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Philippines

Employment and Labour Law

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

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Philippines: Employment and Labour Law

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

Yes. Employers in the Philippines may only terminate employees based on just or authorized causes, provided that they follow the proper procedural requirements. This rule is rooted in the principle of security of tenure, which is not only established by statute but also enshrined in the Philippine Constitution.

The following are just causes for termination:[1]

a. Serious misconduct or wilful disobedience;
b. Gross and habitual neglect of duties;
c. Fraud or wilful breach of trust;
d. Commission of a crime or offense by the employee against his/her employer, the employer's immediate family or his/her 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/her 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 failure to comply with company rules and regulations.[5] Further, no act or omission shall be considered as an analogous cause unless expressly provided in the company rules, regulations, or policies.[6]

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

a. Installation of labour-saving devices;
b. Redundancy;
c. Retrenchment to prevent losses;
d. Closure or cessation of business;[7] and
e. Disease not curable within six (6) months as certified by competent public authority, and continued employment of the employee is prejudicial to his/her health or to the health of his/her co-employees.[8]

Aside from the aforementioned just and authorised causes, the Philippine Labour Code also provides the following grounds for dismissal:

Employees may be dismissed for violating a Union Security Clause under Article 259(c), provided such a clause is included in a collective bargaining agreement ("CBA"). This applies only to employees hired after the CBA's signing, except for religious objectors. Termination under Article 259(c) must follow the procedural requirements for just cause.

This allows the SEBA to request termination for employees who refuse to join the union or fail to maintain good standing, as long as there is sufficient evidence of the violation. This applies only to employees hired after the CBA's signing, except for religious objectors. Termination under Article 259(c) must follow the procedural requirements for just cause.

Under Article 279(a), dismissal may also result from prohibited strike activities, including: (1) Union officers who knowingly participate in an illegal strike, and (2) Employees or union members involved in illegal acts during a strike, regardless of its legality. In these cases, termination is automatic, without requiring notice and hearing.

Article 278(g) further allows immediate disciplinary action, including dismissal, against strikers who violate orders, prohibitions, or injunctions issued by the DOLE Secretary or the NLRC.

Finally, under Article 296, a probationary employee may be dismissed for failing to meet reasonable standards for regular employment, provided these standards were clearly communicated at the time of hiring.

Footnote(s):

[1] Article 297, Labour Code.

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

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

[4] ***Yrasuegui vs. Philippine Airlines, Inc.***, 569 SCRA 467 (2008).

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

[6] Section 5.2 (g), DOLE Department Order ("D.O.") No. 147-15.

[7] Article 298, Labour Code.

[8] Article 299, Labour Code.

2. 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?

Mass terminations must still be justified under any of the authorized causes for termination, which include the installation of labour-saving devices, redundancy, retrenchment, or business closure.

In particular, 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.[9]

For a retrenchment programme to be considered valid, the following conditions must be met:

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, but not limited to: status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[10]

Mass termination due to closure of business or cessation of operation requires the concurrence of the following:

a. There is a decision to close or cease operation of the enterprise by the management:
b. Such decision was made in good faith; and
c. No other option available to the employer except to close or cease operations.[11]

For a termination to be valid due to the installation of labour-saving devices, the following requisites are required:

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.[12]

The above-mentioned requirements must be observed at all times, regardless of the number of employees affected.

Moreover, in cases of termination due to the installation of labour-saving devices, redundancy, or retrenchment, if two employees hold the same position in the company and are subject to any of these three authorised causes of termination, the employee who was hired last will be the first to be let go, following the Last-In, First-Out Rule—unless an employee voluntarily opts for separation from employment.[13]

Footnote(s):

[9] Section 5.4 (b), DOLE D.O. No. 147-15; *see also* ***Dole Philippines, Inc. vs. NLRC***, 365 SCRA 124 (2001).

