Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Intramuros, Manila

DEPARTMENT ORDER NO. 147-15
Series of 2015

AMENDING THE IMPLEMENTING RULES AND REGULATIONS OF BOOK VI OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED

SECTION 1. Pursuant to Article 5 of the Labor Code of the Philippines, as amended, on the rule-making power of the Secretary of Labor and Employment, the following Rules governing the application of the just and authorized causes of termination of employment under Articles 297-299 of the Labor Code, as amended, are hereby issued as follows:

RULE I-A
APPLICATION OF JUST AND AUTHORIZED CAUSES OF TERMINATION

Section 1. Guiding Principles. The workers' right to security of tenure is guaranteed under the Philippine Constitution and other laws and regulations. No employee shall be terminated from work except for just or authorized cause and upon observance of due process.

Section 2. Coverage. This Rules shall apply to all parties of work arrangements where employer-employee relationship exists. It shall also apply to all parties of legitimate contracting/subcontracting arrangements with existing employer-employee relationships.

Section 3. Employer-Employee Relationship. To ascertain the existence of an employer-employee relationship, the four-fold test shall apply, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means used to achieve that end.[1]

Section 4. Definition of Terms. The following terms as used in this Rules, shall mean:

(a) **"Authorized Causes"** refer to those instances enumerated under Articles 298 [Closure of Establishment and Reduction of Personnel] and 299 [Disease as a Ground for Termination] of the Labor Code, as amended. These are causes brought

[1] David vs. Macasio, G.R. No. 1954661, July 2, 2014.

by the necessity and exigencies of business, changing economic conditions and illness of the employee.[2]

(b) **"Just Causes"** refer to those instances enumerated under Article 297 [Termination by Employer] of the Labor Code, as amended. These are causes directly attributable to the fault or negligence of the employee.[3]

(c) "**Closure or Cessation of Business**" refers to the complete or partial cessation of the operations and/or shut-down of the establishment of the employer.[4]

(d) **"Commission of a Crime or Offense**" refers to an offense by the employee against the person of his/her employer or any member of his/her family or his/her duly authorized representative.[5]

(e) "**Contractor**" refers to any person or entity, including cooperative, engaged in a legitimate contracting or subcontracting arrangement providing either services, skilled workers, temporary workers, or a combination of services to a principal under a Service Agreement.[6]

(f) "**Contractor's Employee**" refers to one employed by a contractor to perform or complete a job, work, or service pursuant to a Service Agreement with a principal.

It shall also refer to regular employees of the contractor whose functions are not dependent on the performance or completion of a specific job, work or service within a definite period of time, i.e. administrative staff.

(g) "**Employee**" refers to any person in the employ of an employer. It shall include any individual whose work has ceased as a result of or in connection with any current labor dispute or because of any unfair labor practice.[7]

(h) "**Employer**" refers to any person acting in the interest of an employer, directly or indirectly.[8] It shall include corporation, partnership, sole proprietorship and cooperative.

(i) "**Fraud**" refers to any act, omission, or concealment which involves a breach of legal duty, trust or confidence justly reposed, and is injurious to another.[9]

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[2] Exigency of the business of the employer (Lopez v. Irvin Construction Corp., G.R. No. 207253, August 20, 2014), changing economic conditions (Cajucom v. TPI Philippines Cement Corp., G.R. No. 149090, February 11, 2005) and illness of the employee (Reyes v. RP Guardians Security Agency Inc., G.R. No. 193756, April 10, 2013).

[3] www.laborlaw.usc-law.org

[4] Espina v. Court of Appeals, G.R. No. 164582, March 28, 2007.

[5] JISSCOR Independent Union v. Hon. Torres, 221 SCRA 699.

[6] Section 3(d) DOLE Department Order 18-A, Series of 2011.

[7] Article 219 [212] (f) of the Labor Code of the Philippines, as amended.

[8] Article 219 [212] (e) of the Labor Code of the Philippines, as amended.

[9] Phil. Education Co. v. Union of the Phil. Education Employees, G.R. No. L-13778, 29 April 1960; Lepanto Consolidated Mining v. CA, G.R. No. L-15171, April 29, 1961.

