

Philippines

Introduction

The Constitution of the Republic of the Philippines recognizes and affirms labor as a primary social economic force. As such, the rights of workers are protected and their welfare promoted. The Constitution guarantees the right of labor to security of tenure, humane conditions of work and equality of employment opportunities.

The Civil Code of the Philippines describes the relations between capital and labor as not merely contractual, but one impressed with public interest. Labor contracts should yield to the common good. Where in doubt, all labor legislation and all labor contracts should be construed in favor of the employee's safety and decent living.

Terminations

Restrictions On Employers

In the Philippines, an employer has a right to hire, dismiss and discipline employees, while the employee has a right to security of tenure. The employee's right to security of tenure means that he or she may be dismissed only for one of the causes defined in the Labor Code of the Philippines ("Labor Code") and only after the observance of the appropriate procedural due process by his or her employer.

An employee may be dismissed only for the just and authorized causes provided by law. In this respect, employees are entitled to "substantive due process" under the Labor Code. The terms "just" and "authorized" causes have specific, separate definitions in the Labor Code. The distinction between just and authorized causes is important because the applicable procedural due process requirement, as well as the requirement of giving separation pay, varies depending on the cause of termination. Just causes are those arising from some fault or inadequacy on the part of the employee. On the other hand, authorized causes are based either on economic or health considerations.

The just causes for termination of employment are as follows:

- (i) Serious misconduct or willful disobedience by the employee of the lawful orders of his or her employer or representative in connection with his or her work;
- (ii) Gross and habitual neglect by the employee of his or her duties;

- (iii) Fraud or willful breach by the employee of the trust reposed in him or her by his or her employer or duly authorized representative;
- (iv) Commission of a crime or offense by the employee against the person of his or her employer or any immediate member of the employer's family or duly authorized representative; and
- (v) Other causes analogous to the foregoing.

The authorized causes for termination of employment are as follows:

- (i) Installation of labor saving devices;
- (ii) Redundancy;
- (iii) Retrenchment to prevent losses;
- (iv) Closing or cessation of operation of the establishment or undertaking; and
- (v) Disease, where the continued employment of the afflicted employee is prohibited by law or is prejudicial to his or her health as well as to the health of his or her co-employees.

The absence of just and authorized causes means that there is a violation of the employee's right to substantive due process and that the termination is not in accordance with the law. An employee who is dismissed without a just or authorized cause is entitled to reinstatement without loss of seniority rights and other privileges, full back wages (inclusive of allowances), and other benefits or their monetary equivalent, computed from the time compensation was withheld until the time of the actual reinstatement.

Notice Provisions/Consequences Of A Failure To Provide The Required Notice

The Labor Code requires not only that an employee be dismissed for a just or authorized cause, but also that he or she be dismissed only after the observance of the appropriate procedural due process by his or her employer.

In dismissing an employee due to a just cause, the Labor Code requires the employer to serve a written notice to the employee informing the employee of the charges against him or her. After serving the notice, the employer should give the employee an opportunity to be heard so that the employee can answer the charges with the

assistance of counsel, if he or she so desires. If the employer decides to dismiss the employee, it should serve a second written notice to the employee to inform the employee of its decision to dismiss him or her.

In case of employment termination due to an authorized cause, the employer should serve a written notice of termination to each affected employee and to the appropriate regional or field office of the Philippine Department of Labor and Employment at least 30 days before the intended effective date of termination. The notice should specify the authorized cause and the effective date of termination. The 30-day notice period is mandatory. It cannot be waived or substituted by its monetary equivalent.

For employment termination due to disease, in addition to the notice requirements in the immediately preceding paragraph, there should be a certification by a competent public health authority that the disease cannot be cured within a period of six months even with proper medical treatment.

If the termination is due to the completion of a contract or any phase thereof, or by failure of an employee to meet applicable work standards in cases of probationary employment, the employer is simply required to serve a written notice to the employee within a reasonable time before the effective date of termination.

