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Philippines

EMPLOYMENT & LABOUR LAW

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This country-specific Q&A provides an overview of employment & labour law laws and regulations applicable in Philippines.

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PHILIPPINES
EMPLOYMENT & LABOUR LAW

1. What measures have been put in place to protect employees or avoid redundancies during the coronavirus pandemic?

The Philippine government has instituted a program to hire underemployed, self-employed workers and displaced marginalized worker who have lost their livelihood or whose earnings were affected due to the community quarantine implemented against COVID -19.[1]

The COVID-19 Adjustment Measures Program (CAMP) was also implemented, offering a one-time financial assistance equivalent to Five Thousand Pesos (Php 5,000.00) to affected workers in private establishments that have adopted Flexible Work Arrangements (FWA) or effected temporary closure during the COVID-19 pandemic.[2] Said program also included employment facilitation whereby the government connected affected workers to available job opportunities suitable to their qualifications.

Guidelines were issued to assist employers and employees in the implementation of various alternative work arrangements in lieu of the outright termination of the employees or the total closure of business establishment.[3] The following arrangements were encouraged: (1) Reduction of Workhours and/or Workdays, (2) Rotation of Workers, and (3) Forced Leave of Employees.[4] However, employers were not limited to these arrangements, and may explore other options.

Employers were also mandated to shoulder the cost of COVID-19 prevention and control measures, and no costs related or incidental to such measures are to be borne by the employees.[5]

People who suffer from comorbidities are mandated to stay at home at all times.[6] However for reasons of maintaining their livelihood, these people may report to work albeit on an alternative arrangement.

Employees who fail or refuse to work by reason of imminent danger resulting from natural or man-made calamities cannot be subject to any administrative sanction.[7]

References

[1] DOLE *Department Order No. 210 Series of 2020*, Dated March 18, 2020.

[2] DOLE *Department Order No. 209 Series of 2020*, Dated March 19, 2020

[3] DOLE *Labor Advisory No. 09 Series of 2020,* Dated March 04, 2020

[4] Section III, *DOLE Labor Advisory No. 09 Series of 2020,* Dated March 04, 2020

[5] DOLE *Labor Advisory No. 18 Series of 2020,* Dated May 16, 2020

[6] Sec. 4 (3) of the Omnibus Guidelines on the Implementation of Community Quarantine in the Philippines with Amendments as of February 11, 2021

[7] Sec. 3, Labor Advisory No. 1 Series of 2020 dated January 13, 2020

2. Does an employer need a reason in order to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

Under Philippine law, an employee may only be lawfully terminated when there are just or authorized causes. This is anchored on the principle of the security of tenure, which is not only statutorily provided but is also constitutionally enshrined.

The following are just causes for termination:[1]

(a) Serious misconduct or willful disobedience;

(b) Gross and habitual neglect of duties;

(c) Fraud or willful breach of trust;

(d) Commission of a crime or offense by the employee against his employer, the employer's immediate family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing. Based on Philippine case law, examples of such analogous causes include: (i) theft committed by an employee against a person other than his employer, if proven by substantial evidence;[2] (ii) gross incompetence or inefficiency, such as the failure to attain a reasonable work quota which was fixed by the employer in good faith;[3] (iii) failure to meet the standards of a bona fide occupational qualification;[4] and (iv) a severe[5] failure to comply with company rules and regulations.

On the other hand, the following are authorized causes for termination:

(a) Installation of labor-saving devices;

(b) Redundancy;

(c) Retrenchment to prevent losses;

(d) Closure or cessation of business;[6] and

(e) Disease not curable within six months as certified by competent public authority, and continued employment of the employee is prejudicial to his health or to the health of his co-employees.[7]

References

[1] Article 297, Labor Code.

[2] ***John Hancock Life Insurance Corp. v. Davis***, 564 SCRA 92 (2008).

[3] *See* ***Aliling v Feliciano***, 671 SCRA 186 (2012); ***Skippers United Pacific, Inc. v. Maguad***, 498 SCRA 639 (2006); ***Lim v. National Labor Relations Commission ("NLRC")***, 259 SCRA 485 (1996); ***Philippine American Embroideries v. Embroidery and Garment Workers***, 26 SCRA 634 (1969).

[4] ***Yrasuegui v. Philippine Airlines, Inc.***, 569 SCRA467 (2008).

[5] ***Sutherland Global Services (Philippines), Inc. v. Labrador***, 719 SCRA 634 (2014); ***Gutierrez v. Singer Seweing Machine Company***, 411 SCRA 512 (2003).

[6] Article 298, Labor Code.

[7] Article 299, Labor Code.

3. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

Large numbers of dismissals may be done under the first four authorized causes discussed in Question 1.

