

Lilac CARD



FACTS ON BASIC RIGHTS OF LESBIANS IN THE WORKPLACE

LILAC CARD is an initiative of the Rainbow Rights Project (R-Rights), Inc.

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Rainbow Rights Project (R-Rights), Inc. is a unique alternative lawyering non-governmental organization (NGO) catering to the marginalized sector of Sexual Minorities or lesbians, gays, bisexuals, and transgenders (LGBTs). Since its establishment in 2005, it has been conducting innovative Gender Sensitivity and Human Rights Trainings focused on LGBT issues and concerns.

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THE YOGYAKARTA PRINCIPLES: AFFIRMING THE HUMAN RIGHTS OF LGBTs

BACKGROUND

It has been recognized by the international community that human rights violations targeted towards persons because of their actual or perceived sexual orientation and gender identity constitute a global and entrenched pattern of serious concern.

In 2006, the International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organizations, undertook a project to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity to bring greater clarity and coherence to States' human rights obligations.

FREQUENTLY ASKED QUESTIONS ON RIGHTS IN THE WORKPLACE AS A WORKER, WHAT ARE MY RIGHTS?

The 1987 Constitution provides for the following rights:

- Rights to self-organization, collective bargaining and negotiations, and peaceful concerted activities including the right to strike (note that government employees do not have the right to strike)
- Right to security of tenure
- Right to humane conditions of work
- Right to a living wage
- Right to participate in policy and decision-making processes affecting their rights and benefits
- Right to a just share in the fruits of production

The State shall protect working women by providing safe and healthful working conditions and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.

I AM A LESBIAN. AM I ENTITLED TO PROTECTION UNDER OUR LABOR LAWS?

The 1987 Constitution mandates that the State shall afford full protection to labor, local or overseas, organized and non-organized, and promote full employment and equality of employment opportunities for all.

The Philippine Labor Code has no specific provision on the protection of members of lesbian, gay bisexual and transgender (LGBT) community. But under this Code, the State shall protect labor, promote full employment, provide equal work opportunity regardless of gender, race, or creed, and regulate employer-employee relations. Male and female employees are entitled to equal compensation for work of equal value and to equal access of promotion and training opportunities.

Discrimination against female employees is unlawful. These provisions would work to protect the rights of the LGBT.

For workers in Quezon City, a more specific protection is available, through Quezon City Ordinance No. 5P - 1309, s. 2003 enacted on September 02, 2003, entitled "An Ordinance Prohibiting All Acts of Discrimination Directed Against Homosexuals in Any Office in Quezon City, Whether in Government or the Private Sector and Providing Penalties Therefore."

"Sec. 1. All discriminatory acts committed against homosexuals in the matter of hiring, treatment, promotion or dismissal in any office in Quezon City, whether in the government or private sector, are hereby declared unlawful."

"Sec. 2. Any violation of the provision of this ordinance shall make the head or chief of office, the personnel officer and other concerned officers liable to fine of not more than Five Thousand Pesos (P5,000.00) or an imprisonment of not more than six (6) months, or both such as the imprisonment at the discretion of the court."

What is the main principle governing the appointment of government employees?

The 1987 Constitution mandates that appointments in the civil service shall be made only according to MERIT AND FITNESS to be determined, as far as practicable, and except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination.

WHAT ARE THE PROTECTIONS I AM ENTITLED TO?

Prohibition against discrimination with respect to pay (i.e. equal pay for work of equal value), promotion, training opportunities, study and scholarship grants.

Subject to certain exceptions, women are prohibited from doing night work:

- In industrial undertakings from 10PM to 6AM
- In commercial/non-industrial undertakings from 12MN to 6AM
- In agricultural undertakings, at night unless given not less than 9 consecutive hours of rest

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An experts' meeting was held at Gadjah Mada University in Yogyakarta, Indonesia from 6 to 9 November 2006, 29 distinguished experts from 25 countries with diverse backgrounds and expertise relevant to issues of human rights law. This distinguished group of human rights experts drafted, developed, discussed and refined these statements to become what is now known as the Yogyakarta Principles.