[10] Section 5.4 (c), DOLE D.O. No. 147-15; *see also* ***San Miguel Corp. vs. NLRC***, 304 SCRA 1 (1999).

[11] Section 5.4 (d), DOLE D.O. No. 147-15; *see also* ***Cheniver Deco Print Technics Corp. vs. NLRC***, 325 SCRA 758 (2000).

[12] Section 5.4 (a), DOLE D.O. No. 147-15; *see also* ***Edge Apparel, Inc. vs. NLRC***, 286 SCRA 302 (1998).

[13] ***Maya Farms Employees Organization vs. NLRC***, 309 Phil. 465 (1994).

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

The additional considerations depend on the type of business sale resulting in the employee's termination. There are two (2) categories of business sales: (a) asset sales, which involve one entity selling all or nearly all of its assets to another separate entity (commonly known as the transferee), and (b) stock sales, which occur at the shareholder level within the same entity.

In asset sales, as long as the transaction is conducted in good faith, the transferee is not legally obligated to retain the employees of the transferor. However, the transferee may prioritise qualified separated employees when filling job vacancies.[14]

Conversely, stock sales involve a change in shareholders but do not disrupt the corporation's continuity, as the corporation maintains a legal identity separate from its shareholders. As a result, despite a change in ownership, the corporation cannot terminate its employees unless a just or authorised cause exists.[15]

Footnote(s):

[14] ***Barayoga vs. Asset Privatization Trust***, 473 SCRA 690 (2005); ***Manlimos vs. NLRC***, 242 SCRA 145 (1995).

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

4. Do employees need to have a minimum period of service in order to benefit from termination rights? If so, what is the length of the service requirement?

No minimum length of service is required for employees to be protected from illegal termination under Philippine labour laws. All employees, regardless of tenure, are entitled to due process and security of tenure, meaning they cannot be dismissed without just or authorized cause and compliance with procedural requirements.[16]

However, in addition to just and authorized cause, probationary employees may also be terminated if they fail to meet the reasonable standards for regularization, provided these standards were clearly communicated at the time of hiring.[17] Under Philippine law, probationary employment is set at a maximum of six (6) months, unless it is covered by an apprenticeship agreement stipulating a longer period.[18]

Footnote(s):

[16] ***Fuji Television Network, Inc. vs. Espiritu***, 727 SCRA 456..

[17] Article 296, Labor Code.

[18] *Id.*

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?

In all cases of termination initiated by the employer, providing notice is mandatory, regardless of the type of employment. However, the specific notice requirements vary depending on whether the termination is based on just or authorised causes.

For just causes, the employer is required to adhere to the twin notice and hearing rule, which entails the following:

a. Serve the employee with a written notice containing the specific grounds for termination against him/her, detailed narration of the facts and circumstances serving as basis for the charge against him/her, and a directive giving him/her an opportunity to explain, within at least five (5) calendar days from his/her receipt of the notice[19], his/her defense;
b. Conduct a hearing to allow the employee to explain his/her defenses, present evidence, and rebut the evidence presented against him/her, with the assistance of counsel if the employee so desires;[20] and
c. Serve the employee a written notice of termination indicating that all circumstances involving the charge against him/her have been considered and that the grounds to justify the severance of his/her employment have been established.[21]

On the other hand, a notice period of at least one (1) month before the intended termination date is required. This notice must be provided to both the employee and the relevant Regional Office of the Department of Labour and Employment ("DOLE").[22] Written reports are now

submitted online through the DOLE's portal at reports.dole.gov.ph.

Footnote(s):

[19] Section 12, DOLE D.O. 18-A; *see also* ***Unilever Philippines, Inc. vs. Rivera***, 697 SCRA 136 (2013).

[20] Section 5.1 (b), DOLE D.O. No. 147-15; *see also* ***Perez vs. Philippine Telegraph and Telephone Company***, 584 SCRA 110 (2009).

