Hourly rate of basic daily wage x 200% x 130% x number of hours work) + (Basic wage rate x 200%)] *(LABOR CODE, Art. 87; Art. 94(b))*.

25. Distinguish facilities from supplements.

Facilities are items of expense necessary for the laborer's and his family's existence and subsistence so that by express provision of law. On the other hand, supplements constitute extra remuneration or special privileges, or benefits given to or received by the laborers over and above their ordinary earnings or wages. Facilities form part of the wage and are deductible therefrom when furnished by the employer, whereas supplements do not form part of the wage and are therefore not deductible *(SLL International Cables Specialist et. al. v. NLRC, G.R. No. 172161, March 2, 2011)*.

WEEKLY REST PERIODS

26. X and Y decided to put up an IT firm. They agreed to hire 20 employees for various positions such as software developers and engineers, marketing officers and administrative assistants. Being optimistic on the growth of the company, X and Y wanted to operate daily. In the proposed employment contract, the employees are required to report for work from Mondays to Sundays. X and Y sought your advice on the legality of the employment contract. What advice will you give them?

I will advise X and Y to include in the employment contract a weekly rest period for the employees. Article 91 of the Labor Code provides that it shall be the duty of every employer, whether operating for profit or not, to provide each of his employees a rest period of not less than twenty-four (24) consecutive hours after every six (6) consecutive normal work days. The employer shall determine and schedule the weekly rest day of his employees, subject to collective bargaining agreement and to such rules and regulations as the Secretary of Labor and Employment may provide. As an exception, the employer shall respect the preference of employees as to weekly rest day when such preference is based on religious grounds *(LABOR CODE, Art. 91)*.

HOLIDAYS

27. Mr. X is engaged in the business of selling various household and food products. He has a medium-sized grocery store located in the town center mainly catering to the residents of the town. The store is open daily from 8AM to 9PM, including weekends and holidays. Due to high volume of sales, he had to employ ten (10) persons to assist in the daily store operations. All 10 employees are given a fixed and regular schedule with a rest day per week. One of his employees, Y, acts as cashier. During her years of employment, Y had worked as scheduled, without objection, including on holidays. The dispute arose when Y demanded holiday pay from Mr. X. In his defense, Mr. X claimed that he is exempted from paying holiday pay because he is regularly employing 10 workers only. Is the contention correct?

No, the contention of Mr. X is not correct. As general rule, holiday pay benefit applies to all employees. However, one of the exceptions therein are retail and service establishments regularly employing less than ten workers. In other words, exemptions from holiday pay apply only to establishments employing “less than ten” employees or workers, meaning one to nine. Otherwise, if the number of employees equal to ten or more, such employer is no longer covered by the exception. Accordingly, Mr. X is obliged to pay holiday pay to his employees, including Y *(IRR of the Labor Code, Sec. 1, Rule IV, Book III).*

28. C, a worker at XYZ Center, was on leave without pay on April 17, 2019. He did not report for work on April 18 and 19, Maundy Thursday and Good Friday, respectively. Is C entitled to holiday pay for the two successive holidays? Explain.

No, C is not entitled to holiday pay for the two successive holidays. Where there are two (2) successive regular holidays, like Maundy Thursday and Good Friday, an employee may not be paid for both holidays if he/she absents himself/herself from work on the day immediately preceding the first holiday, unless he/she works on the first holiday, in which case he/she is entitled to his/her holiday pay on the second holiday *(IRR of the Labor Code, Sec. 10, Rule IV, Book III)*.

SERVICE CHARGES

29. How should service charges be distributed?

All rank-and-file employees of employers and contractors collecting service charges are entitled to equal share in the 85% of the total of such charges. The remaining 15% may be retained to cover for loss and breakages and for distribution to managerial employees, at the discretion of the management in the latter case. In restaurants or similar establishments where no service charge is collected but there is a policy or practice of pooling tips, such pooled tips shall be distributed in the same manner *(2018 Handbook on Worker's Statutory Monetary Benefits, p. 25).* The shares referred to herein shall be distributed and paid to the employees not less than once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days *(IRR OF THE LABOR CODE, Sec. 4, Rule VI).*

30. What is the rule in case the service charge is abolished?

In the event that the company stopped collecting service charges, the share of the covered employees shall be considered as integrated in their wages. The basis of the amount to be integrated shall be the average monthly share of each employee for the last 12 months immediately preceding the abolition of withdrawal of such charges *(IRR OF THE LABOR CODE, Sec. 5, Rule VI).*

13th MONTH PAY

31. W is real estate agent engaged in selling condominium units. In her employment contract with XYZ Builders, she is paid on a purely commission basis at the rate of 10% of the total purchase price of the condominium units she sold. After two years with the company, W claimed 13th month pay from XYZ Builders. Is XYZ Builders required to pay 13th month pay to W?

