

Introduction

Employment relationships in the Philippines are primarily governed by the **Labor Code of the Philippines** and interpretative jurisprudence from the Supreme Court. Both employers and employees must understand the different types of employment to ensure legal compliance and establish clear expectations. The recognized types of employment in the Philippines are:

1. **Regular Employment**
2. **Casual Employment**
3. **Project Employment**
4. **Seasonal Employment**
5. **Fixed-Term Employment**
6. **Probationary Employment**

This comprehensive guide delves into each employment type, provides practical examples, discusses essential contractual requirements, and offers sample provisions for drafting employment contracts. Special emphasis is placed on regular employment, including the presumption of regularity in the absence of a written contract, and the necessity of specific contractual provisions to classify employees under other employment types.

1. Regular Employment

Definition

Regular employment exists when an employee performs tasks that are **necessary or desirable** in the usual business or trade of the employer. This is provided under **Article 295** (formerly **Article 280**) of the **Labor Code of the Philippines**, which states:

“The provisions of written agreements 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...”

Presumption of Regular Employment

In the Philippines, there is a legal presumption that an employee is a **regular employee**

unless the employer can prove otherwise. This means that **all employees without a written contract specifying the nature and terms of their employment are considered regular employees.** The Supreme Court has consistently held that, in the absence of clear evidence to the contrary, the law leans towards regular employment to protect workers' rights to security of tenure.

Legal Basis

- **Article 295** of the Labor Code emphasizes the regular status of employees performing necessary or desirable activities.
- In the absence of a written contract or clear agreement indicating that the employment is not regular, the default classification is regular employment.

Implications

- **Security of Tenure:** Regular employees enjoy protection from unjust dismissal and have the right to due process before termination.
- **Statutory Benefits:** Entitlement to benefits such as holiday pay, service incentive leave, 13th-month pay, and other statutory benefits.
- **Termination:** Can only be terminated for just or authorized causes as defined by the Labor Code, and with due process.

Ensuring Non-Regular Employment

If an employer intends to classify an employee under a different employment type (e.g., project-based, casual, seasonal, fixed-term, or probationary), it is crucial to have a **written contract** that explicitly states the nature and terms of the employment. The contract must follow the guidelines provided in the subsequent sections of this guide, including specific provisions that comply with legal requirements.

2. Casual Employment

Definition

Casual employment refers to work that is **not usually necessary or desirable** to the employer's usual business or trade and is typically short-term. However, if a casual employee renders at least **one year of service**, whether continuous or broken, they become

a regular employee concerning the activity they perform.

Legal Basis

- **Article 295** of the Labor Code states: **“An employment shall be deemed to be casual if it is not covered by the preceding paragraphs: 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 they are employed and their employment shall continue while such activity exists.”**

Examples

- **Event Staff:** Hiring servers for a single event.
- **Temporary Administrative Assistant:** Engaging someone to cover for an employee on leave.
- **Freelance Writer:** Employing a writer for a one-off article or publication.

Contractual Requirements

To classify an employee as casual, a **written contract** must specify:

- **Duration of Employment:** Specific start and end dates.
- **Nature of Work:** Define the casual and temporary nature of the engagement.
- **Compensation Details:** Payment terms for the task or period.
- **No Expectation of Continuity:** A clause stating no guarantee of continued employment beyond the specified period.

Sample Provisions

Duration Clause:

“The Employee is engaged from [Start Date] to [End Date], after which this Contract shall automatically terminate.”

Nature of Work Clause:

“The Employee shall perform tasks related to administrative support during the specified period.”

No Expectation Clause:

“The Employee acknowledges that this is a casual engagement with no expectation of continued employment beyond the termination date.”

3. Project Employment

Definition

Project employment involves hiring an employee for a **specific project or undertaking**, the completion or termination of which has been determined at the time of engagement.

Legal Basis

- **Article 295** of the Labor Code provides: “... **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...**”

Examples

- **Construction Projects:** Employing an architect for a building project.
- **Software Development:** Hiring programmers for the development of a specific application.
- **Marketing Campaigns:** Engaging a marketing specialist for a product launch.

Contractual Requirements

To establish project employment, the contract must include:

- **Project Description:** Detailed scope and objectives.
- **Duration:** Employment tied to the project’s timeline.
- **Automatic Termination:** Clause stating employment ends upon project completion.
- **No Regularization Clause:** Employee acknowledges that they will not become regular by virtue of project employment.

Sample Provisions

Project Description Clause:

“The Employee is hired exclusively for the ‘Green Building Project,’ involving sustainable architectural design.”

Duration Clause:

“This Contract is effective from [Start Date] and shall terminate upon project completion, estimated at [End Date].”

Automatic Termination Clause:

“Employment shall cease upon project completion without need for further notice or separation pay, except as required by law.”

No Regularization Clause:

“The Employee agrees that this project-based employment does not entitle them to regular employment status.”

4. Seasonal Employment

Definition

Seasonal employment applies when work or services are performed during **specific seasons or periods** of the year, and employment is only for the duration of that season.