[21] Section 5.1 (c), DOLE D.O. No. 147-15; *see also* ***Unilever Philippines, Inc. vs. Rivera***, *supra*.

[22] Articles 298 and 299, Labour Code.

6. Is it possible to make a payment 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, payment in lieu of notice is not permitted.[23] However, non-compliance with the notice requirement does not render the termination invalid in itself when there are just and/or authorised causes present. Instead, the employer shall be liable for nominal damages due to the failure to observe procedural due process.

Nevertheless, it is worthy noting that employment may be terminated by mutual agreement between the employer and the employee through the execution of a Mutual Separation Agreement ("MSA").[24] This method of termination shifts the dissolution of the employer-employee relationship from the scope of Philippine labour laws to the applicable laws on obligations and contracts, thereby eliminating the need for notice requirements related to termination based on just or authorised causes. Offering separation pay to an employee signing an MSA is not mandatory, as the employee's consent is the key requirement for its execution. However, in practice, employers who provide the option of mutual termination through an MSA often include a provision in the agreement granting the employee financial amounts exceeding their legal entitlements to make the arrangement more appealing.

Footnote(s):

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

[24] ***Saura Import and Export Co., Inc. vs. Development Bank of the Philippines***, 150 Phil. 251 (1972).

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

Yes, an employer may place a worker on garden leave during the notice period, provided that the employee's procedural rights outlined under Item 4 are upheld. However, caution must be exercised in enforcing garden leave, as there is a possibility that the employee may allege constructive dismissal. Constructive dismissal occurs when an employee is forced to resign because continued employment becomes impossible, unreasonable, or unlikely, particularly in cases where the employer demonstrates clear discrimination, insensitivity, or disregard toward the employee.[25]

When termination is due to just cause, an employee may be also placed on preventive suspension without pay for a maximum period of thirty (30) days if they present a serious and imminent threat to the life and/or property of their employer or co-workers.[26] However, the preventive suspension without pay exceeds this period, such suspension is considered as constructive dismissal.[27]

Footnote(s):

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

[26] ***Every Nation Language Institute vs. Dela Cruz***, G.R. No. 225100 (2020); ***Gatbonton vs. NLRC***, 479 SCRA 416 (2006).

[27] ***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.

Yes. The procedure for a valid termination by an employer is detailed in the response to Question 3.

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, the consequences shall depend on whether the dismissal is for just out authorised cause:

a. In terminations for just cause, the dismissal will be valid but the employer will be required to pay nominal damages of up to Thirty Thousand Pesos (PhP 30,000.00) for violating the employee's right to due process in the form of the two notices and hearing.[28]
b. In terminations for an authorized cause, the dismissal will be valid but the employee shall be entitled to nominal damages of up to Fifty Thousand Pesos (PhP 50,000.00) and to separation pay.[29]

Footnote(s):

[28] ***Virex Enterprises vs. Dimaya***, G.R. No. 195584 (2021); ***Agabon vs. NLRC***, 442 SCRA 537 (2004).

[29] ***Mejila vs. Wrigley Philippines, Inc.***, 919 SCRA 106 (2019); ***Nippon Housing Phils. Inc. vs. Leynes***, 655 SCRA 77 (2011).

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

CBAs play a role in terminations as they may establish additional just causes for dismissal that both employers and employees are contractually bound to observe.[30] One example is the enforcement of a union security clause, wherein an employee's refusal to maintain union membership, as required by the CBA, may be considered a just cause for termination.[31]

Furthermore, CBAs provide employees in organised establishments with a structured mechanism to contest terminations through the grievance machinery and voluntary arbitration procedures specified in the agreement. This allows disputes related to termination to be resolved in accordance with the terms mutually agreed upon by the employer and the union, ensuring compliance with both labour laws and contractual obligations.[32]

Footnote(s):

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

[31] ***Slord Development Corporation vs. Noya***, 891 SCRA 598 (2019); ***Alabang Country Club, Inc. vs. NLRC***, 545 SCRA 351 (2008).