No, XYZ Builders is not required to pay 13th month pay because it falls within the exception as an employer of those who are paid on a purely commission basis. The following are not covered by PD 851, or the 13th Month Pay Law:

- The government and any of its political subdivisions, including government-owned and controlled corporations, except those corporations operating essentially as private subsidiaries of the government;
- Employers who are already paying their employees thirteenth- month pay or more in a calendar year or its equivalent at the time of the issuance of PD 851;
- Persons in the personal service of another in relation to such workers; and
- Employers of those who are paid on purely commission, boundary or task basis, and those who are paid a fixed amount for performing specific work, irrespective of the time consumed in the performance thereof (except those workers who are paid on piece-rate basis, in which case their employer shall grant them thirteenth-month pay) *(2018 Handbook on Workers' Statutory Monetary Benefits, p. 40)*.

B. Wages

PAYMENT OF WAGES

32. Distinguish wage from salary.

Wage applies to the compensation for skilled or unskilled manual labor while salary denotes compensation for a higher grade or supervisor level of employment *(Equitable Banking Corp. v. Sadac, G.R. No. 164772, June 8, 2006 citing Gaa v. CA, G.R. No. L-44169, December 3, 1985).*

33. What is the required form of payment of wages?

As a general rule, wages shall be paid in legal tender; use of promissory notes and other forms is prohibited even when expressly requested by employee *(IRR of the Labor Code, Sec. 1, Rule VIII, Book III).* The only exceptions in which the law allows payment by check are when:

a. Such manner is customary upon effectivity of the Labor Code, or
b. Stipulated in a CBA, or
c. The following conditions are met:
   i. There is a bank or facility for encashment within a radius of 1 km
   ii. Employer does not receive any pecuniary benefit from the arrangement
   iii. Employees are given reasonable time during banking hours to withdraw, such time shall be considered as working hours
   iv. Written consent of employees concerned if there is no CBA *(Sec. 2, Rule VIII, Book III, IRR of the Labor Code)*.

34. When is payment to a person other than the employee himself authorized under the law?

Wages shall be paid directly to the employee, except when:
a. Payment to a member of the family is authorized in writing by the employee
b. Payment to another is authorized by law (such as payment for insurance premiums and union dues
c. In case of death, payment to heirs of the deceased employees without need of intestate proceedings *(IRR of the Labor Code, Sec. 5, Rule VIII, Book III)*.

PROHIBITIONS REGARDING WAGES

35. What are the prohibitions regarding wages?

The following are the prohibitions regarding wages:

- **Non-interference in disposal of wages** – No employer shall interfere with the employee's freedom to dispose of his wages nor shall force, compel, or oblige employees to purchase merchandise, commodities or other property from the employer or from any other person, or otherwise make use of any store or services of such employer or any other person *(LABOR CODE, Art. 112);*
- **No wage deduction** – No employer shall make any deductions from the employee's wages except when authorized to do so *(LABOR CODE, Art. 113);*
- **No deposits for loss or damage** – No employer shall require the worker to make deposits from which deductions shall be made for reimbursement of loss of or damage to tools, materials, or equipment supplied by the employer except when the employer is engaged in such business requiring such deposits as determined by the Secretary of Labor *(LABOR CODE, Art. 114);*
- **Limitations on deductions from deposits for loss or damage** – No employer shall make any deduction from the employee's deposits for the actual amount of the loss or damage unless the employee has been heard thereon and his responsibility has been clearly shown *(LABOR CODE, Art. 115)*;
- **Withholding of wages and kickbacks prohibited** – No employer shall withhold any amount from the wages unless authorized to do so or induce the employee to give up any part of his wages by force, stealth, intimidation, threat or dismissal or by any other means without his (consent (LABOR CODE, Art. 116);
- **No deduction to ensure employment** – No employer shall make deductions as consideration of a promise of employment or retention of employment *(LABOR CODE, Art. 117)*;
- **No retaliatory measures** – No employer shall refuse to pay or reduce the wages and benefits or otherwise discharge the employee who has filed any complaint under this Title, or has testified or is about to testify in such proceedings *(LABOR CODE, Art. 118)*; and
- **No false reporting** – No employer shall make any statement, report or record knowing such statement, report or record to be false in any material respect *(LABOR CODE, Art. 119).*

