

Part-Time Employment in the Philippines

The Labor Code and its implementing rules have no specific provisions regarding part-time regular employment. The International Labor Organization (“ILO”), however, defines “part-time work” as “a single, regular or voluntary form of employment with hours of work substantially shorter than those considered as normal in the establishment.” This definition excludes certain forms of employment, which, although referred to as part-time work, are in particular, irregular, temporary or intermittent employment, or cases where hours of work have been temporarily reduced for economic, technical or structural reasons.

In an Explanatory Bulletin on Part-Time Employment dated 2 January 1996 (hereafter, “DOLE Explanatory Bulletin on Part-Time Employment”), it was explained that part-time work may take different forms depending on the agreed hours of work in a day, the days of work in a week or other reference periods. In the Philippines, however, the two most common and acceptable forms are four (4) hours work per day and weekend work or two (2) full days per week.

Security of tenure of part-time workers

Under the DOLE Explanatory Bulletin on Part-Time Employment, the same protection afforded to full-time workers with respect to security of tenure should also be extended to part-time workers. Thus, the protection provided under Articles 279 to 286, Book VI of the Labor Code on Termination of Employment, and its implementing rules and regulations, should likewise be applied to part-time workers. If for example, a part-time employee becomes regular, he cannot be dismissed summarily without just or authorized cause and without complying with the twin requirements of notice and hearing, as mandated by the due process clause of the Constitution. Otherwise, the part-time regular employee shall be considered illegally dismissed. Thus, the part-time character of the employment does not in and of itself provide legal justification for subjecting the position to “contractualization”. Stated otherwise, a part-time regular position cannot be legally made a contractual item.

Probationary employment of part-time workers

Using the legal principles enunciated in Article 281 of the Labor Code on probationary employment *vis-à-vis* Article 13 of the Civil Code on the proper reckoning of periods, a probationary part-time employee shall become regular in status after working for such number of hours or days which equates to, or completes, a six-month probationary period in the same establishment doing the same job under the employment contract. In other words, "the six-month probationary period prescribed by law should be interpreted to mean the number of normal working days and hours within the normal six-month period in the establishment or undertaking. For this reason, part-timers should become regular in status, after working for the total number of hours or days, which completes a six-month probationary period of a full-time worker in the same establishment doing the same job under normal circumstances."

To illustrate, under Article 13 of the Civil Code, a "day" is understood to be the twenty-four hour period which commences from the time the employee regularly starts to work. It is not necessarily the ordinary calendar day (like Monday, Tuesday, etc.) from 12:00 midnight to 12:00 midnight unless the employee starts working at midnight, which is unlikely, in which case the start of the 24-hour period in determining his workday coincides with the start of the calendar day. Thus, if a part-time employee regularly works from 11:00 a.m. to 3:00 p.m., the workday of such employee is from 11:00 a.m. to 11:00 a.m. the following day. Otherwise stated, the period from 11:00 a.m. to 3:00 p.m. is the regular working hours or shift of the employee while the period from 11:00 a.m. to 11:00 a.m. the following day is his work day. Accordingly, for purposes of determining whether a part-time employee has completed the probationary period of employment as a requisite for entitlement to regular employment, the six-month service in a calendar year should be reconciled with the idea of six normal working months in the establishment which for the part-time employee should be determined on the total number of hours and days worked.

Once a part-time employee becomes a regular employee, he is entitled to security of tenure under the law and he can only be separated for a just or authorized cause and after due process.

Indicators of regular employment of part-time workers

The DOLE Explanatory Bulletin on Part-Time Employment provides that one may know if a part-time worker is a regular employee if any of the following conditions exist:

- (1) The terms of his employment show that he is engaged as a regular or permanent employee;

- (2) The terms of his employment indicated that he is employed for an indefinite period;
- (3) He has been engaged for a probationary period and has continued in his employment even after the expiration of the probationary period; or
- (4) The employee performs activities which are usually necessary or desirable in the usual business or trade of the employer.

On the other hand, where the employment contract is fixed or for a definite period only as contemplated by law, part-time employees are likewise entitled to tenorial rights during the entire period of their fixed employment. In other words, they cannot be separated from work without just or authorized cause.

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