[32] Section 8, DOLE Department Order 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?

For terminations based on authorised causes, the employer must provide notice to the appropriate DOLE Regional Office. However, obtaining DOLE's permission is not necessary.[33] In cases of termination due to just causes, neither notification nor approval from DOLE is required.

Footnote(s):

[33] ***Nippon Housing Phils. Inc. vs. Leynes***, *supra*.

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 by reason of their age[34], sex[35], religion[36], disability[37], marital status[38], or national origin[39], unless the employer can show that these are *bona fide* occupational qualifications necessary in the performance of the job.[40]

Footnote(s):

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

[35] Article 133, Labour Code; *see also* Section 35, Republic Act No. 9710.

[36] ***Yrasuegui vs. Philippine Airlines, Inc.***, *supra*.

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

[38] Article 134, Labour Code; *see also* Section 7, Republic Act No. 8972.

[39] ***Yrasuegui vs. Philippine Airlines, Inc.***, *supra*.

[40] *Id*.

13. What are the possible consequences for the

employer if a worker has suffered discrimination or harassment in the context of termination of employment?

If an employer engages in acts of discrimination or harassment in relation to an employee's termination, such conduct may be deemed indicative of bad faith and malice. As a result, the affected employee may have the right to seek moral and exemplary damages as compensation for the harm suffered.[41]

Additionally, such treatment may amount to constructive dismissal when an employer's acts of discrimination, insensitivity, or disdain create an intolerable work environment which would compel a reasonable person to resign. In these cases, the employee's resignation is not voluntary but rather a dismissal in disguise, making the employer liable for illegal dismissal.[42]

Footnote(s):

[41] ***Quadra vs. CA***, 497 SCRA 221 (2006).

[42] ***Mandapat vs. Add Force Personnel Services, Inc., et al.,*** 624 SCRA 155.

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?

All workers in the Philippines are granted security of tenure as a constitutional right. However, certain categories of employees receive additional legal protection against wrongful termination. For example, migrant Filipino workers, or those employed overseas, are afforded extra safeguards in cases of unlawful dismissal beyond protections against discrimination or harassment.

Under Section 10 of Republic Act No. 8042, as amended, a migrant Filipino worker who is wrongfully terminated before the completion of their employment contract is entitled, among other remedies, to receive their salaries for the unexpired portion of the contract.

Additionally, Article 301 of the Labour Code provides that an employee's service in military or civic duties does not result in termination of employment. Instead, the employer is required to reinstate the employee to their previous position with no loss of seniority rights, provided the employee chooses to return to work within one (1) month from being relieved of their 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?

There are no specific laws in the Philippines that provide general protection for whistleblowers against termination. However, individuals admitted to the Witness Protection, Security, and Benefit Program of the Philippine government are safeguarded from termination or demotion due to their role as witnesses.[43]

Additionally, in matters concerning wage claims under Title II, Book III of the Labour Code, it is unlawful for an employer to dismiss an employee who has filed a complaint, testified, or is about to participate in such proceedings.

Footnote(s):

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

16. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

If an employer can demonstrate that financial difficulties necessitate the implementation of a redundancy program, retrenchment, or the installation of a labour-saving device, termination of employment may be lawfully carried out based on an authorised cause. Should the employer subsequently re-engage the affected employee, the new employment arrangement may have less favourable terms, as it constitutes an entirely separate and distinct contract between the parties.

Additionally, modifications to an existing employment contract may be made through an amendatory agreement mutually agreed upon by both the employer and the employee. However, it is crucial that the employee voluntarily consents to the amendments. Otherwise, if the employee feels coerced into accepting the new terms and later chooses to resign, the modification of the agreement could be considered a badge of constructive dismissal, which may be used as grounds to challenge the termination.

