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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. Philippine labour laws allow employers to terminate their employees only under either just or authorized causes, and upon due compliance with the prescribed procedure. This is anchored on the principle of security of tenure, which is not only statutorily provided, but is also guaranteed by 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]

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?

Large numbers of dismissal would still require that they fall under any of the authorized causes for termination: installation of labour-saving devices, redundancy, retrenchment, and closure of business.

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]

A valid retrenchment program requires the concurrence of 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, 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]

A valid termination due to the installation of labour-saving devices requires the concurrence of 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.[12]

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

Further, with regard to the installation of labour-saving devices, redundancy, and retrenchment, when there are two (2) employees occupying the same position in the company to be affected by any of the three (3) enumerated authorized causes of termination, the last one employed will necessarily be the first one to go, *i.e.*, Last-In, First-Out Rule, except when an employee volunteers to be separated 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?

There are two (2) types of business sales, namely: (a) asset sales or the sale of one entity of all or substantially all its assets to another distinct entity (commonly referred to as the transferee), and (b) stock sales which take place at the shareholder level within the same entity. These two have different 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. However, the transferee may give

 

preference to the qualified separated employees in filling vacancies.[14]

On the other hand, stock sales, contemplate a change in the shareholders. These, however, do not affect the corporation's continuity as the corporation possesses a personality separate and distinct from that of its shareholders. Thus, the corporation, despite a change in shareholders, cannot dismiss its employees absent a just or authorized cause.[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. 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 at the instance of the employer regardless of classification of the employment. 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 followed, which requires the employer to:

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[16], 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;[17] 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.[18]

For authorized causes, the minimum notice period is one (1) month prior to the intended date of termination. Such notice must be given to both the worker and to the appropriate Department of Labour and Employment ("DOLE") Regional Office.[19] To streamline these reportorial requirements, written reports are now submitted online through the DOLE's portal at reports.dole.gov.ph.

Footnote(s):

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

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

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

[19] Articles 298 and 299, Labour Code.

## 5. 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.[20] Nevertheless, failure to comply with the notice requirement will not invalidate a termination where just and/or authorized causes exist. In such cases, the employer shall be held liable for nominal damages for failure to comply with procedural due process.

Employment may be terminated by mutual consent of the employer and the employee through the execution of a Mutual Separation Agreement ("MSA").[21] This mode of termination effectively transfers the extinguishment of the employer-employee relationship from the ambit of Philippine labour laws to the relevant laws on obligations and contracts, dispensing with the notice requirement in relation to termination for just or authorized causes. It is not necessary to offer separation payment to the employee executing the MSA, since only his/her consent is essential to the execution thereof. However, in practice, employers offering the option to mutually terminate employment through the execution of an MSA, usually provide a stipulation in the agreement paying the employee amounts over and above those which he/she would be legally entitled to, for the purpose of making the MSA more attractive to the employee.

Footnote(s):

 

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

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

## 6. 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?

Yes. The employer may put the worker on garden leave during the notice period but must ensure that the employee is still accorded his/her 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/her 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 towards the employee.[22]

In cases of termination due to just cause, the employee may be placed on preventive suspension without pay for a period not exceeding thirty (30) days where the employee poses a serious and imminent threat to the life and/or property of his/her employer or his/her co-workers.[23] A preventive suspension without pay which exceeds this period may also be deemed to have ripened into constructive dismissal.[24]

Footnote(s):

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

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

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

## 7. 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.

## 8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

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

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.[25]
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.[26]

Footnote(s):

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

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

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

Collective Bargaining Agreements ("CBAs") are relevant in terminations since they may provide for additional just causes for termination, which both employers and employee are obliged to follow.[27] For instance, the refusal of an employee to comply with a union security clause embodied in a CBA may be recognized as a just cause for termination.[28] CBAs likewise allow employees to dispute terminations in organized establishments through the grievance machinery provided in the CBA.[29]

Footnote(s):

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

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

 

[29] Section 8, DOLE Department Order No. 147-15.

## 10. 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.[30] However, the permission of the DOLE is not required. For terminations due to just causes, neither permission nor notice to the DOLE is necessary.

Footnote(s):

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

## 11. 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[31], sex[32], religion[33], disability[34], marital status[35], or national origin[36], unless the employer can show that these are *bona fide* occupational qualifications necessary in the performance of the job.[37]

Footnote(s):

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

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

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

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

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

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

[37] *Id*.