(j) "**Gross Neglect**" refers to the absence of that diligence that an ordinary prudent man would use in his/her own affairs.[10]

(k) **"Habitual Neglect**" refers to repeated failure to perform one's duties over a period of time, depending upon the circumstances.[11]

(l) "**Insubordination**" refers to the refusal to obey some order, which a superior is entitled to give and have obeyed. It is a willful or intentional disregard of the lawful and reasonable instructions of the employer.[12]

(m) "**Installation of Labor-saving Devices**" refers to the reduction of the number of workers in any workplace made necessary by the introduction of labor-saving machinery or devices.[13]

(n) "**Loss of Confidence"** refers to a condition arising from fraud or willful breach of trust by employee of the trust reposed in him/her by his/her employer or his/her duly authorized representative. There are two (2) classes of positions of trust. The first class consists of managerial employees, or those vested with the power to lay down management policies; and the second class consists of cashiers, auditors, property custodians or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[14]

(o) "**Misconduct"** refers to the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not mere error in judgment.[15]

(p) "**Principal**" refers to any employer, whether a person or entity including government agencies and government owned and controlled corporation, who/which puts out or farms out a job, service or work to a contractor.

(q) **"Redundancy"** refers to the condition when the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise or superfluous.[16]

(r) **"Retrenchment**" refers to the economic ground for dismissing employees and is resorted to primarily to avoid or minimize business losses.[17]

Section 5. Due Process of Termination of Employment. In all cases of termination of employment, the standards of due process laid down in Article 299 (b)

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[10] Reyes vs. Maxim's Tea House, G.R. 140853, February 27, 2003.
[11] JGB Associates, Inc. v. NLRC, G.R. No. 10939, March 7, 1996.
[12] Civil Service Commission v. Arandia, G.R. No. 199549, April 7, 2014.
[13] Philippine Sheet Metal Workers' Union v. CIR, 83 Phil 433.
[14] Esguerra v. Valle Verde Country Club, Inc. and Ernesto Villaluna, G.R. No. 173012, June 13, 2012.
[15] Department of Labor Manual, Section 4343.01
[16] Wiltshire File Co., Inc. v. NLRC, G.R. No. 82249, February 7, 1991.
[17] Atlantic Gulf and Pacific Company of Manila, Inc. [AG & P], v. NLRC, G.R. No. 127516, May 28, 1999.

of the Labor Code, as amended, and settled jurisprudence on the matter, must be observed as follows:

5.1 Termination of Employment Based on Just Causes. As defined in Article 297 of the Labor Code, as amended, the requirement of two written notices served on the employee shall observe the following:

(a) The **first written notice** should contain:

1. The specific causes or grounds for termination as provided for under Article 297 of the Labor Code, as amended, and company policies, if any;
2. Detailed narration of the facts and circumstances that will serve as basis for the charge against the employee. A general description of the charge will not suffice; and
3. A directive that the employee is given opportunity to submit a written explanation within a reasonable period.

"Reasonable period" should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employee an opportunity to study the accusation, consult or be represented by a lawyer or union officer, gather data and evidence, and decide on the defenses against the complaint.[18]

(b) After serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative if he/she so desires, as provided in Article 299 (b) of the Labor Code, as amended.

"Ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him/her and submit evidence in support of his/her defense, whether in a hearing, conference or some other fair, just and reasonable way. A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.[19]

(c) After determining that termination of employment is justified, the employer shall serve the employee a written notice of termination indicating that: (1) all circumstances involving the charge against the employee have been considered; and (2) the grounds have been established to justify the severance of their employment.

The foregoing notices shall be served personally to the employee or to the employee's last known address.

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[18] Unilever v. Rivera G.R. No. 201701, June 3, 2013; Section 12, DOLE Department Order 18-A.
[19] Perez v. PTTC, G.R. No. 152048, April 7, 2009; Section 12, DOLE Department Order 18-A.

5.2 Standards on Just Causes. An employer may terminate an employee for any of the following grounds:

(a) *Serious Misconduct.* - To be a valid ground for termination, the following must be present:[20]

1. There must be misconduct;
2. The misconduct must be of such grave and aggravated character;
3. It must relate to the performance of the employee's duties; and
4. There must be showing that the employee becomes unfit to continue working for the employer.