Under Philippine law, an employer is liable for a monetary penalty if it terminates an employee in violation of the requirements of procedural due process, even if the employer had a just or authorized cause for the termination. The monetary penalty is subject to the discretion of the court.

Termination Indemnities

The separation from work of an employee for a just cause does not entitle him or her to separation pay. However, this is without prejudice to whatever rights, benefits and privileges the employee may have under applicable employee agreement, company policy or practice.

In case of employment termination due to installation of labor saving devices or redundancy, the Labor Code provides that the employee should be given separation pay equivalent to at least one month's pay for every year of service or one month's pay, whichever is higher. A fraction of at least six months is considered as one year for separation pay purposes.

On the other hand, the Labor Code provides that in case of employment termination by reason of retrenchment to prevent losses, closure *not* due to serious business losses or disease, the employer is required to give the employee separation pay equivalent to one-half month's pay for every year of service or one month's pay, whichever is higher. A fraction of at least six months is considered as one year in this instance as well.

With respect to employment termination because of closure due to serious business losses, current jurisprudence provides that such employers are not required to give any separation pay.

The separation pay described above is the minimum amount set by the Labor Code. The employer is not prohibited from giving a bigger separation pay out of its own generosity. However, it may be required to give a bigger separation pay depending on the employee agreement, company policy or company practice.

Law On Separation Agreements, Waivers, And Releases

A separation agreement, waiver or release from the employee will not bar him or her from subsequently filing a complaint concerning his or her employment, including his or her employment termination. This is because the courts normally frown upon separation agreements, waivers or releases of employees as contrary to public policy. The reason commonly given is that the employers and employees do not stand on the same footing. Notwithstanding that rule, it is still prudent to get an employee to sign his or her separation agreement, waiver or release. The separation agreement, waiver or release may strengthen the employer's position in the event that an action is filed on matters covered by the document. If it can be shown that the separation agreement, waiver or release was voluntarily entered into and represented a reasonable settlement, the document is binding on the parties and may not later be disowned.

Litigation Considerations

An employee has the right to question the validity of his or her dismissal. Once questioned before the proper labor authorities, the employer has the burden of proof to establish the validity of the dismissal by showing that the dismissal was due to a just or authorized cause and that it was accomplished in compliance with the appropriate procedural due process.

In addition, a labor complaint usually takes three to four years to litigate because it may involve four levels of the judiciary.

When an employee files a labor complaint with the National Labor Relations Commission (NLRC), the complaint will be assigned to a labor arbiter (i.e., trial judge) who will hear and decide the case. The labor arbiter's decision may be appealed to a division of commissioners of the NLRC within 10 days from receipt of such decision. If the labor arbiter's decision involves a monetary award (e.g., back wages), an appeal by the employer may only be perfected upon posting a cash or surety bond equivalent to the monetary award, exclusive of damages and attorney's fees. It should be noted that an order of the labor arbiter to reinstate the employee is immediately executory even pending appeal to the NLRC, and the employer has the option to choose between actual or payroll reinstatement.

The NLRC's decision may still be elevated to the Court of Appeals and subsequently to the Supreme Court. In this regard, a petition for certiorari with the Court of Appeals or the Supreme Court does not stay the execution of the NLRC's decision unless the Court of Appeals or the Supreme Court issues a temporary restraining order.

All levels of the judiciary are essentially pro-labor. Any doubt between the evidence of the employer and the employee is resolved in the employee's favor in line with the constitutional mandate to afford full protection to employees.

Employment Discrimination

Laws On Employment Discrimination

Labor Code On Women And Other Forms Of Discrimination

The Labor Code provides that the government shall ensure equal work opportunities, regardless of sex, race, age or creed. Republic Act N^o 7192, otherwise known as the "Women In Developing and Nation Building Act," affords women equal work opportunities with men.

Under the Labor Code, it is unlawful for an employer to discriminate against any female employee with respect to terms and conditions of employment solely on account of sex. The following are considered acts of discrimination:

- (i) Payment of lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee for work of equal value; and
- (ii) Favoring a male employee over a female employee with respect to promotions, training opportunities, and study and scholarship grants solely on account of their sexes.