Legal Basis

- **Article 295** of the Labor Code mentions: “... **where the work or service to be performed is seasonal in nature and the employment is for the duration of the season...**”

Examples

- **Agricultural Work:** Hiring workers for the harvest season.
- **Retail Industry:** Employing additional staff during the Christmas season.
- **Tourism Sector:** Engaging tour operators during peak travel periods.

Contractual Requirements

To classify employment as seasonal, the contract should specify:

- **Season Defined:** Specific period or season of employment.
- **Nature of Recurring Work:** Indicate if re-engagement is expected in future seasons.
- **Compensation:** Wages and any applicable seasonal benefits.
- **No Continuous Employment:** Clarify employment is only for the season.

Sample Provisions

Season Definition Clause:

“The Employee is engaged for the holiday season from [Start Date] to [End Date] due to increased customer demand.”

Nature of Work Clause:

“Duties include customer assistance, stocking shelves, and cashiering during the specified season.”

No Continuous Employment Clause:

“This Contract is valid only for the stated season, with no guarantee of re-employment thereafter.”

5. Fixed-Term Employment

Definition

Fixed-term employment is valid when both employer and employee agree to a **definite period**, and the agreement is not a means to circumvent security of tenure laws.

Legal Basis

- While the Labor Code does not expressly define fixed-term employment, jurisprudence recognizes its validity under certain conditions, as established in cases like **Brent School, Inc. vs. Zamora** (G.R. No. 48494, February 5, 1990).

Requirements for Valid Fixed-Term Employment

- **Voluntary Agreement:** The fixed period was knowingly and voluntarily agreed upon by both parties.
- **Equal Bargaining Power:** The employer and employee dealt with each other on more or less equal terms.
- **No Circumvention:** The fixed-term contract is not intended to circumvent the employee's security of tenure.

Examples

- **Project Consultant:** Engaging a consultant for a fixed six-month period.
- **Contractual Teachers:** Hiring educators for an academic term.
- **Performing Artists:** Employing actors for a specific production run.

Contractual Requirements

To establish fixed-term employment, the contract must include:

- **Fixed Duration:** Clearly defined start and end dates.
- **Voluntary Agreement:** Mutual consent without any form of coercion.
- **Specific Purpose:** Reason for the fixed term.
- **Early Termination Conditions:** Provisions for termination before the end date.

Sample Provisions

Duration Clause:

"The Employee is hired from [Start Date] to [End Date] on a fixed-term basis."

Voluntary Agreement Clause:

"Both parties agree to this fixed term voluntarily and without undue pressure or influence."

Early Termination Clause:

"This Contract may only be terminated before the end date by mutual agreement or for just cause as defined by law."

6. Probationary Employment

Definition

Probationary employment is a trial period where the employer evaluates the employee's qualifications and performance based on reasonable standards made known at the time of engagement. It must not exceed **six (6) months** unless covered by an apprenticeship agreement stipulating a longer period.

Legal Basis

- **Article 296** (formerly **Article 281**) of the Labor Code states: "**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 they fail to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of their engagement."
- **Failure to Inform:** If the employer does not inform the employee of the reasonable standards at the time of engagement, the employee is deemed a regular employee from the start.

Examples

- **New Employee Evaluation:** A bank hires a teller on probation to assess accuracy and customer service skills.
- **Skill Assessment:** An IT company employs a developer to evaluate coding proficiency.
- **Performance Metrics:** A sales agent is assessed based on sales targets during probation.

Contractual Requirements

To properly establish probationary employment, the contract must include:

- **Probation Period Duration:** Not exceeding six months, with specific start and end dates.
- **Performance Standards (KPIs):** Clearly communicated Key Performance Indicators.
- **Assessment Timeline:** Schedule for evaluations during the probationary period.

- **Possibility of Extension:** Conditions under which the probationary period may be extended (subject to legal limitations).
- **Outcome Possibilities:** Regularization or termination based on performance.

Detailed Considerations

Assessment Timelines and Feedback

- **Monthly Evaluations:** Conduct performance reviews at least once a month.
- **Mid-Probation Review:** Provide a formal assessment halfway through the probationary period.
- **Final Evaluation:** Conduct a comprehensive review before the probation ends.
- **Feedback Mechanism:** Offer constructive feedback and areas for improvement after each assessment.

Sample Schedule:

1. **First Month Review:** Discuss initial performance, integration into the team, and any immediate concerns.
2. **Third Month Review:** Evaluate progress towards meeting KPIs, address any persistent issues, and provide support.
3. **Fifth Month Review:** Final assessment to determine readiness for regularization or need for extension.

Key Performance Indicators (KPIs)

- **Specific Metrics:** Define measurable objectives relevant to the role.
- **Realistic Goals:** Set achievable targets within the probationary period.
- **Documentation:** Provide written KPIs as part of the employment contract or an annex.
- **Notification of KPIs:** Ensure the employee acknowledges understanding of the KPIs.