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

Acts which constitute discrimination or harassment in the context of termination may be construed as bad faith and malice on the part of the employer. These acts shall entitle the employee concerned to claim moral and exemplary damages.[38]

Footnote(s):

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

## 13. 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 Philippines law in the context of wrongful termination of employment. For instance, migrant Filipino Workers or Filipino workers employed abroad 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, as amended, in case a migrant Filipino worker is wrongfully terminated before the expiration of the employment contract, he/she shall be entitled, among others, to their salaries for the unexpired portion of their employment contract.

Further, under Article 301 of the Labour 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/her former position without loss of seniority rights if he/she desires to resume work not later than one (1) month from his/her relief from the military or civic duty.

## 14. 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.[39]

On a related note, and specific to actions on wage claims under Title II, Book III of the Labour 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.

Footnote(s):

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

## 15. 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 substantiate the necessity of the implementation of either a redundancy program or retrenchment or the installation of a labour-saving device, as a result of financial difficulties, it may lawfully terminate an employment arrangement based on an authorized cause. The subsequent re-engagement of the concerned employee may be on less favourable terms, considering that it constitutes an entirely new employment agreement between the parties.

Further, the terms of an employment agreement may be modified by both the employer and employee through the execution of an amendatory contract implementing changes to the terms of the existing employment agreement. It is essential that both parties willingly give their consent to the amending agreement. It is worth noting that the employer must ensure that the concerned employee has freely given his/her consent to the amending agreement. Otherwise, the notice of such amending agreement may be used and appreciated against the employer as a badge of constructive dismissal in the event that the concerned employee decides to resign and subsequently challenges his/her separation therefrom.

## 16. 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?

On the one hand, with regard to the recruitment aspect in employment decision-making, there is no apparent potential risk associated with the use of artificial intelligence, *e.g.*, the use of automated technology in screening applicants based on quantifiable metrics and suggesting which candidates to hire, considering that it may be considered as a valid exercise of management prerogative.

On the other hand, as regards the termination aspect in employment decision-making, the scope within which the use of artificial intelligence or automated technology can be considered may be more limited as opposed to the former. Artificial intelligence may be utilized in the clerical aspects of employee termination, *e.g.*, drafting of the necessary notices. However, with respect to other aspects, particularly those which necessitate human intervention or interaction, *e.g.*, facilitation of administrative investigation on an employee's infractions and the creation of a committee on decorum and investigation ("CODI") in relation to gender-based sexual harassment in the workplace[40], the use of artificial intelligence may not be sufficient in satisfying the requirements laid down by the relevant rules.

Footnote(s):

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

## 17. 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 labour-saving devices or redundancy, the separation pay is equivalent to one (1) month pay for one (1) month for every year of service, whichever is higher.[41]

If the authorized cause is retrenchment, closure or cessation of business, or an incurable disease[42], 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.[43]

The only time employers are not compelled to pay separation pay when terminating due to authorized

 

cause is when they closed their establishments or undertaking due to serious business losses or financial reverses.[44]

On the other hand, if the dismissal is due to any of the just causes enumerated under the Philippine Labour Code, separation pay is not required to be given to employees.

Footnote(s):

[41] Article 298, Labour Code.

[42] Article 299, Labour Code.

[43] Article 298, Labour Code.

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

## 18. 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, employers and employees may enter into an agreement wherein the latter validly waives his/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:[45]

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.

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.[46]

Footnote(s):

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

[46] Article 1306, Civil Code.

## 19. 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[47], trade[48], and place[49]. Although such restrictive covenants are evaluated on a case-to-case basis, it has been held that a non-compete clause for a period of two (2) years is valid in the Philippines.[50]

In determining the reasonableness of the restriction, courts consider the following factors:[51]

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):

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

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

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

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

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

## 20. 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.[52]

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.[53]

Footnote(s):

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

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

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

Yes. 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/she is employed.[54] Employers must issue the said Certificate of Employment within three (3) days upon request.[55]

Footnote(s):

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

[55] *Id.*

## 22. 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.

## 23. 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?

Senate Bill No. 1311, which is still pending Senate Committee deliberations, proposes an amendment into the Philippine Labour Code to include "commission of sexual violence and/or other sexually-related offenses, regardless of conviction" as one of the just causes for termination of an employee. If passed into law, employers may cite this as another ground for a just cause termination of their employee.

Other than the above bill, there are no other major planned statutory changes to the legal framework on termination in the Philippines that employers should be aware of at this time.

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