(b) *Willful Disobedience or Insubordination.* - To be a valid ground for termination, the following must be present:[21]

1. There must be disobedience or insubordination;
2. The disobedience or insubordination must be willful or intentional characterized by a wrongful and perverse attitude;
3. The order violated must be reasonable, lawful, and made known to the employee; and
4. The order must pertain to the duties which he has been engaged to discharge.

(c) *Gross and Habitual Neglect of Duties.* - To be a valid ground for termination, the following must be present:[22]

1. There must be neglect of duty; and
2. The negligence must be both gross and habitual in character.

(d) *Fraud or Willful Breach of Trust* - To be a valid ground for termination, the following must be present:[23]

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[20] Fighting within company premises (Technol Eight Philippines Corporation v. NLRC and Denis Amular, G.R. No. 187605, April 13, 2010), uttering obscene, insulting or offensive words against a superior (Autobus Workers Union, et al. v. NLRC, et. al., G.R. No. 117453, July 1, 1998), fabrication of time records (Manuel C. Felix v. Enertech Systems Industries, Inc. G.R. No. 142007, March 28, 2001), and using employer's property equipment and personnel in the personal business of the employee (Zenco Sales, Inc. v. NLRC, G.R. No. 111110, August 2, 1994).

[21] Refusal to transfer (Sentinel Security Agency, Inc. v. NLRC, G.R. No. 1222468, September 3, 1998) and refusal to report to new work assignment (Westin Philippine Plaza Hotel v. NLRC, G.R. No. 121621, May 3, 1999).

[22] Habitual tardiness, absenteeism and abandonment (Labor et. al. v. NLRC, G.R. No. 110388, September 14, 1995).

[23] Head supervisor initiating and leading a boycott (Top Form Mfg. Co., Inc. v. NLRC, G.R. 65706, December 11, 1992), habitual absence of managerial employee (GT Printers v. NLRC, G.R. No. 100749, April 24, 1992), failure of cashier to account for the shortage of company funds (San Miguel Corp. v. NLRC, G.R. No. 88268), June 2, 1992), complicity in the attempt to cover up pilferage of the company's toll collections (CDCP Tollways Operation Employees and Workers Union v. NLRC, G.R. Nos. 7618-19, July 3, 1992), stealing company property (Zamboanga Water District v. Bartolome, 140 SCRA 432), and using double or fictitious requisition slips in order to withdraw company materials (PLDT v. NLRC, 129 SCRA 163).

1. There must be an act, omission, or concealment;
2. The act, omission or concealment involves a breach of legal duty, trust, or confidence justly reposed;
3. It must be committed against the employer or his/her representative; and
4. It must be in connection with the employees' work.

(e) *Loss of Confidence* - To be a valid ground for termination, the following must be present:[24]

1. There must be an act, omission or concealment;
2. The act, omission or concealment justifies the loss of trust and confidence of the employer to the employee;
3. The employee concerned must be holding a position of trust and confidence;
4. The loss of trust and confidence should not be simulated;
5. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified; and
6. It must be genuine and not a mere afterthought to justify an earlier action taken in bad faith.

(f) *Commission of a Crime or Offense* - To be a valid ground for termination, the following must be present:[25]

1. There must be an act or omission punishable/prohibited by law; and
2. The act or omission was committed by the employee against the person of employer, any immediate member of his/her family, or his/her duly authorized representative.

(g) *Analogous Causes* - To be valid ground for termination, the following must be present:

1. There must be act or omission similar to those specified just causes; and
2. The act or omission must be voluntary and/or willful on the part of the employees.

No act or omission shall be considered as analogous cause unless expressly specified in the company rules and regulations or policies.

5.3 Termination of Employment Based on Authorized Causes. As defined in Articles 298 and 299 of the Labor Code, as amended, the requirements of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and

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[24] China City Restaurant Corp. v. NLRC, 217 SCRA 443; Midas Touch v. NLRC, G.R. No. 111639, July 29, 1996).

[25] Illegally diverting employer's products, violation of company rules and regulations, drunkenness, gross inefficiency (M.F. Violago Oiler Tank Trucks v. NLRC, 117 SCRA 544 [1982]).

Employment (DOLE) at least thirty days (30) before the effectivity of the termination, specifying the ground or grounds for termination.