17. What, if any, risks are associated with the use

of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

In the context of recruitment, the use of artificial intelligence (AI), such as automated screening tools that evaluate applicants based on quantifiable metrics and recommend potential hires, generally does not pose significant legal risks. This practice may be regarded as a valid exercise of management prerogative, provided that it does not result in discriminatory hiring practices.

However, in the termination of employment, the permissible scope of AI use is more constrained. While AI may assist in clerical functions, such as drafting termination notices, its role in aspects requiring human discretion and judgment is more limited. For instance, certain processes, such as conducting administrative investigations into employee infractions or forming a Committee on Decorum and Investigation ("CODI") for workplace gender-based sexual harassment cases, necessitate human intervention.[44] The reliance on AI alone may fail to meet the requirements mandated by labour laws and regulations.

Footnote(s):

[44] Section 17 (c), Article IV, Republic Act No. 11313.

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

Under Philippine labour law, separation pay is mandatory only in cases of termination due to authorized causes. The amount is determined based on the specific cause of termination as follows:

For termination due to the installation of labour-saving devices or redundancy, the employee is entitled to separation pay equivalent to one (1) month's salary or one (1) month's pay for every year of service, whichever is higher.[45]

If the authorized cause is retrenchment, closure or cessation of business, or an incurable disease[46], 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.[47]

Employers are not required to provide separation pay when closing their business due to serious business losses or financial reverses, provided that substantial proof of such financial distress is presented.[48]

Meanwhile, in cases of termination due to just causes as defined under the Labour Code, separation pay is not required.

Footnote(s):

[45] Article 298, Labour Code.

[46] Article 299, Labour Code.

[47] Article 298, Labour Code.

[48] ***G.J.T. Rebuilders Machine Shop, et al. vs. Ambos, et al.,*** 748 SCRA 348 (2015).

19. 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, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Yes, an employer and an employee may enter into an agreement where the employee validly waives their rights upon termination in exchange for financial compensation. However, for such an agreement, commonly referred to as a quitclaim, to be upheld in the event of litigation, the employer must establish the following:[49]

a. The employee executed the deed of quitclaim voluntarily;
b. There is no fraud or deceit on the part of any of the parties;
c. The consideration of the quitclaim is credible and reasonable; and
d. 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.

A quitclaim may also include non-disclosure or confidentiality clauses concerning the employee's work. However, such provisions must not contravene any law, public policy, or good morals, nor should they infringe upon the rights of third parties.[50]

Footnote(s):

[49] ***Dela Torre vs. Twinstar Professional Protective Services, Inc.***, G.R. No. 222992 (2021); ***Goodrich Manufacturing Corp. vs. Ativo***, 611 SCRA 261 (2010).

[50] Article 1306, Civil Code.

20. 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, an employer may impose restrictions on a worker's employment with competitors after termination, provided there are reasonable limitations thereto as to time,[51] trade,[52] and place. Additionally, such limitations must not be greater than is necessary to afford a fair and reasonable protection to the employer.[53]

While restrictive covenants are assessed on a case-by-case basis, Philippine jurisprudence has recognised that a non-compete clause lasting up to two (2) years is valid.[54]

To determine whether a non-compete agreement is enforceable, courts evaluate the following factors:[55]

a. Whether the covenant protects a legitimate business interest of the employer;
b. Whether the covenant creates an undue burden on the employee;
c. Whether the covenant is injurious to public welfare;
d. Whether the time and territorial limitations contained in the covenant are reasonable; and
e. Whether the restraint is reasonable from the standpoint of public policy.

Footnote(s):

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

[52] ***Consulta vs. CA***, 453 SCRA 732 (2005).

[53] ***Del Castillo vs. Richmond***, 45 Phil. 679 (1924).

[54] ***Tiu vs. Platinum Plans Phils., Inc.***, *supra*.

[55] ***Rivera vs. Solidbank Corp.***, 487 SCRA 512 (2006).

