

# Labor Law 1

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# Human Resources Development

Module 3

# Human Resources Development

- Book II, Title I of the Labor Code has been superseded by the TESDA Act of 1994.

# R.A. 7796

- RA 7796 is known as the Technical Educational and Skills Development Act of 1994 or the TESDA Act of 1994.
- This law created the Technical Education and Skills Development Authority or commonly known as TESDA.

# R.A. 7796

- Declaration of policy
- It is hereby declared the policy of the State to provide relevant, accessible, high quality and efficient technical education and skills development in support of the development of high quality Filipino middle-level manpower responsive to and in accordance with Philippine development goals and priorities.
- The State shall encourage active participation of various concerned sectors, particularly private enterprises, being direct participants in and immediate beneficiaries of a trained and skilled work force, in providing technical education and skills development opportunities.

# R.A. 7796

- Goals and Objectives of the TESDA Act:
  - a) Promote and strengthen the quality of technical education and skills development programs to attain international competitiveness.
  - b) Focus technical education and skills development on meeting the changing demands for quality middle-level manpower;

# R.A. 7796

- Goals and Objectives of the TESDA Act:
- c) Encourage critical and creative thinking by disseminating the scientific and technical knowledge base of middle-level manpower development programs;
- d) Recognize and encourage the complementary roles of public and private institutions in technical education and skills development and training systems; and
- e) Inculcate desirable values through the development of moral character with emphasis on work ethic, self-discipline, self reliance and nationalism.

# R.A. 7796

- See RA 7796 here:
- <https://www.officialgazette.gov.ph/1994/08/25/republic-act-no-7796/>

# Training and Employment of Special Workers

Title II, Book II, Labor Code (Arts. 57-81)

# Apprenticeship

- What is Apprenticeship?
  - It is practical training on the job supplemented by related theoretical instruction involving a contract between an apprentice and an employer on an approved apprenticeable occupation
- Who implements the apprenticeship program?
  - Section 18 of the TESDA Act of 1994, expressly empowers the TESDA to implement and administer the apprenticeship program in accordance with existing laws, rules and regulations.

# Apprenticeship

- Requisites for employment of apprentices
  - 1. The employer should be engaged in a business that is considered a highly technical industry;
  - 2. The job which the apprentice will work on should be an apprenticeable occupation.
- Who approves apprenticeable occupations?
  - It is no longer the SOLE, but the TESDA, who approves apprenticeable occupations.

# Apprenticeship

- Who is an apprentice?
  - Any worker who is covered by a written apprenticeship agreement with an individual employer or any of the entities recognized under the Labor Code.
- What is an apprenticeable occupation?
  - Any trade, form of employment or occupation which requires **more than three (3) months of practical training** with theoretical instruction officially approved for apprenticeship by the TESDA.

# Apprenticeship

- Qualifications of an apprentice
  - 1. At least 15 years of age, provided that those below 18 years of age may be eligible for apprenticeship only in non-hazardous occupations;
  - 2. Physically fit for the occupation in which he desires to be trained;
  - 3. Possess vocational aptitude and capacity for the particular occupation as established through appropriate tests;
  - 4. Possess the ability to comprehend, and follow oral and written instructions;
  - 5. The company must have an apprenticeship program duly approved by TESDA.
- **NOTE:** Trade and industry associations may recommend to DOLE appropriate educational requirements for different occupations.

# Apprenticeship

- Employment status of apprentices
  - They are contractual workers whose length of service depends on the term provided for in the apprenticeship agreement. Thus, the employer is not obliged to employ the apprentice after the completion of his training.
- Status of an apprentice after the lapse of the period of apprenticeship (if he is allowed to continue working)
  - He is deemed a regular employee. He cannot be hired as a probationary employee since the apprenticeship is deemed the probationary period.