It is also unlawful for an employer to do any of the following:

- (iii) To require as a condition of employment or continuation of employment that a female employee shall not get married;
- (iv) To stipulate expressly or tacitly that upon getting married, a female employee shall be deemed resigned or separated;
- (v) To dismiss, discharge, discriminate or otherwise prejudice a female employee merely by reason of her marriage;
- (vi) To deny any female employee the benefits provided in the Labor Code or to discharge any female employee to prevent her from enjoying the benefits provided in the Labor Code;
- (vii) To discharge any female employee on account of her pregnancy or while on leave or in confinement due to her pregnancy;
- (viii) To discharge or refuse the admission of any female employee upon her returning to work for fear that she may again be pregnant.

The Labor Code also makes it unlawful for an employer to do any of the following:

- (ix) To discriminate against any employee who has filed any complaint concerning wages or has testified or is about to testify in such complaint;
- (x) To discriminate against employees in the exercise of their right to self-organization;
- (xi) To discriminate in regard to wages, hours of work, and other terms and conditions of employment to encourage or discourage membership in any labor organization;
- (xii) To discriminate against an employee for having given or being about to give testimony under the Labor Code.

Republic Act N° 7277 (“RA 7277”), As Amended By Republic Act N° 9442, otherwise known as the “Magna Carta for Persons with Disability”

RA 7277 provides that no person with disability shall be denied access to opportunities for suitable employment. A qualified employee with disability is 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. Furthermore, no employer shall discriminate against a qualified person with disability by reason of disability in regard to job application procedures; the hiring, promotion or discharge of employees; employee compensation; job training; and other terms, conditions and privileges of employment. The following constitute acts of discrimination:

- (i) Limiting, segregating or classifying a job applicant with disability in such a manner that adversely affects his or her work opportunities;
- (ii) Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out a person with disability unless such standards, tests or other selection criteria are shown to be job-related for the position in question and are consistent with business necessity;
- (iii) Utilizing standards, criteria or methods of administration that have the effect of discrimination on the basis of disability or perpetuate the discrimination of others who are subject to common administrative control;
- (iv) Providing less compensation, such as salary, wage or other forms of remuneration and fringe benefits, to a qualified employee with disability, by reason of his or her disability, than the amount to which a person without disability performing the same work is entitled;
- (v) Favoring an employee without disability over a qualified employee with disability with respect to promotions, training opportunities, and study and scholarship grants, solely on account of the latter’s disability;
- (vi) Re-assigning or transferring an employee with disability to a job or position he or she cannot perform by reason of his or her disability;
- (vii) Dismissing or terminating the services of an employee with disability by reason of his or her disability, unless the employer can prove that he or she 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 the employee with disability;

- (viii) 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 tests purports to measure, rather than the impaired sensory, manual or speaking skills of such applicant or employee, if any; and
- (ix) Excluding persons with disability from membership in labor unions or similar organizations.

Republic Act N° 8371 (“RA 8371”), Otherwise Known As The “Indigenous Peoples’ Rights Act Of 1997”

RA 8371 provides that it shall be the right of the indigenous cultural communities/ indigenous peoples (ICCs/IPs) to be free from any form of discrimination, with respect to recruitment and conditions of employment so that they may enjoy equal opportunities for admission to employment, medical and social assistance, and safety, as well as other occupationally-related benefits.

RA 8371 makes it unlawful for any person:

- (i) To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. In this regard, ICCs/IPs and non-ICCs/IPs should be paid equal remuneration for work of equal value; and
- (ii) To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under RA 8371.

Republic Act N° 8504 (“RA 8504”), Otherwise Known As The “Philippine AIDS Prevention and Control Act Of 1998”

Under RA 8504, discrimination in any form from pre-employment to post-employment, including hiring, promotion or assignment, based on the actual, perceived or suspected human immunodeficiency virus (HIV) status of a person is prohibited. Termination from work on the sole basis of actual, perceived or suspected HIV status is deemed unlawful.