The Yogyakarta Principles as a Basis for LGBT Human Rights.

The Yogyakarta Principles recognizes LGBT Rights within the Human Rights framework. The Principles affirm the primary obligation of States to implement human rights. They affirm binding international legal standards with which all States must comply.

The Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. The Principles defined Sexual Orientation and Gender Identity as a specific basis or criteria for Non-Discrimination.

* Sexual orientation is understood to refer to a person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender, of the same gender, or more than one gender.

* Gender identity refers to each person's deeply felt internal and individual experience with gender, which may or may not correspond to the sex assigned at birth, including personal sense of body (which may involve, if freely chosen, modification of bodily appearance by medical, surgical, or other means) and other expressions of gender, including dress, speech, and mannerisms.

* Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms.

The Principles also enumerate specific civil and political rights, as well as relevant social, economic, and cultural rights. LGBTs are entitled to. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright.

An LGBT's Civil and Political Rights are embodied in the following Principles:

Principle 1: **The Right to the Universal Enjoyment of Human Rights**
 - All human beings are born free and equal in dignity and rights

Principle 2: **The Rights to Equality and Non-Discrimination**
 - Everyone is entitled to equality before the law and the equal protection of the law

Principle 3: **The Right to Recognition before the Law**
 - Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

Principle 4: **The Right to Life**

Principle 5: **The Right to Security of the Person**

Principle 6: **The Right to Privacy**
 - Includes enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation.

Principle 7: **The Right to Freedom from Arbitrary Deprivation of Liberty**

Principle 8: **The Right to a Fair Trial**

Principle 9: **The Right to Treatment with Humanity while in Detention**

Principle 10: **The Right to Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment**
www.yogyakartaprinciples.org

TO ENJOY EMPLOYMENT RIGHTS, I HAVE TO BE AN EMPLOYEE AM I ONE?

Seek this checklist to determine if you have an employer-employee relationship:

- (a) Selection and engagement of the employee
- (b) Payment of wages
- (c) Power of dismissal
- (d) The employer's power to control the employee with respect to the means and methods by which the work is to be accomplished, also known as the "control test" which is the most important element.

HOW OLD SHOULD I BE TO START WORKING?

The minimum age of employment is 18 years old for hazardous jobs, and 15 years for non-hazardous jobs if the employment does not interfere with the child's schooling.

HOW MANY HOURS CAN I BE REQUIRED TO WORK PER DAY?

Normal hours of work shall not exceed eight (8) hours a day. Hours worked shall include (a) time during which an employee is required to be on duty or to be at prescribed workplace, and (b) all time during which an employee is suffered to be permitted to work. Rest period during short duration during working hours shall be counted as hours worked.

Waiting time spent by an employee is considered working time if waiting is an integral part of his work or if the employee is required or engaged by an employee to wait.

Every employee is entitled to **not less than sixty (60) minutes time off for regular meals.**

WHAT IS THE STATUTORY MINIMUM WAGE?

This refers to the lowest basic wage rate fixed by law that an employer can pay his or her worker. The Current Minimum Daily Wage Rate is as what the Regional Wage Board may determine.

IF I WORK AT NIGHT, HOW MUCH SHOULD I BE PAID?

On top of regular wage, an employee should also be paid Night Shift Differential (NSD). NSD is the additional compensation of ten percent (10%) of an employee's regular wage for each hour of work performed between 10:00PM and 6:00AM.

WHAT ARE THE SAFETY MEASURES THAT MUST BE PRESENT IN THE WORKPLACE?

Building premises shall have adequate fire, emergency or danger signs and safety instructions of standard colors and sizes available at all times.

Other visible signs that may be needed to direct the driver of motorized vehicle such as STOP, YIELD, and DO NOT ENTER, properly positioned within the compound of the establishment shall be used to increase safety especially during the night.

Handicapped employees shall be restricted only to designated workplaces. As far as practicable and feasible, they shall be provided with facilities for safe and convenient movement within the establishment.