Examples of KPIs:

- **Sales Position:** Achieve a minimum of 80% of the monthly sales quota.
- **Customer Service Role:** Maintain a customer satisfaction rating of at least 90%.
- **Administrative Role:** Complete assigned tasks with less than 2% error rate.

Extension of Probationary Period

Legal Framework

- The general rule is that probationary employment **shall not exceed six months**.
- Jurisprudence allows for extension under exceptional circumstances, such as:
 - **Authorized Leave:** Absence due to illness or personal reasons.
 - **Insufficient Evaluation Period:** When the employee did not render sufficient actual service days for proper evaluation.
- **Second Chance Rule**
 - An employer may extend the probationary period to give the employee a “second chance” to meet performance standards, provided that:
 - **Employee Consent:** The employee agrees to the extension in writing.
 - **Legitimate Reason:** There is a valid reason for the extension, such as initial underperformance with potential for improvement.
 - **No Circumvention:** The extension is not a means to avoid granting regular employment.

Contractual Requirements for Extension

- **Extension Agreement:** A written document stating the new probationary period.
- **Revised KPIs:** Updated performance standards, if applicable.
- **Duration of Extension:** Specific period, ensuring total probation does not exceed six months unless justified.
- **Employee Acknowledgment:** Employee’s consent to the extension terms.

Sample Provisions for Extension

Extension Agreement Clause:

“The Employer and Employee agree to extend the probationary period by [Number of Days/Months], ending on [New End Date], to allow the Employee additional time to meet performance standards.”

Employee Consent Clause:

“The Employee voluntarily agrees to this extension and acknowledges understanding of the revised KPIs outlined in Annex C.”

Sample Probationary Employment Contract Provisions

Probation Period Clause:

“The Employee is engaged on a probationary basis for six (6) months, from [Start Date] to [End Date], in accordance with Article 296 of the Labor Code.”

Performance Standards (KPIs) Clause:

“The Employee must meet the Key Performance Indicators (KPIs) detailed in Annex B, which have been explained and provided upon commencement of employment, as required by Article 296.”

Assessment and Feedback Clause:

“The Employer shall conduct performance evaluations monthly and provide feedback to the Employee, outlining areas of strength and improvement.”

Extension Clause:

“In the event that the Employee has not fully met the performance standards by [End Date], the Employer may consider extending the probationary period, subject to the Employee’s written consent and provided it is in compliance with the Labor Code and applicable jurisprudence.”

Regularization Clause:

“Upon satisfactory completion of the probationary period, the Employee shall be deemed a regular employee with all the rights and benefits pertaining thereto.”

Notifications About KPIs and Performance

- **Initial Notification:** Provide KPIs at the start of employment, ensuring the employee understands expectations.
- **Ongoing Communication:** Regularly discuss progress towards KPIs during assessments.

- **Documentation:** Keep records of all communications, evaluations, and feedback sessions.

Best Practices

- **Transparency:** Be clear about performance expectations from the outset.
- **Support:** Offer training or resources to help the employee meet KPIs.
- **Fairness:** Assess performance objectively based on documented KPIs.
- **Compliance:** Ensure all actions comply with labor laws to avoid disputes.

Conclusion

Understanding the different employment types in the Philippines is crucial for legal compliance and fostering transparent employer-employee relationships. **In the absence of a written contract specifying the nature and terms of employment, the law presumes that an employee is a regular employee.** To classify employees under other types of employment, it is essential to have a well-drafted **written contract** that includes all necessary provisions as outlined in this guide.

Employment contracts should be carefully drafted to reflect the nature of employment, define expectations clearly, and protect the rights of both parties. Employers should pay particular attention to providing written contracts when intending to establish non-regular employment types, ensuring that all legal requirements are met to prevent disputes and potential liabilities.

Note: The sample provisions provided are illustrative and should be customized to fit specific circumstances. It is advisable to seek legal counsel when drafting or entering into any employment agreement to ensure compliance with current laws and regulations.

Additional Considerations for Employment Contracts

- **Confidentiality Agreements:** Include clauses to protect proprietary information.
- **Non-Compete Clauses:** Specify any post-employment restrictions within legal limits.
- **Dispute Resolution:** Outline methods for resolving disputes, such as mediation or arbitration.

- **Governing Law:** State that Philippine laws govern the contract.
- **Signatures and Acknowledgments:** Ensure both parties sign the contract and any annexes, such as KPIs.

Sample Confidentiality Clause:

“The Employee agrees to maintain the confidentiality of all proprietary and sensitive information acquired during employment and shall not disclose such information without the Employer’s prior written consent.”

Sample Dispute Resolution Clause:

“Any disputes arising from this Contract shall be resolved amicably between the parties. If unresolved, the dispute shall be submitted to arbitration in accordance with the rules of the Philippine Arbitration Law.”

Disclaimer

This guide provides general information and is not a substitute for professional legal advice. Employers and employees are encouraged to consult with a legal professional to address specific concerns or circumstances related to employment law in the Philippines.