DRN:LS-L-LO-24-08-50514-C

**DSWD OPINION NO. 66 S. 2024**

**MEMORANDUM**

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| **TO** | : | **MS. JENNIFER M. RIZO**<br>Director IV, Human Resource Management and Development Service |
| **FROM** | : | **THE ASSISTANT SECRETARY FOR GASSG AND CONCURRENT-OFFICER-IN-CHARGE, LEGAL SERVICE** |
| **SUBJECT** | : | **COMMENTS ON THE APPLICABILITY OF THE FOUR-FOLD TEST TO THE EXISTING MOA/COS WORKER OF DSWD** |
| **DATE** | : | **30 AUGUST 2024** |

This is in reference to the MEMORANDUM[1] from Human Resource Management and Development Service (HRMDS) requesting for assistance in determining the applicability of the "Four-Fold Test", under the Labor law to the existing Memorandum of Agreement (MOA) / Contract of Service (COS) workers of the Department of Social Welfare and Development (DSWD) as raised by the Field Office V during the GASSG Summit.

Kindly see this level's discussion below:

**Legal Bases**

CSC Memorandum Circular (MC) No. 40, Series of 1998

The Civil Service Commission (CSC) issued CSC MC No. 40, 1998[2] as an urgent response to the changing need in personnel administration and in updating and consolidating the various CSC issuances on appointments.

Rule XI of CSC MC No. 40, s.1998 discussed the policies in hiring Contract of Services or Job Orders. Section 2(c) and (d) of Rule XI specifically provides that:

> "Section 2. Contract of Services/Job Orders refer to employment described as follows:
> X X X
> c. **The contract of services** and job orders **are not covered by Civil Service Law, Rules and Regulations, but covered by COA Rules;**

[1] Memorandum from HRMDS, dated 04 July 2024
[2] Entitled "Revised Omnibus Rules on Appointments and Other Personnel Actions"



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d. The employees involved in the contracts or job orders do not enjoy the benefits enjoyed by government employees, such as PERA, COLA and RATA." (Emphasis Supplied)

CSC MC No. 1, series of 2007 (Resolution No. 062254)

On 19 January 2007, the CSC published MC No. 1, series of 2007[3], resolving that the Commission (CSC) relinquished its regulation over COS workers and further declaring that the contractual engagement with the COS shall be governed by the Commission on Audit (COA) and Department of Budget and Management (DBM) since they are not considered as government employees but they are being funded using public funds, to wit:

"x x x
Whereas, the Commission also identified the need to strengthen its policy that service rendered under **contracts of service and job order is not government service through proper regulation of contracts of this nature**;
x x x
Whereas, since **contracts of service** and job orders are in the nature of contracts, the same **should be under the supervision of and regulation by the Department of Budget and Management and the Commission on Audit**;

NOW THEREFORE, **the Commission RESOLVES as it hereby RESOLVED to repeal its present policies on contract of service and job orders and relinquish its regulations over said contracts.**" (Emphasis supplied)

CSC-COA-DBM Joint Circular No. 1, series of 2017

Thereafter, the CSC-COA-DBM Joint Circular (JC) No. 01, Series of 2017[4] provides for the authority of the government agencies to enter into service contracts with other government agencies, private firms, non-government agencies or individuals for services related or incidental to their respective functions and operations, whether on a part-time or full time basis[5].

Relative thereto, Item 5.1 of the same JC provides a definition of Contract of Service, to state:

"**Contract of Service** refers to the engagement of the services of an individual, private firm, other government agency, non-governmental agency or international organization as consultant, learning service provider

[3] Entitled "Repeal of CSC Memorandum Circular Nos 17 and 24, series of 2002"
[4] Entitled "Rules and Regulations Governing Contract of Service and Job Order Workers in the Government"
[5] Item 2.0 Policy Statement, CSC-COA-DBM JC No. 1, s. 2017, dated June 15 2017

or technical expert to undertake special project or job within a specified period".

COA-DBM JC No. 2, series of 2020

Subsequently, COA-DBM JC No. 2, Series of 2020[6] was issued, adopting the limitations of individual Contract of Service prescribed by CSC MC No. 40, s. 1998 and CSC-COA-DBM JC No. 1, s.2017, thus:

> "7.0 Limitations
> x x x
> 7.5 The **services of the COS and JO workers are not covered by Civil Service laws, rules, and regulations, thus, not credible as government service.** They do not enjoy the benefits enjoyed by government employees, such as leave, Personnel Economic Relief Allowance, Representation and Transportation Allowances, and other bonuses and incentives." (Emphasis Supplied)

**Issue**

Whether individuals engaged under Contract of Service arrangement may be considered as government employees pursuant to the Four-Fold Test under the Labor Law.