An employer may implement termination by redundancy when the following are present:

(a) Superfluous positions or services of employees;

(b) Positions or services are in excess of what is reasonably demanded by the actual requirements of the enterprise to operate in an economical and efficient manner;

(c) Good faith in abolishing redundant positions;

(d) Fair and reasonable criteria in selecting the employees to be terminated: and

(e) Adequate proof of redundancy such as feasibility studies/proposals.[1]

A valid retrenchment program requires the following:

(a) Retrenchment must be reasonably necessary and likely to prevent business losses;

(b) Losses, if already incurred, are substantial, serious, actual and real, or if only expected, are reasonably imminent;

(c) Expected or actual losses must be proved by sufficient and convincing evidence;

(d) Retrenchment must be in good faith and not to defeat or circumvent the employees' right to security of tenure; and

(e) Fair and reasonable criteria in ascertaining the retention and dismissal of employees, such as: status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[2]

Mass termination due to closure of business requires the following:

(a) Decision to close or cease operation of the enterprise by the management;

(b) Decision was made in good faith; and

(c) No other option available to the employer except to

close or cease operations.[3]

A valid termination due to the installation of labor-saving devises requires the following:

(a) Introduction of machinery, equipment or other devices;

(b) Introduction must be done in good faith;

(c) Purpose for such introduction must be valid such as to save on cost, enhance efficiency and other justifiable economic reasons;

(d) No other option available to the employer than the introduction of machinery, equipment or device and the consequent termination of employment of those affected thereby; and

(e) Fair and reasonable criteria in selecting employees to be terminated.[4]

These requirements must always be complied with regardless of the number of employees affected.

References

[1] Section 5.4(b), Department of Labor and Employment ("DOLE") Department Order ("D.O.") No. 147-15.

[2] Section 5.4(c), D.O. No. 147-15.

[3] Section 5.4(d), D.O. No. 147-15.

[4] Section 5.4(a), D.O. No. 147-15.

4. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

There are two types of business sales, namely: sale of one entity of all or substantially all its assets to another distinct entity, and stock sales which take place at the shareholder level within the same entity. These two have varying effects.

In asset sales, provided that the sale is in good faith, the transferee has no legal duty to absorb the employees of the transferor.[1] However, the transferee may, give preference to the qualified separated employees in filling vacancies.[2]

In stock sales, because the corporation possesses a personality separate and distinct from that of its shareholders, changing the shareholders will not affect the corporation's continuity. Thus, the corporation, despite change in shareholders, cannot dismiss its employees absent a just or authorized cause.[3]

References

[1] ***Manlimos vs. NLRC***, 242 SCRA 145 (1995).

[2] ***Manlimos vs. NLRC***, 242 SCRA 145 (1995).

[3] ***SME Bank Inc. vs. De Guzman***, 707 SCRA 35 (2013).

5. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

Notice is always required in terminations made by the employer of any employee regardless of classification. The notice requirements, however, depend on whether the termination is due to just or authorized causes.

For just causes, the twin notice and hearing rule must be complied with. This requires the employer to:

(a) Serve the employee with a written notice containing the specific grounds of termination against him, giving him an opportunity to explain at least five calendar days from receipt to clarify his defense;

(b) Conduct a hearing to allow the employee to explain his defenses, present evidence, and rebut the evidence presented against him; and

(c) Serve the employee a written notice of termination indicating that all circumstances involving the charge against him has been considered and that the grounds to justify the severance of his employment.[1]

For authorized causes, the minimum notice period is one month prior to the intended date of termination which notice must be given to both the worker and to the appropriate Department of Labor and Employment ("DOLE") Regional Office.[2]

References

[1] ***Unilever Philippines, Inc. vs. Rivera***, 697 SCRA 136 (2013).

[2] Articles 298 and 299 of the Labor Code.

6. Is it possible to pay monies out to a

worker to end the employment relationship instead of giving notice?

In terminations at the instance of the employer, whether for just or authorized causes, there can be no payment in lieu of notice.[1] Nevertheless, failure to comply with the notice requirement does not invalidate a termination where just and/or authorized causes exist. In such cases, the employer may be held liable for nominal damages, as discussed in Question 9.

References

[1] ***Jaka Food Processing Corp. vs. Pacot***, 454 SCRA 119 (2005).

7. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

The employer may put the worker in a garden leave during the notice period but must ensure that the employee is still accorded his procedural rights. Nevertheless, care must be taken in implementing the garden leave since there is a risk that the employee on garden leave may claim constructive dismissal. There is constructive dismissal when the employee is compelled to give up his job because continued employment is rendered impossible, unreasonable, or unlikely as when there is clear discrimination, insensibility, or disdain on the part of the employer to the employee.[1]

Nevertheless, during the notice and hearing period in a just cause termination, where the employee poses a serious and imminent threat to the employer or his co-workers, the employee may be placed on preventive suspension for a period not longer than thirty days without pay.[2] A preventive suspension which exceeds this period may also be deemed to have ripened to constructive dismissal.[3]

References

[1] ***Tan Brothers Corporation of Basilan City vs. Escudero***, 700 SCRA 583 (2013).