Republic Act N° 8972 (“RA 8972”), Otherwise Known As The “Solo Parents Welfare Act Of 2000”

RA 8972 provides that no employer shall discriminate against any solo parent (sometimes referred to as single parent) employee with respect to terms and conditions of employment on account of the employee’s status.

Jurisprudence On Discrimination On Wages

Discrimination in terms of wages is also prohibited. In one case involving Filipino teachers of a school who were receiving less salaries compared to their foreign colleagues in the same school, the Supreme Court said that all the teachers, regardless of nationality, should receive equal pay for work of equal value.

Potential Employer Liability For Employment Discrimination

Employers who willfully commit any unlawful acts of discrimination, or who violate applicable implementing rules and regulations, can be held criminally liable and punished with a fine, imprisonment or both, at the discretion of the court and depending on the circumstances of the discrimination. For offenses committed by a corporation and other juridical persons, the penalty may be imposed upon the guilty officer or officers. If the guilty officer or officers are foreigners, he or she will be deported after satisfaction of the penalty imposed by the court.

The filing of the criminal action does not normally bar a discriminated employee from instituting an entirely separate and independent civil action for monetary claims against his or her erring employer. These claims include, but are not limited to, damages and other affirmative relief.

Sexual Harassment

Laws On Sexual Harassment

Philippine law protects workers from all forms of sexual harassment in the work environment. Republic Act N° 7877 (“RA 7877”), otherwise known as the “Anti-Sexual Harassment Act of 1995”, declares sexual harassment in the employment environment unlawful.

Under RA 7877, work-related sexual harassment is committed by an employer, employee, manager, supervisor or agent of the employer or any other person who,

having authority, influence or moral ascendancy over another in a work environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request, or requirement for submission is accepted by the object of the act. In particular, sexual harassment is committed in a work-related or employment environment when:

- (i) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of the individual, or in granting the individual favorable compensation, terms, conditions, promotions or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities, or otherwise adversely affect the employee;
- (ii) The above acts would impair the employee's right or privileges under existing labor laws; or
- (iii) The above acts would result in an intimidating, hostile or offensive environment for the employee.

RA 7877 also imposes on the employer the duty to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of such acts. Towards this end, the employer is required to do the following:

- (i) Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees, through their duly designated representatives, prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefore. The said rules and regulations issued should include, among others, guidelines on proper decorum in the workplace and educational or training institutions;
- (ii) Create a committee on decorum and investigation of cases on sexual harassment. The committee shall be composed of at least one representative each from the management, the union, if any, the employees from the supervisory rank, and from the rank and file employees. It shall conduct meetings, as the case may be, with officers and employees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of alleged cases constituting sexual harassment; and
- (iii) Disseminate or post a copy of RA 7877 for the information of all concerned.

The Supreme Court has had occasions to rule on the validity of the disciplinary action imposed by an employer on its employee who was guilty of sexual harassment.

Potential Employer Liability For Sexual Harassment

Persons found guilty of acts of sexual harassment are subject to imprisonment of one to six months, a fine of PHP10,000 to PHP20,000, or both fine and imprisonment, at the discretion of the court. The aggrieved party also may institute an independent civil action for damages and other affirmative relief.

An employer that is informed of such acts and fails to take immediate action will be jointly and severally liable with the erring employee for damages arising from the acts of sexual harassment.

Practical Advice to Employers on Avoiding Sexual Harassment Problems

In addition to complying with its duties and obligations as set forth above, employers should act immediately on sexual harassment complaints.

If an employer receives a complaint concerning an act of sexual harassment, it should take action immediately by investigating the veracity of the complaint in accordance with its rules and regulations for the investigation of sexual harassment cases, which it has previously put in place. If there is merit in the complaint, the employer should impose the appropriate penalty on the erring employee.

As stated above, the employer will be jointly and severally liable with the erring employee for damages arising from the sexual harassment act, if it is informed of such act and it fails to take immediate action. Thus, it is very important that the employer investigates a sexual harassment complaint as soon as it receives such complaint and imposes the appropriate penalty on the erring employee, in accordance with the rules and regulations it has put in place.