**Discussion**

The Supreme Court in *Felicilda vs Uy*[7] had the occasion to discuss the Four-Fold Test in ascertaining whether an employee-employer relationship exists, viz:

> "To ascertain the existence of an employer-employee relationship, jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the emp'oyee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test."

To determine whether the Four-Fold test may apply, there is a need to ascertain whether COS workers are covered by the provisions, principles, and doctrines under the Labor Code.

The pronouncements of the Supreme Court in the case of *CSC vs Annang*[8] are elucidating:

1. The relationship between the government and its supposed employees is primarily determined by special and civil service laws, rules, and regulations

[6] Entitled "Updated Rules and regulations Governing Contract of Service (COS) and Job Order (JO) Workers in the Government"
[7] GR No. 221241, 14 September 2016
[8] GR No. 225895, 28 September 2022

x x x

It must be remembered, however, that the **rules of employment in private practice differs from government service**. As astutely explained by our colleague Justice Marvic Leonen, that while a private employer should apply the four-fold test in determining employer-employee relationship as it is strictly bound by the labor code, a **government employer or GOCC, must, apart from applying the four-fold test, comply with the rules of the CSC in determining the existence of employer-employee relationship**.

The difference between private and public employment is readily apparent in our legal landscape. For one, **the Labor Code recognizes that the terms and conditions of employment of all government employees**, including those of GOCCs **shall be governed by the civil service law, rules and regulations.** Particularly, in cases of GOCCs created by special law, the terms and conditions of employment of its employees are particularly governed by its charter.

x x x

2. Civil Service Rules do not recognize service rendered pursuant to contracts of service as government service

x x x

**In contracts of services** and job orders, **there exists no employer-employee relationship between the hiring agency and the persons hired** and it should be made clear in their contracts that services rendered thereunder can never be accredited as government service. Furthermore, **the persons hired are not entitled to benefits enjoyed by government employees such as PERA, ACA and RATA.**" (Emphasis Supplied)

It is clear from the foregoing, to ascertain whether the services rendered by the supposed employee of the government may be accredited to as a government services, we must be guided by the special and CSC rules and regulations rather than the application of the Four-Fold test set forth under the Labor Code.

Suppletorily, COS workers are engaged by the Department through the execution of a contract detailing the specific task to be done by the COS worker within a specified period for a consideration.

Consequently, in addition to the COA, and DBM rules, the provision on New Civil Code on Contracts further govern the relationship between the Department and the COS worker. This interpretation finds support in the case of *IP E-game Ventures Inc vs Tan*[9] where the Supreme Court held that:

[9] GR No. 239576, 30 June 2021

> "It is basic that a **contract is the law between the parties**. Obligations arising from contracts have the force of law between them and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order, or public policy, the same are binding as between the parties.' (Emphasis supplied)

Corollary, the parties are free from stipulating the terms and conditions of the contract and may include those benefits that are enshrined under the Labor Law, but this does not make the contractee as the employer of the contractor. The law protects the right of the parties to freely set forth the terms of the contract provided that the intended terms are not contrary to law, morals, good customs, public order, or public policy, thus, Article 1306 of the New Civil Code provides:

> "Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

Having established that COS workers are not covered by the CSC and the Labor Code, the Four-Fold test finds no application in the engagement between the Department and the COS workers. Rather, the relationship between the Department and COS workers are primarily governed by the COA and DBM issuances pursuant to CSC MC No. 1, series of 2007 and the New Civil Code of the Philippines on Contracts.

**Conclusion**

This level opines, based on the foregoing legal bases, jurisprudence, and discussion, that the relationship between the COS worker and the Department does not warrant the application of the Four-Fold test since COS workers are primarily governed by the resolutions and circulars of the COA and DBM as well as the provision on Contracts under the New Civil Code of the Philippines making the engagement between the COS worker and the Department outside the ambit of the Labor Code and CSC Rules.

In the words of the Supreme Court in the Annang Case:

> "To summarize, **employer-employee relationship in the public sector is primarily determined by special laws, civil service laws, rules and regulations. While the four-fold test and other standards set forth in the labor code** may aid in ascertaining the relationship between the government and its purported employees, they **cannot be overriding factors over the conditions and requirements for public employment as provided for by civil service laws, rules and regulations**.
>
> Applying the foregoing, the appellate court should have primarily relied on the pertinent civil service laws, rules, and regulations to determine the relationship between CSU and Dr. Annang, and to ascertain whether the service rendered by the latter should be counted as government service.

**For mainly relying on the four-fold test, the CA committed a reversible error.**' (Emphasis Supplied)

Please be informed that the foregoing legal opinion is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

For your consideration.

Thank you.

ATTY. GINA V. WENCESLAO

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