WAGE DISTORTION; CONCEPT

36. D Manufacturing is engaged in the business of manufacture and sale of household appliances. The supervisors and foremen of the company were then receiving a daily wage of P320 and P300, respectively. Sometime in 2005, a new law was passed increasing the statutory minimum wage and salary rates in the private sector by P25 per day but only for those receiving the minimum wage and up to P300. Did the wage increase result in wage distortion? Explain.

Yes, the wage increase resulted in wage distortion. Wage distortion means a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation. In other words, wage distortion means the disappearance or virtual disappearance of pay differentials between lower and higher positions in an enterprise because of compliance with a wage order. In the case at bar, only the daily wages of foremen were increased from P300 to P325, resulting in a situation where the foremen would receive more than that of the supervisors. Thus, wage distortion resulted *(PI*

Manufacturing v. PI Manufacturing Supervisors and Foreman Association, G.R. No. 167217, February 4, 2008).

37. X Bank classifies its employees according to five (5) levels. Sometime in 2010, the Board of Directors approved a new salary scale wherein the hiring rates of new employees were increased by PhP1,000 for those falling under Levels 1-3, and by PhP2,000 for those classified under Levels 4-5. Only the salaries of those who fell below the new minimum rates were adjusted. The union demanded for an across-the-board increase for old employees. X Bank refused and maintained that it was not obliged to do so. In its complaint, the union contended that the adjusted salary scale resulted in a wage distortion using the classification based on new and old employees and thus necessitated a correction or adjustment. Did the said change in salary scale result in wage distortion?

No, the change did not result in wage distortion. Jurisprudence laid down the four elements of wage distortion, to wit: (1) an existing hierarchy of positions with corresponding salary rates; (2) a significant change in the salary rate of a lower pay class without a concomitant increase in the salary rate of a higher one; (3) the elimination of the distinction between the two levels; and (4) the existence of the distortion in the same region of the country. In the case at bar, the first element is wanting. While seniority may be a factor in determining wages, it cannot be the sole basis when the nature of their work differs. Moreover, for purposes of determining the existence of wage distortion, employees cannot create their own independent classification as this is a matter of management judgment and discretion *(Bankard Employees Union-Workers Alliance Trade Unions v. NLRC, G.R. No. 140689, February 17, 2004)*.

38. How should a wage distortion be settled? *(2006, 1997, 2009 Bar)*

Where the application of any prescribed wage increases by virtue of a law or wage order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortion shall be resolved through the grievance procedure as provided in the applicable collective bargaining agreement and, if the dispute remains unresolved, then through voluntary arbitration. In cases where there are no collective bargaining agreements or recognized labor unions, the employers and workers shall endeavor to correct such wage distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, the issue of wage distortion shall be referred to the appropriate branch of the NLRC *(LABOR CODE, Art. 124, par. 5).*

NON-DIMINUTION OF BENEFITS

39. W Company is engaged in a business involving integrated circuits to serve communications and data processing industries. Through negotiations by the union, the company agreed to increase the salaries/wages of its employees within a four-year period. After a year of implementing the agreement, the company discovered an error in the automated payroll which caused overpayment of salaries/wages to employees. Accordingly, the company notified the employees that the overpayment will be deducted on a staggered basis. The union opposed the deduction and thereafter filed a complaint against the company for violation of Article 100 of the Labor Code on non-diminution of benefits. Will the action prosper?

No, the action will not prosper. Diminution of benefits is the unilateral withdrawal by the employer of benefits already enjoyed by the employees. There is diminution of benefits when it is shown that: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer. In this case, the third requisite is absent. An erroneously granted benefit may be withdrawn without violating the prohibition against non-diminution of benefits because no vested right may be said to have arisen nor any diminution of benefit may have resulted *(TSPIC Corp v. TSPIC Employees Union, G.R. No. 163419, February 13, 2008)*.