# Apprenticeship

- Conditions for employment of an apprentice
  - 1. Should be an apprenticeable trade as determined by TESDA
  - 2. Prior approval by the TESDA of the proposed apprenticeship program is a condition *sine qua non* before an apprenticeship agreement can be validly entered into (*Century Canning Corp. v. CA, G.R. No. 152894*).
    - The purpose is to ensure the protection of apprentices and to obviate possible abuses by prospective employers because of allowed lower wages for apprentices.

# Apprenticeship

- Contents of the agreement:
  - (a) The full names and addresses of the contracting parties;
  - (b) Date of birth of the apprentice;
  - (c) Name of the trade, occupation or job in which the apprentice will be trained and the dates on which such training will begin and will approximately end;
  - (d) The approximate number of hours of on-the-job training as well as of supplementary theoretical instructions which the apprentice shall undergo during his training;
  - (e) A schedule of the work processes of the trade/occupation in which the apprentice shall be trained and the approximate time to be spent on the job in each process;
  - (f) The graduated scale of wages to be paid the apprentice; (g) The probationary period of the apprentice during which either party may summarily terminate their agreement; and
  - (h) A clause that if the employer is unable to fulfill his training obligation, he may transfer the agreement, with the consent of the apprentice, to any other employer who is willing to assume such obligation.

# Apprenticeship

- Rules regarding apprenticeship agreements
- Apprenticeship agreements, including the wage rates of apprentices, shall:
  - 1. Conform to the rules issued by SLE.
  - 2. The period of Apprenticeship shall not exceed 6 months.
  - 3. Apprenticeship agreements providing for wage rates below the legal minimum wage, which in no case shall start below 75% of the applicable minimum wage, may be entered into only in accordance with Apprenticeship programs duly approved by the SLE.
  - 4. The DOLE shall develop standard model programs of Apprenticeship (*IRR, Book II, Rule VI, Sec. 18*).

# Apprenticeship

- Period of apprenticeship:
  - Apprenticeship must not exceed 6 months.

# Apprenticeship

- Compensation of an apprentice:
  - GR: It starts at not less than 75% of the statutory minimum wage for the 1st 6 months (*except OJT*); thereafter, shall be paid in full minimum wage, including the full COLA.
- XPN: Art. 72 of the LC provides that the SLE may authorize the hiring of apprentices without compensation whose training on the job is required:
  - 1. By the school or;
  - 2. By a training program curriculum or;
  - 3. As requisite for graduation or
  - 4. As requisite for board examination.

# Apprenticeship

- Party who can terminate an apprenticeship agreement
  - 1. Either party may terminate an agreement after the apprenticeship period but only for a valid cause.
  - 2. It may be initiated by either party upon filing a complaint or upon DOLE's own initiative.

# Apprenticeship

- Procedure for the termination of apprenticeship
- The party terminating shall:
  - 1. Serve a written notice on the other at least 5 days before actual termination,
  - 2. Stating the reason for such decision; and
  - 3. A copy of said notice shall be furnished to the Apprenticeship Division concerned.

# Apprenticeship

- Features of Apprenticeship Training
  - 1. The apprentice must be paid not less than 75% of the prescribed minimum salary
  - 2. There must be approval from TESDA for an apprenticeship program (without such one shall be deemed a regular employee)
  - 3. The employer is not compelled to continue one's employment
  - 4. One-half (1/2) of the value of labor training expenses incurred for developing the productivity and efficiency of apprentices of the training cost is deducted from the employer's income tax but it shall not exceed ten percent (10%) of direct labor wage.
  - 5. If the apprenticeship training is part of the school curriculum, a requirement for graduation, or board examination, the employer may not pay any wage.

# Learnership

- Learners:
  - 1. They are persons hired as trainees in semi-skilled and other industrial occupations
  - 2. Which are non-apprenticeable and
  - 3. Which may be learned through practical training on the job in a relatively short period of time
  - 4. Which shall not exceed 3 months
  - 5. Whether or not such practical training is supplemented by theoretical instructions (*IRR, Book II, Rule VII, Sec. 1[a]*).