5.4 Standards on Authorized Causes. An employer may terminate an employee for any of the following grounds:

(a) Installation of Labor-saving Devices. - To be a valid ground for termination, the following must be present:[26]

1. There must be introduction of machinery, equipment or other devices;
2. The introduction must be done in good faith;
3. The purpose for such introduction must be valid such as to save on cost, enhance efficiency and other justifiable economic reasons;
4. There is 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
5. There must be fair and reasonable criteria in selecting employees to be terminated.

(b) Redundancy. - To be a valid ground for termination, the following must be present:[27]

1. There must be superfluous positions or services of employees;
2. The 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;
3. There must be good faith in abolishing redundant positions;
4. There must be fair and reasonable criteria in selecting the employees to be terminated;[28] and
5. There must be an adequate proof of redundancy such as but not limited to the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring.[29]

(c) Retrenchment or Downsizing. - To be a valid ground for termination, the following must be present:[30]

1. The retrenchment must be reasonably necessary and likely to prevent business losses;

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[26] Automation (Philippine Sheet Metal Workers' Union v. CIR, 83 Phil 433).

[27] Reorganization (Dole Philippines Inc. et al. v. NLRC et. al.) and duplication of work (Wiltshire File Co., Inc. v. NLRC, supra).

[28] Asian Alcohol Corporation v. NLRC, G.R. No. 131108, March 25, 1999.

[29] General Milling Corporation v. Violeta L. Viajar, G.R. No. 181738.

[30] Abolition of departments or positions in a company (San Miguel Corporation v. NLRC, G.R. No. 99266, March 2, 1999).

2. The losses, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent;
3. The expected or actual losses must be proved by sufficient and convincing evidence;[31]
4. The retrenchment must be in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and
5. There must be fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

(d) Closure or Cessation of Operation. - To be a valid ground for termination, the following must be present:[32]

1. There must be a decision to close or cease operation of the enterprise by the management;
2. The decision was made in good faith; and
3. There is no other option available to the employer except to close or cease operations.

(e) Disease. - To be a valid ground for termination, the following must be present:

1. The employee must be suffering from any disease;
2. The continued employment of the employee is prohibited by law or prejudicial to his/her health as well as to the health of his/her co-employees; and
3. There must be certification by a competent public health authority that the disease is incurable within a period of six (6) months even with proper medical treatment.

In cases of installation of labor-saving devices, redundancy and retrenchment, the "Last-In, First-Out Rule"[33] shall apply except when an employee volunteers to be separated from employment.

5.5 Payment of Separation Pay. Separation pay shall be paid by the employer to an employee terminated due to installation of labor-saving devices, redundancy, retrenchment, closure or cessation of operations not due to serious business losses or financial reverses, and disease.

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[31] Balasabas v. NLRC, G.R. No. 85286, August 24, 1992; Central Azucarerra dela Carlota v. NLRC, G.R. No. 100092, December 29, 1995.

[32] Relocation of business (Cheniver Deco Print Technics Corporation v. NLRC, [G.R. No. 122876, February 17, 2000], sale in good faith (Lucena Oil factory Inc. v. NLRC, G.R. No. 7840, November 17, 1986; Second Division, Minute Resolution).

[33] When there are two employees occupying the same position in the company affected by the retrenchment program, the last one employed will necessarily be the first to go (Maya Farms Employees Organization v. NLRC, G.R. No. 106256, December 28, 1994).

An employee terminated due to installation of labor-saving devices or redundancy shall be paid by the employer a separation pay equivalent to at least one (1) month pay or at least one (1) month pay for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year.

An employee terminated due to retrenchment shall be paid by the employer a separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year.

An employee terminated due to closure or cessation of business operation not due to serious business losses shall be paid by the employer a separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year. Where closure is due to serious business losses or financial reverses, no separation pay is required.

An employee terminated due to disease shall be paid by the employer a separation pay equivalent to at least one (1) month salary or one-half (1/2) month salary for every year of service, whichever is higher, a fraction of six (6) months service is considered as one (1) whole year.

An employee whose employment is terminated by reason of just causes is not entitled to separation pay except as expressly provided for in the company policy or Collective Bargaining Agreement (CBA).