C. Leaves

SERVICE INCENTIVE LEAVE

40. As a general rule, every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five (5) days with pay. Who are excluded from the benefit?

The following are not entitled to service incentive leave:

- Government employees
- Managerial employees and officers or members of the managerial staff
- Persons in the personal service of another
- Field personnel and those whose time and performance is unsupervised by the employer

- Those already enjoying the benefit
- Those enjoying vacation leave with pay of at least five (5) days
- Those employed in establishments regularly employing less than 10 employees *(2018 Handbook on Workers' Statutory Monetary Benefits, p. 26).*

41. X worked as a bus driver for AB Trans. His daily route is from Lipa City, Batangas to Cubao, Quezon City. For every trip, he is required to report on time to ensure prompt departure and arrival. Bus inspectors also board the bus for general inspection while on the way from the point of origin to destination. During his five (5) years of employment, he did not use his service incentive leave. When he was dismissed, he sued his employer for non-payment of commutable service incentive. AB Trans argued that X was not entitled to service incentive leave because he is considered as a field personnel paid on a commission basis and thus excluded from the benefit. Will the action of X prosper? Explain.

Yes, the action of X will prosper. Section 1(D), Rule V, Book III of the Implementing Rules and Regulations of the Labor Code excludes field personnel and other employees whose performance is unsupervised by the employer including those who are engaged on purely commission basis. However, the phrase "other employees whose performance is unsupervised by the employer" must not be understood as a separate classification but must be taken as an amplification of the definition of field personnel. Here, while X is paid on a commission basis, his work is supervised by his employer. Not being considered as field personnel, X is entitled to service incentive leave *(Auto Bus v. Bautista, G.R. No. 156367, May 16, 2005)*.

Note: D.O. No. 118-12 expressly provides that public utility bus drivers and conductors are now entitled to be paid service incentive leave of five (5) days for every year of service.

MATERNITY LEAVE

42. What are the conditions for entitlement to the maternity leave benefit?

To be entitled to the maternity leave benefit, a female employee should be an SSS member employed at the time of her delivery or miscarriage; she must have given the required notification to the SSS through her employer; and her employer must have paid at least three monthly contributions to the SSS within the twelve-month period immediately before the date of the contingency (i.e., childbirth or miscarriage) *(2018 Handbook on Workers' Statutory Monetary Benefits, p. 28)*.

43. A, a female employee, who is living-in with B, is pregnant with her fourth child. Prior to her due date, she filed for maternity leave, but the employer refused the application because she is not married. Is the refusal of the employer justified?

No, the refusal of the employer is not justified. The law does not discriminate based on the civil status of a female employee. Accordingly, this benefit applies to all female employees, whether married or unmarried. As long as the female employee has paid at least three (3) monthly contributions in the twelve-month period immediately preceding the semester of her childbirth, she can avail of the maternity benefits by complying with the requirements on notification. Hence, even if A is not married, she is still entitled to the maternal leave, regardless of civil status or the legitimacy of her child *(2018 Handbook on Workers' Statutory Monetary Benefits, p. 28)*.

PATERNITY LEAVE

44. What are the conditions for entitlement of paternity leave benefit?

A legally married male employee in the private and public sector shall be entitled to a seven-day paternity leave benefit provided that he has met the following conditions:

a. He is an employee at the time of the delivery of his child;
b. He is cohabiting with his spouse at the time that she gives birth or suffers a miscarriage;
c. He has applied for paternity leave with his employer within a reasonable period of time from the expected date of delivery by his pregnant spouse, or within such period as may be provided by company rules and regulations, or by collective bargaining agreement; and
d. His wife, to whom he is legally married, has given birth or suffered a miscarriage *(2018 Handbook on Workers' Statutory Monetary Benefits, p. 30).*

SOLO PARENT LEAVE

45. A is married to B and they have three minor children. Later on, B was convicted for the crime of theft and meted the penalty of imprisonment for two years. B was then arrested and jailed to serve the sentence. Is A considered as a solo parent?