# Learnership

- Employment of learners
- Learners may be employed when:
  - 1. No experienced worker is available
  - 2. It is necessary to prevent curtailment of employment opportunities; and
  - 3. Employment does not create unfair competition in terms of labor costs or impair or lower working standards.

# Learnership

- Contents of a learnership agreement
- Any employer desiring to employ learners shall enter into a learnership agreement with them, which agreement shall include:
  - 1. The names and addresses of the learners;
  - 2. The duration of the learnership period, which shall not exceed 3 months;
  - 3. The wages or salary rates of the learners which shall begin at not less than 75% of the applicable minimum wage; and
  - 4. A commitment to employ the learners if they so desire, as regular employees upon completion of the learnership.

# Learnership

- Employment of minors as learners
- A learner must be at least 15 years of age.
  - NOTE: Those below 18 years of age shall not work in hazardous occupations.

# Learnership

- Persons who may employ learners
  - Only employers in semi-skilled and other industrial occupations which are non-apprenticeable may employ learners.
- Pre-termination of Learnership contract; regular employment
  - If training is terminated by the employer before the end of the stipulated period through no fault of the Learners, they are deemed regular employees (*IRR, Book II, Rule VII, Sec. 4*). Provided, they have already been trained for 2 months.

# Learnership

- Features of Learnership

- 1. The duration of the learnership period, which shall not exceed three (3) months;
- 2. If the learnership of 3 months is completed, the employer can be compelled to continue with the services of the learner as a regular employee
- 3. There is a commitment from the employer to employ the learners if they so desire, as regular employees upon completion of the learnership
- 4. If the learner is dismissed from the service without just and valid cause and without due process after 2 months of service, he will be deemed as regular employee
- 5. The wages or salary rates of the learners which shall begin at not less than seventy- five percent (75%) of the applicable minimum wage;

# Learnership vs. Apprenticeship

- Learnership vs. Apprenticeship (BAR 2017)
  - L = Training on the job in semi-skilled and other industrial occupation or trades which are non-apprenticeable and which may be learned thru practical training on the job in a relatively short period of time.
  - A = Training in trades which are apprenticeable, that is, practical training on the job supplemented by related theoretical instruction for more than 3 months.

# Learnership vs. Apprenticeship

- Learnership vs. Apprenticeship (BAR 2017)
  - L = Max: 3 months
  - A = Min: 3 months ;Max: 6 months
- L = With commitment to employ the learner as a regular employee if he desires upon completion of learnership
- A = No commitment to hire

# Learnership vs. Apprenticeship

- Learnership vs. Apprenticeship (BAR 2017)
  - L = Considered a regular employee if pre-termination occurs after 2 months of training and the dismissal is without fault of the Learner.
  - A = Worker not considered as regular employee.
  
- L = Semi-skilled/Industrial occupations
- A = Highly technical industries and only in industrial occupation

# Learnership vs. Apprenticeship

- Learnership vs. Apprenticeship (BAR 2017)
  - L = There is a list of learnable trades by TESDA
  - A = No list
  
- L = Requires learnership agreement
- A = Requires apprenticeship agreement

# Disabled Workers

- Who are persons with disability (PWD)?
- Those whose earning capacity is impaired by:
  - 1. Physical deficiency
  - 2. Age
  - 3. Injury
  - 4. Disease
  - 5. Mental deficiency
  - 6. Illness

# Disabled Workers

- **Qualified Disabled Employee**

- A **qualified individual with disability** is an individual with disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.
- A **qualified disabled employee** shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as a qualified able-bodied person.

# Disabled Workers

- **Employment of PWD**

- 1. When their employment is necessary to prevent curtailment of employment opportunities; and
- 2. When it will not create unfair competition in labor costs or lower working standards (*LC, Art. 79*).

# Disabled Workers

- **Employment period of PWD**
- There is no minimum or maximum duration. It depends on the agreement but it is necessary that there is a specific duration stated.

# Disabled Workers

- Persons with disability can be a regular employee:
  - Persons with disability can be a regular employee if work is usually or necessarily desirable to the business (*Bernardo v. NLRC, G.R No. 122917, July 12, 1999*).