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

Yes, an employer may require a worker to keep information confidential even after the termination of employment. Non-disclosure agreements are are recognised and enforceable in the Philippines, provided they are voluntarily entered into by both parties.[56]

In addition to contractual obligations, Philippine law imposes statutory duties of confidentiality on employees even after their employment has ended. For example, under the Data Privacy Act, employees are legally obligated to maintain the confidentiality of personal information they had access to during their employment, even after their departure from the company.[57]

Footnote(s):

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

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

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

Yes. employers are legally required to issue a Certificate of Employment, indicating the material dates of an employee's engagement and the type of work in which he/she is employed.[58] Employers must issue the said Certificate of Employment within three (3) days upon request.[59]

Footnote(s):

[58] DOLE *Labour Advisory No. 06*, Series of 2020 dated 31 January 2020.

[59] *Id.*

23. 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 arises in justifying dismissals due to retrenchment. To ensure the validity of a retrenchment programme, Philippine labour laws mandate that employers provide proof of actual or imminent business losses. To meet this requirement, employers should maintain updated financial records and a well-documented paper trail.

In the same vein, terminations due to redundancy are required to be proven with "adequate proof of redundancy, despite the decision to declare a position redundant falling within the employer's management prerogative. DOLE Department Order No. 147, s. 2015, outlines specific examples of acceptable proof, such as new staffing patterns, feasibility studies, job descriptions, and management-approved restructuring plans. Thus, Companies must take the additional step of preparing comprehensive documentation which demonstrates a clear causal link between the redundancy and business necessity, as general claims of superfluity are insufficient.

24. Are any legal changes planned that are likely to impact 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?

Over the past year, the Supreme Court has promulgated the following precedent-setting cases impacting the legal framework governing dismissals in the Philippines:

A recent Supreme Court ruling clarified that terminating an employee solely for testing positive for HIV is unlawful.[60] The case involved an OFW in Saudi Arabia who was dismissed and repatriated due to an HIV-positive diagnosis. The Court ruled that this violated the Philippine HIV and AIDS Policy Act, affirming that HIV is not a "disease" that justifies dismissal under the Labour Code.

Another recent landmark case ruled that illegally dismissed probationary employees are entitled to back wages not only for the remainder of their probationary period but also for the entire duration their compensation was withheld until reinstatement.[61] This decision abandons the previous doctrine[62] which limited back wages to the end of the probationary period, affirming that probationary employment automatically converts to regular employment upon completion unless the employee is validly dismissed or fails to qualify for regularization. Thus, employers are now required to exercise greater diligence in eliminating probationary employees.

The Supreme Court also recently held that employers may be held liable for constructive dismissal if they fail to prevent or properly address workplace sexual harassment.[63] In the case, the employer failed to act on her sexual harassment complaint, withheld her salary for refusing to work alongside the harasser, and failed to establish a CODI as required by law, forcing her to endure a hostile and intolerable work environment. The Supreme Court found that while the employee remained employed, she was constructively dismissed due to the hostile, offensive, and intimidating work environment created by the employer's inaction. Given this ruling, employers are bound to observe strict compliance with workplace harassment laws, including prompt investigation of complaints and the establishment of a CODI to prevent liability for constructive dismissal.

On a related note, Senate Bill No. 1311, which is currently undergoing deliberations in the Senate Committee, seeks to amend the Philippine Labour Code by including "commission of sexual violence and/or other sexually-related offenses, regardless of conviction" as a just cause for termination. If enacted, this amendment would provide employers with an additional legal ground to terminate an employee for just cause.

Footnote(s):

[60] ***Bison Management Corp. vs. AAA***, G.R. No. 256540, 20 May 2024.

[61] ***C.P. Reyes Hospital vs. Barbosa***, G.R. No. 228357, 16 April 2024.

[62] ***Robinsons Galleria vs. Ranchez***, G.R. No. 177937, 19 January 2011.

[63] ***Buban vs. De la Peña***, G.R. No. 268399, 24 January 2024.

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