Yes, A is considered as a solo parent because she was left with the responsibility of parenthood due to the criminal conviction resulting to the imprisonment of her spouse for at least a year. Section 3 (a) of R.A. No. 8972 provides that a solo parent is:

- A woman who gives birth as a result of rape and other crimes against chastity provided she keeps and raises the child
- Parent left solo or alone with the responsibility of parenthood due to:
  - Death of the spouse
  - Spouse is detained of serving sentence for criminal conviction for at least a year
  - Due to physical or mental incapacity of spouse
  - Due to legal separation or de facto separation from spouse for at least 1 year so long as entrusted with custody of the child
  - Due to declaration of nullity or annulment of marriage as long as in custody of the children
  - Due to abandonment of spouse for at least 1 year.
- Unmarried mother or father who preferred to keep and rear his or her children
  - Any other person who solely provides parental care and support to a child.
  - Any family member who assumes the responsibility of head of family as a result of death, abandonment, disappearance or prolonged absence of the parent *(R.A. No. 8972, Sec. 3)*.

LEAVE BENEFITS FOR WOMEN WORKERS UNDER RA 9710 AND RA 9262

46. A was employed by BKY Company on June 10, 2010. Sometime in 2018, she suffered from intraductal papilloma. Her doctor advised her that she needs to undergo the procedure of excision of the lactiferous duct fistula. As a result, she filed a leave under the special leave benefits for women. Is A entitled to such benefit?

Yes, A is entitled to the special leave benefit for women. Section 18 of R.A. No. 9710 provides that a woman employee having rendered continuous aggregate employment service of at least six (6) months for the last twelve (12) months shall be entitled to a special leave benefit of two (2) months with full pay based on her gross monthly compensation following surgery caused by gynecological disorders *(R.A. No. 9710, Sec. 18)*.

47. B, a female employee, filed charges against her live-in partner under R.A. No. 9262 or Anti-Violence Against Women and Their Children Act. After suffering trauma, she filed for a leave. However, her employer did not approve the same claiming that she already used up all her sick leave. Is B entitled to file for a leave?

Yes, B is entitled to a leave under R.A. No. 9262. Under Section 43 of R.A. No. 9262, victims of violence against women and their children shall be entitled to take a paid leave of absence up to 10 days in addition to other paid leaves under the Labor Code extendible when the necessity arises as specified in the protection order. Hence, even if B already used up all her sick leaves, she is still entitled to take a leave under R.A. No. 9262 *(R.A. No. 9262, Sec. 43)*.

D. Special Groups of Employees

WOMEN

Discrimination

48. What are the acts of discrimination prohibited under the Labor Code?

Article 133 of the Labor Code provides that it shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex. Specifically, the following are acts of discrimination:

a. Payment of lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee for work of equal value; and
b. Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes *(LABOR CODE, Art. 133).*

Prohibited Acts

49. P Airlines is an airline company catering domestic flights in the country. Z was hired as a stewardess in May 2000. Sometime in March 2015, P Airlines fired Z on the ground that she had gotten married. The dismissal was pursuant to a company policy requiring that a female employee must be single and shall not marry during her employment. P Airlines justified its company policy based on Art. 130 of the Labor Code which states that an employer can determine appropriate standards for retirement or termination in special occupations such as those of flight attendants and the like. Did P Airlines violate the Labor Code?

Yes, P Airlines violated Article 134 of the Labor Code which specifically provides that it shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage. In the case at bar, the stipulation requiring a female employee to be single violates the prohibition on stipulations against marriage. Article 134 provides protection for women that is broader and more powerful than the regulation provided under Article 130 *(Zialcita v. PAL, Case No. RO4-3-3398-76, February 20, 1977)*.

50. GG Airlines hired and recruited A, B and C as flight attendants. They continued their employment until they were separated from service on various dates. Later, A, B and C brought an action for illegal dismissal against GG Airlines. According to them, the termination of their employment was illegal because the same was made solely on the ground that they became pregnant. In its defense, GG Airlines invoked the Employment Contract which provides that the employment of a flight attendant who becomes pregnant at any time during the term of the contract shall render such contract void and shall be cause for termination for lack of medical fitness. Decide the case.