# Disabled Workers

- Persons who may employ persons with disability:
  - Employers in all industries: Provided, the disability is not such as to effectively impede the performance of job operations in the particular occupations for which they are hired.

# Disabled Workers

- Not all workers with a disability are considered disabled workers
  - The mere fact that a worker has a disability does not make him a disabled worker because his disability may not impair his efficiency or the quality of his work. If despite his disability he can still efficiently perform his work, he would be considered a qualified disabled worker entitled to the same treatment as qualified able-bodied workers (*Bernardo v. NLRC, G.R. No. 122917, July 12, 1999*).

# Disabled Workers

- RIGHTS OF PERSONS WITH DISABILITY

- 1. Equal opportunity for employment - No PWD shall be denied access to opportunities for suitable employment. Five percent (5%) of all casual emergency and contractual positions in the DSWD, Health, Education and other government agencies, offices or corporations engaged in social development shall be reserved for PWDs (Section 5, Chapter 1, Title II, RA 7277).
- 2. Sheltered employment - The Government shall endeavour to provide them work if suitable employment for disabled persons cannot be found through open employment

# Disabled Workers

- 3. Apprenticeship - PWD may be hired as apprentices or learners if their disability is not such as to effectively impede the performance of job operations in the particular occupations for which they are hired (LC, Art. 81).
- 4. Vocational rehabilitation - To develop the skills and potentials of disabled workers and enable them to compete in the labor market
- 5. Vocational guidance and counselling

# Disabled Workers

- Wage Rate (2013 Bar)
  - GR: Handicapped workers are entitled to not less than seventy-five percent (75%) of the applicable adjusted minimum wage (*Article 80, LC*).
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  - XPN: All qualified handicapped workers shall receive the full amount of the minimum wage rate prescribed herein pursuant to RA 7277 (*Wage Order No. NCR-18, Effective October 4, 2013*).

# Disabled Workers

- **Prohibitions on discrimination against persons with disability**
- The following constitutes acts of discrimination:
  - 1. Limiting, segregating, or classifying a job applicant with disability in such a manner that adversely affects his work opportunities;
  - 2. GR: Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out a PWD;
    - XPN: Such standards, tests or other selection criteria are shown to be job-related for the position in question and are consistent with business necessity

# Disabled Workers

- Prohibitions on discrimination against persons with disability
- The following constitutes acts of discrimination:
  - 3. Utilizing standards, criteria, or methods of administration that:
    - a. Have the effect of discrimination on the basis of disability; or
    - b. Perpetuate the discrimination of others who are subject to common administrative control
  - 4. Providing less compensation, by reason of his disability, than the amount to which a non-disabled person performing the same work is entitled;
  - 5. Favoring a non-disabled employee over a qualified employee with disability with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter's disability;

# Disabled Workers

- Prohibitions on discrimination against persons with disability
- The following constitutes acts of discrimination:
  - 6. GR: Dismissing or terminating the services of an employee with disability by reason of his disability
    - XPN: The employer can prove that he impairs the satisfactory performance of the work involved to the prejudice of the business entity; provided, however, that the employer first sought to provide reasonable accommodations for persons with disability;
  - 7. Failing to select or administer in the most effective manner employment tests which accurately reflect the skills, aptitude or other factor of the applicant or employee with disability that such test purports to measure, rather than the impaired sensory manual or speaking skills of such applicant or employee, in any; and
  - 8. Excluding PWD from membership in labor unions or similar organizations (*Section 32, Chapter I, Title III, RA 7277*).

# Disabled Workers

- **Incentives of employer who are employing disabled workers**
- 1. 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 the DOLE and the Department of Health as to his disability, skills and qualifications.
- 2. Private entities that improve or modify their physical facilities in order to provide reasonable accommodation for disabled persons shall also be entitled to an additional deduction from their net taxable income, equivalent to 50% of the direct costs of the improvements or modifications (*R.A. 7277, Sec. 8*).