Section 6. Other Causes of Termination. In addition to Section 4, the employer may also terminate an employee based on reasonable and lawful grounds specified under its company policies.

An employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination.[34]

An employee shall not be terminated from work based on actual, perceived or suspected HIV status.[35]

An employee shall not be terminated on basis of actual, perceived or suspected Hepatitis B status.[36]

An employee who has or had Tuberculosis shall not be discriminated against. He/she shall be entitled to work for as long as they are certified by the company's accredited health provider as medically fit and shall be restored to work as soon as his/her illness is controlled.[37]

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[34] DOLE Department Order No. 53, Series of 2003 in relation to the IRR of R.A. 9165.
[35] DOLE Department Order No. 102, Series of 2010.
[36] DOLE Department Advisory No. 5, Series of 2010 Part III C1. par. c.
[37] DOLE Department Order No. 75, Series of 2005.

Sexual harassment[38] is considered a serious misconduct. It is reprehensible enough but more so when inflicted by those with moral ascendancy over their victim.

Section 7. Causes of Termination Under the Collective Bargaining Agreement (CBA). An employee may also be terminated based on the grounds provided for under the CBA.

Section 8. Mandatory Conciliation-Mediation on Termination Disputes. All disputes arising out of termination of employment shall be subject to mandatory conciliation-mediation pursuant to Republic Act No. 10396 and its Implementing Rules and Regulations.

Request for assistance involving issues arising out of termination of employment based on just or authorized cause shall be lodged before the Single Entry Assistance Desk Officers (SEADOs) at the Regional/Provincial/Filed Offices of DOLE or its attached agencies in the region pursuant to the Implementing Rules and Regulations of Republic Act No. 10396.

In case of settlement, the Desk Officer shall reduce the agreement into writing, have the parties understand the contents therefor, sign the same in his/her presence, and attest the document to be the true and voluntary act of the parties.

For organized establishment, all disputes shall undergo grievance machinery under the CBA. In case of failure to reach an agreement, the parties may refer the same to conciliation-mediation under the Single Entry Approach (SEnA) or agree to submit it for voluntary arbitration in accordance with Articles 274 and 275 of the Labor Code, as amended.

Section 9. Settlement Agreement. Any settlement agreement reached by the parties before the Desk Officer shall be final and binding.

In case of failure to reach an agreement during the conciliation-mediation period, the request shall be referred to compulsory arbitration, or if both parties so agree, to voluntary arbitration.

Section 10. Condition Precedent to Compulsory Arbitration. No Labor Arbiter shall take cognizance of the complaint for illegal dismissal unless there is a referral from the Desk Officer pursuant to the Implementing Rules and Regulations of Republic Act No. 10396.

Section 11. Non-compliance with Settlement Agreement; Execution. In case of non-compliance by the employer or employee, the terms of the settlement agreement may be enforced by requesting the Desk Officer to refer the same to the proper Regional Arbitration Branch (RAB) of the National Labor Relations Commission (NLRC) for enforcement of the agreement pursuant to Rule V, Section 1 (i) of the 2005 Revised NLRC Rules, as amended. The same shall be docketed by the RAB as arbitration case for enforcement of the settlement agreement. The employee or

[38] Fondling the hands, massaging the shoulder and caressing the nape (Libres v. NLRC, National Steel Corp., et. al., G.R. No. 123737, May 28, 1999).

employer may also disregard the settlement agreement and file an appropriate case before the appropriate forum.

SECTION 2. Repealing Clause. Section 2(4), Section 7, Section 8, Section 9, Section 10 and Section 11 of Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code of the Philippines, as amended, are hereby repealed. All other rules and regulations issued by the Secretary of Labor and Employment inconsistent with the provision of this Rules are hereby superseded.

SECTION 3. Separability Clause. If any provision or portion of this Rules is declared void or unconstitutional, the remaining portions or provisions hereof shall continue to be valid and effective.

SECTION 4. Effectivity. This Order shall be effective fifteen (15) days after completion of its publication in at least two (2) newspapers of general circulation.

Manila, Philippines, 07 September 2015.

ROSALINDA DIMAPILIS-BALDOZ
Secretary
Dept. of Labor & Employment
Office of the Secretary
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