A, B and C were illegally dismissed. It is illegal and unlawful to terminate the employment of any woman by reason of pregnancy. Section 135 of the Labor Code provides that it shall be unlawful for any employer to discharge a woman on account of her pregnancy. While pregnancy does present physical limitations that may render difficult the performance of functions associated with being a flight attendant, it would nevertheless be the height of iniquity to view pregnancy as a disability so permanent and immutable that, it must entail the termination of one's employment. It is clear that any individual, regardless of gender, may be subject to exigencies that limit the performance of functions, but pregnancy could not be such an impairing occurrence that it leaves no other recourse but the complete termination of the means through which a woman earns a living *(LABOR CODE, Art. 135; Saudi Arabian Airlines v. Rebesencio et al., G.R. No. 198587, January 14, 2015).*

Sexual Harassment (R.A. No. 7877)

51. A is a female employee working as an office clerk under the supervision of B, the office manager. On several occasions, B called A asking her to come to his office. At one time, while inside the office, B touched her shoulder and part of her neck. He also tickled her ears. A filed a complaint for sexual harassment. B argued that his acts do not constitute sexual harassment because A did not allege in her complaint that there was a demand, request, or requirement of a sexual favor as a condition for her continued employment or for her promotion to a higher position. Is B guilty of sexual harassment? Explain.

Yes, B is guilty of sexual harassment. It is true that sexual harassment under R.A. No. 7877 calls for a "demand, request or requirements of a sexual favor". However, it is not essential that the demand, request or requirement be made as a condition for continued employment or for promotion to a higher position. It is enough that the respondent's acts result in creating an intimidating, hostile or offensive environment for the employee. In the case at bar, the acts committed by B generated an intimidating and hostile environment for A *(Domingo v. Rayala, G.R. No. 155831, February 18, 2008)*.

MINORS (R.A. NO. 7610, AS AMENDED BY R.A. NO. 9231)

52. R, a 17-year-old girl, signed a contract with MG Company to work as a model promoting the new flavors of Crazy Vodka, its premier alcoholic product. It was stipulated in the contract that since R is a minor, she will only work for eight (8) hours per day during the shooting and will not work beyond 10:00 P.M. until 6:00 A.M. the next morning. Did MG Company violate any law?

Yes, MG Company violated R.A. No. 9231. Under D.O. No. 65-04, the rules and regulations implementing R.A. No. 9231, as amended, no child below 18 years of age shall be employed as a model in any advertisement directly or indirectly promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts, gambling

or any form of violence or pornography. Thus, MG Company clearly violated the prohibition when it engaged R in advertising an alcoholic beverage. *(D.O. No. 65-04, Sec. 6)*.

KASAMBAHAY (RA 10361)

53. D is employed by A Company to perform laundry services at its staff house. One morning, while D was performing her assigned task and hanging her laundry, she accidentally slipped and hit her back on a stone. The accident prevented her from working. She was permitted to go on leave for medication. After a month, A Company offered her PhP5,000 to persuade her to quit her job instead. D refused and informed A Company that she preferred to return to work. A was not permitted to work again and was thereafter dismissed. Hence, D filed a case for illegal dismissal before the Labor Arbiter. The Labor Arbiter awarded salary differential, 13th month pay differential and separation pay. NLRC affirmed and held that D was a regular employee and thus entitled to such benefits. In its defense, A Company insisted that D is a mere domestic helper and not a regular employee. Is D a *kasambahay*? Explain.

No, D is not a *kasambahay*. Under Section 4(d) of R.A. No. 10361, a domestic worker or *kasambahay* refers to any person engaged in domestic work within an employment relationship. Domestic or household service shall mean service 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. The criterion is the personal comfort and enjoyment of the family of the employer in the home of said employer. The definition cannot be interpreted to include househelper or laundrywomen working in staff houses of a company. Hence, D cannot be considered as a *kasambahay (Apex Mining v. NLRC, G.R. No. 94951, April 22, 1991).*

54. What are the rights and benefits of a kasambahay granted under RA 10361 or Batas Kasambahay?

The following are the rights of a kasambahay:

a. Minimum wage;
b. Other mandatory benefits, such as the daily and weekly rest periods;
c. Service Incentive Leave;
d. 13th month pay;
e. Freedom from employers' interference in the disposal of wages;
f. Coverage under the SSS, PhilHealth and Pag-IBIG laws;
g. Standard of treatment;
h. Board, lodging and medical attendance;
i. Right to privacy;
j. Access to outside communication;
k. Access to education and training;
l. Right to form, join, or assist labor organization;
m. Right to be provided a copy of the employment contract;
n. Right to certificate of employment;
o. Right to terminate the employment; and
p. Right to exercise their own religious beliefs and cultural practices.