Food housekeeping shall be maintained at all times through cleanliness of building, yard, machines, equipment, regular waste disposal, and orderly arrangement of process operations, storage and filing materials.

WHAT ARE THE RULES FOR FIRING AN EMPLOYEE?

In the Labor Code, under the rule on security of tenure, no employee can be dismissed from work except for just or authorized cause, and only after due process. Just cause refers to any wrongdoing committed by an employee including serious misconduct, while authorized cause refers to economic circumstance not due to the employee's fault, including retrenchment to prevent losses.

The 1987 Constitution provides that no officer or employee in the civil service shall be removed or suspended except for cause provided by law.

To date there is no law that identifies lesbianism as cause of dismissal from work or removal from office, although certain acts may expose the officer or employee to charges of grave or serious misconduct.

WHAT IS THE PROPER PROCEDURE FOR FIRING AN EMPLOYEE?

The employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for the termination and shall afford the latter ample opportunity to be heard and defend himself/herself with the assistance of his/her representative, if he/she so desires, in accordance with the company rules and regulations promulgated pursuant to the guidelines set by DOLE.

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 NLRC.

HOW DO I QUIT MY JOB?

An employee may file his/her voluntary resignation by serving a written notice to the employer at least one (1) month prior to the intended date of resignation.

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Principle 19: The Right to Freedom of Opinion and Expression

-Includes the right to expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds

Principle 20: The Right to Freedom of Peaceful Assembly and Association

-Refers to the right to peacefully organize, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations/groups, without discrimination on the basis of sexual orientation or gender identity;

Principle 21: The Right to Freedom of Thought, Conscience and Religion

-Refers to the right to hold and practise religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or the imposition of beliefs;

Principle 22: The Right to Freedom of Movement

(the right to travel and change residence)

Principle 23: The Right to Seek Asylum

(asylum as an escape from torture or persecution)

Principle 25: The Right to Participate in Public Life (the right to political participation; not just the right to vote but to be elected into office)

Principle 27: The Right to Promote Human Rights

Principle 28: The Right to Effective Remedies and Redress

-Refers to the right of victims of human rights violations on the basis of sexual orientation or gender identity have access to full redress through restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition, and/or any other means as appropriate;

Principle 29: Accountability

-That those directly or indirectly responsible for the violation, whether they are government officials or not, held accountable for their actions in a manner that is proportionate to the seriousness of the violation. There should be no impunity for perpetrators of human rights violations related to sexual orientation or gender identity.

An LGBT's Social, Economic, and Cultural Rights are embodied in the following principles:

Principle 11: The Right to Protection from all Forms of Exploitation, Sale and Trafficking of Human Beings

Principle 12: The Right to Work

-Not just the right to work, but the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;

Principle 13: The Right to Social Security and to Other Social Protection Measures

-This refers to employment benefits (including for body modifications related to gender identity), other social insurance, family benefits, funeral benefits, pensions and benefits with regard to the loss of support for spouses or partners as the result of illness or death.

Principle 14: The Right to an Adequate Standard of Living

-Refers to basic needs as adequate food, safe drinking water, adequate sanitation and clothing, and to the continuous improvement of living conditions,

Principle 15: The Right to Adequate Housing

-Refers to the right to adequate housing, including protection from eviction; It means access to affordable, habitable, accessible, culturally appropriate and safe housing, including shelters and other emergency accommodation

Principle 16: The Right to Education

-Refers to education that is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential; Includes adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment

Principle 17: The Right to the Highest Attainable Standard of Health

-Includes the right to access to healthcare facilities, goods and services, including in relation to sexual and reproductive health, and to their own medical records

Principles 18: The Rights to Protection from Medical Abuses

-No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility; a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.

Principle 24: The Right to Found a Family

-Refers to the right to the right to found a family, including through access to adoption or assisted procreation (including donor insemination),

Principle 26: The Right to Participate in Cultural Life

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