[2] Sections 3 and 4, Rule XIV, Book V, Omnibus Rules Implementing the Labor Code.

[3] ***Maricalum Mining Corporation vs. Decorion***, 487 SCRA 182 (2006).

8. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

The procedure for a valid termination of an employer depends on the cause for the same.

For just causes, the employer is required to comply with the twin notice and hearing rule, as detailed in Question 5.

For authorized causes, the employer must send written notices to the worker and to the appropriate Department of Labor and Employment ("DOLE") Regional Office at least one month before the intended date of termination. The employee must also be granted separation pay.

9. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?

If the employer fails to follow the procedural requirements under the law:

(a) In terminations for a just cause, the dismissal will be valid but the employer will be required to pay nominal damages of up to PhP30,000.00 for violating the employee's right to due process in the form of the two notices and hearing.[1]

(b) In terminations for an authorized cause, the dismissal will be valid but the employee is entitled to nominal damages of up to PhP50,000.00 and to separation pay.[2]

References

[1] ***Agabon vs. NLRC***, 442 SCRA 537 (2004).

[2] ***Nippon Housing Phils. Inc. vs. Leynes***, 655 SCRA 77 (2011).

10. How, if at all, are collective agreements relevant to the termination of employment?

Collective Bargaining Agreements ("CBAs") are relevant in terminations since it could provide for just causes for termination.[1] For instance, the refusal of an employee to comply with a union security clause embodied in a CBA is recognized as a ground for termination.[2] CBAs

also allow employees to dispute terminations in organized establishments through the grievance machinery provided in the CBA.[3]

References

[1] ***Inguillo vs. First Philippine Scales, Inc.***, 588 SCRA 471 (2009).

[2] ***Alabang Country Club, Inc. vs. NLRC***, 545 SCRA 351 (2008).

[3] Section 8, D.O. No. 147-15.

11. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

In terminations due to authorized causes, the employer is required to notify the appropriate DOLE Regional Office of the same.[1] However, the permission of the DOLE is not required. For terminations due to just causes, neither permission nor notice to the DOLE is required.

Reference

[1] ***Nippon Housing Phils. Inc. vs. Leynes***, 655 SCRA 77 (2011).

12. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

Philippine law and jurisprudence protect employees from being dismissed from employment simply because of their age,[1] sex,[2] religion,[3] disability,[4] marital status,[5] or national origin[6] unless the employer can show that these are *bona fide* occupational qualifications needed to perform the job.[7]

References

[1] Section 5 (a), Republic Act No. 10911

[2] Article 133, Labor Code. See also Section 35, Republic Act No. 9710.

[3] ***Ysaregui vs. Philippine Airlines***, 569 SCRA 467 (2008).

[4] Section 5, Republic Act No. 7277.

[5] Article 134, Labor Code. See also Section 7, Republic Act No. 8972.

[6] ***Ysaregui vs. Philippine Airlines***, 569 SCRA 467 (2008).

[7] ***Ysaregui vs. Philippine Airlines***, 569 SCRA 467 (2008).

13. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

The employer, its officers, and agents who actually participated, authorized, or ratified the discriminatory acts above may be held criminally and/or civilly liable.[1] The DOLE may also issue a Compliance Order and/or Work Stoppage Order against the employer's business to remedy its non-compliance with anti-discriminatory laws.[2]

References

[1] See, e.g., Article 305, Labor Code; Section 7, Republic Act No. 10911; Section 41, Republic Act No. 9710; and Section 46, Republic Act No. 7277.

[2] Rule V, DOLE Department Order No. 183, Series of 2017.

14. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Every worker in the Philippines is constitutionally protected with security of tenure. However, there are certain classes of workers which are given additional protection under Philippine law in the context of wrongful termination of employment. For instance, migrant Filipino Workers are given additional protection when wrongfully terminated, apart from their protection from wrongful dismissal due to discrimination or harassment.

Under Section 10 of Republic Act No. 8042, in case a migrant Filipino worker is wrongfully terminated before the expiration of the employment contract, he or she shall be entitled, among others, to their salaries for the

unexpired portion of their employment contract or for three (3) months for every year of the unexpired term, whichever is less.

Further, under Article 301 of the Labor Code, the performance of military or civic duties by an employee shall not terminate employment, and the employer shall instead reinstate the employee to his or her former position without loss of seniority rights if he or she desires to resume work not later than one (1) month from his or her relief from the military or civic duty.

15. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

While there are no specific laws protecting whistleblowers in general, witnesses admitted to the Witness Protection, Security and Benefit Program of the Philippine government are protected from being removed from or demoted in work because or on account of their witness duty.[1]

On a related note, and specific to actions on wage claims under Title II, Book III of the Labor Code, it is also unlawful for an employer to dismiss any employee who has filed or testified in any such proceeding or is about to do so.

Reference

[1] Section 8 (c), Republic Act No. 6981.

16. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

Separation pay as a result of termination of employment is set by law and given only in cases of dismissals due to authorized causes.

If the authorized cause is the installation of labor-saving devices or redundancy, the separation pay is equivalent to one (1) month pay or one (1) month for every year of service, whichever is higher.[1]

If the authorized cause is retrenchment, closure or cessation of business, or an incurable disease,[2] the separation pay is equivalent to one (1) month pay or one-half (1/2) month pay for every year of service, whichever is higher.[3]

On the other hand, if the dismissal is due to a just cause, no separation pay is required by law to be given to employees.

References

[1] Article 298, Labor Code.

[2] Article 299, Labor Code.

[3] Article 298, Labor Code.

17. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Yes, employers and employees may enter into an agreement wherein the latter validly waives his or her rights in a termination of employment scenario, in return for payment. However, in order for such an agreement to be upheld in case of litigation, the employer must be able to prove that:[1]

1. That the employee executed the deed of quitclaim voluntarily;
2. There is no fraud or deceit on the part of any of the parties;
3. The consideration of the quitclaim is credible and reasonable; and
4. The contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

The quitclaim may also provide for non-disclosure or confidentiality clauses related to the work done by the employee. The only limitation being that such provision must not be contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

Reference

[1] ***Goodrich Manufacturing Corporation vs. Ativo***, 611 SCRA 261 (2010).

18. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes,

describe any relevant requirements or limitations.

Yes, it is possible to restrict a worker from working for competitors after termination of employment, provided there are reasonable limitations thereto as to time, trade, and place. Although such restrictive covenants are evaluated on a case-to-case basis, it has been held that a non-complete clause for a period of two (2) years is valid in the Philippines.[1]

In determining the reasonableness of the restriction, courts consider the following factors:[2]

1. whether the covenant protects a legitimate business interest of the employer;
2. whether the covenant creates an undue burden on the employee;
3. whether the covenant is injurious to public welfare;
4. whether the time and territorial limitations contained in the covenant are reasonable; and
5. whether the restraint is reasonable from the standpoint of public policy.

References

[1] ***Tiu vs. Platinum Plans Phils., Inc.***, 517 SCRA 101 (2007).

[1] ***Rivera vs. Solidbank Corporation***, 487 SCRA 512 (2006).

19. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes, employees may be required to keep information confidential even after the termination of employment. Non-disclosure agreements are recognized in the Philippines, provided they are voluntarily entered into by the parties thereto.[1]

Further, apart from contractual obligations, Philippine law also requires employees to keep certain information confidential even after employment. For instance, under the Data Privacy Act, employees are bound to keep confidential personal information even after termination of employment.[2]

References

[1] ***Century Properties, Inc. vs. Babiano***, 795 SCRA 671 (2016).

[2] Section 20 (e), Republic Act No. 10173.

20. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

Employers are obliged to issue a Certificate of Employment, indicating the material dates of an employee's engagement and the type of work in which he or she is employed. Employers must issue the said Certificate of Employment within three (3) days upon request.[1]

References

[1] DOLE *Labor Advisory No. 06, Series of 2020* dated 31 January 2020.

21. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

One common difficulty is in complying with the notice requirement in dismissing employees. Unlike in some jurisdictions, employment cannot be terminated in the Philippines without any prior notice, not even through payment in lieu of notice.

Another common difficulty is with respect to compliance with the regulations on retrenchment. To uphold the validity of retrenchment programs, Philippine regulations require proof of actual or imminent business losses. To comply with this requirement, employers would do well to regularly update their financial records and/or ensure a constant paper trail, such that in the unfortunate need for a retrenchment, employers can ably and promptly justify the measure.

22. Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

While there are no planned statutory changes to the legal framework on terminations at the moment, there are a lot of discussions on the impact of the COVID-19

pandemic to various industries and the possibility of mass lay-offs and furloughs.

For instance, the DOLE has recognized that the temporary 'suspension' of employment or the placement of employees on forced leave due to physical closure of the establishment, in relation to the COVID-19 pandemic, shall not result in termination of employment.[1]

The DOLE is expected to provide more guidance in how to mitigate the impact of COVID-19 on the Philippine economy.

References

[1] DOLE *Labor Advisory No. 11, Series of 2020* dated 14 March 2020.

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