HOMEWORKERS

55. Who is an industrial homeworker?

An industrial homeworker can be defined as any person engaged in industrial homework. Industrial homework means a system of production where work for an employer or contractor is carried out by a homeworker in or about his/her home. In such case, the materials may or may not be furnished by the employer or contractor. *(IRR OF THE LABOR CODE, Sec. 2)*.

56. When is homework not allowed?

No homework shall be performed on the following: (1) explosives, fireworks and articles of like character; (2) drugs and poisons; and (3) other articles, the processing of which requires exposure to toxic substances *(IRR OF THE LABOR CODE, Sec. 13).*

NIGHT WORKERS

57. M is a construction worker whose work day is from 10:00 P.M. to 6:00 A.M. the following day. While at work, he suddenly experienced back pain. Due to the incident, he requested his employer to allow him to undergo health assessment and get advice on how to reduce his back pain during work. The employer refused and claimed that M is not covered by the law governing nightworkers as the same only applies to women. Is the contention correct?

No, the contention is not correct. Under Section 2 of D.O. No. 119-12, the implementing rules and regulations of R.A. No. 10151, a night worker is any employed person whose work covers the period from 10 in the evening to 6 o'clock the next morning provided that the worker performs no less than 7 consecutive hours of work. The law does not distinguish as to what sex the employee should be. Accordingly, all workers whose schedule falls within the said schedule are deemed night workers and may avail of the right to request health assessment without charge.

APPRENTICES AND LEARNERS

58. BLC Hotel and Restaurant offers apprenticeship program as approved by the Secretary of Labor. Under the apprenticeship program, students may be accepted for a six-month training without compensation. A, an HRM student, submitted her application pursuant to her school's internship program. As part of the requirements for graduation, she is required to complete 200 hours of on-the-job training work. A insisted that she should receive compensation as a matter of right. Is A correct?

No, A is not correct. Article 72 of the Labor Code provides that the Secretary of Labor may authorize the hiring of apprentices without compensation whose training on the job is required by the school or training program curriculum or as a requisite for graduation or board examination. In this case, A cannot insist on receiving compensation as a matter of right since the reason why she applied to BLC is to comply with the school requirement for which she is not entitled to a compensation.

PERSONS WITH DISABILITIES

Discrimination

59. P is a software engineer in an advertising firm. Sometime in 2015, she figured into an accident which resulted to the loss of her ability to use her legs. Nevertheless, the performance and productivity of P remained the same. When the advertising firm had a change of management, P noticed that her wage became 25% lower than the minimum wage. When P asked management as to the sudden diminution of her wage, the management said that handicapped workers may be paid not less than 75% of the minimum wage. Is the employer correct?

No, the employer is not correct. Under Section 5 of R.A. No. 7277, as amended by R.A. 10524, a qualified disabled employee shall be subject to the same terms and conditions and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as a qualified able-bodied person. A qualified disabled person is an employee who can perform, with or without reasonable accommodations, the essential functions of her employment. In this case, P is a qualified disabled person. There was no allegation that P cannot perform the essential functions of her employment. The employer should not have had her wage cut below minimum wage and should have provided the same compensation received by able-bodied software engineers in the firm.

Incentives for employers

60. X, the owner of JM Foods Corporation, informed you about his plan to expand his business and put up a new brand of food chain in the Philippines. He told you that he intends to hire at least 200 crews for his initial opening. How will you convince X to hire persons with disabilities?

I will advise X to hire persons with disabilities and emphasize to him the incentives provided under the Magna Carta for Disabled Persons. Section 8(b) of R.A. No. 7277, as amended by R.A. 10524, provides that private entities that employ disabled persons who meet the required skills or qualifications, either as a regular employee, apprentice or learner, shall be entitled to an additional deduction, from their gross income, equivalent to 25% of the total amount paid as salaries and wages to disabled persons: Provided, however, that such entities present proof as certified by the DOLE that disabled persons are under their employ. Provided further, that the disabled employee is accredited with DOLE and DOH as to his disability, skills and qualifications.