

Security of Tenure



Article XIII – Labor

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to **security of tenure**, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

1987 Philippine Constitution

Security of Tenure



ART. 294. [279] Security of Tenure. In cases of regular employment, the employer shall not terminate the services of an employee **except for a just cause or when authorized by this Title**. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

P.D. 442, Labor Code

Security of Tenure



But what is security of tenure?

Sec. 1. Security of tenure and due process. — No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

Rule XIV, Book V, of the Omnibus Rules Implementing the Labor Code

Security of Tenure



An employee has the right to security of tenure, but this does not give him a vested right to his position as would deprive the company of its prerogative to change his assignment or transfer him where his service... will be most beneficial...

Exocet Security and Allied Services Corporation v. Serrano, G.R. No. 198538, 29 September 2014

Due Process



This brings us to... due process – what is it?

Due process is the legal way to dismiss or separate an employee.

The 2 components of due process:

1) Substantive due process

- Grounds/reasons for dismissal or separation

2) Procedural due process

- Steps to be taken to properly dismiss or separate an employee

Substantive Due Process



Substantive due process – refers to the grounds for dismissing (**just causes**) or separating (**authorized causes**) an employee.

The 2 aspects of substantive due process:

1) Just causes

- Serious employee violations *justifying* their dismissal
- (e.g. serious misconduct, willful disobedience, etc.)

2) Authorized causes

- Business/economic reasons, as well as illness, *authorizing* the separation of an employee
- (e.g. installation of labor-saving devices, redundancy, etc.)

Procedural Due Process



Procedural due process – refers to the steps to be taken to properly dismiss or separate an employee.

The 2 aspects of procedural due process:

1) Just cause procedure

- Steps to be taken to implement just cause related due process

2) Authorized cause procedure

- Steps to be taken to implement authorized cause related due process

Just Cause Procedure



1st Written
Notice

Ample
Opportunity
to Explain

2nd Written
Notice

Step 1: 1st Written Notice



Notice should contain the following:

- 1) The specific causes or grounds for termination as provided for under the Labor Code, as amended, employment contract, and company policies, if any.
- 2) Detailed narration of facts and circumstances that will serve as basis for the charge against the employee. A general description of the charge will not suffice.
- 3) A directive that the employee is given opportunity to submit a written explanation within a reasonable period, which should be at least (5) calendar days.

Step 1: 1st Written Notice



Important

The NTE is required to be served, and not necessarily received.

Focus is on the service.

Step 1: 1st Written Notice



Proof of service:

- 1) Signed receiving copy from the employee;
- 2) Affidavit of Personal Service;
- 3) Return Card from the Registered Mail with the Philippine Post Office;
- 4) Return of the Sealed Envelope with Postman's Annotations; or
- 5) Certification from the Philippine Post Office.

Section 5.1[a], DOLE Department Order No. 147, Series of 2015

Step 2: Opportunity to Explain



Ample opportunity to explain is satisfied either via:

- 1) A written explanation; or
- 2) A formal administrative hearing.

“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.

Paragraph 2, Section 5.1[b], DO-147

Step 2: Opportunity to Explain



Admin hearing: When mandatory

A formal hearing or conference becomes mandatory only when:

- 1) Requested by the employee in writing; or
- 2) Substantial evidentiary disputes exist; or
- 3) A company rule or practice requires it; or
- 4) When similar circumstances justify it.

Paragraph 2, Section 5.1[b], DO-147

Step 2: Opportunity to Explain



At least 5 calendar days

Whether a written explanation or a formal administrative hearing will be required, it should be at least five (5) calendar days from receipt of the 1st written notice in order for the employee to study the accusations, consult or be represented by a lawyer or union officer, gather data and evidence, and decide on the defenses against the charges/complaint.

Paragraph 2, Section 5.1[b], DO-147

Step 2: Opportunity to Explain



Waiver

The employee waives his/her right for an opportunity to explain if he/she does not submit a written explanation or does not attend the scheduled formal administrative hearing.

Step 3: 2nd Written Notice



The employer shall issue a 2nd Written Notice to the employee after evaluating all available pieces of evidence and the explanation of the employee, if any.

The results may either be that the employee is innocent or guilty.

If the employee is innocent, the 2nd written notice will indicate so. This is often referred to as a Notice of Results.

Step 3: 2nd Written Notice



If the employee is guilty, the 2nd written notice shall state that all circumstances involving the charge against him/her have been considered and grounds have been established to justify the imposition of a penalty. This is often referred to as a Termination Notice.

Paragraph 2, Section 5.1[c], DO-147

Step 3: 2nd Written Notice



Penalty must be commensurate to the offense.

If the offense/violation is severe, the penalty of dismissal may be warranted. This may apply even to a first-time offense/violation.

For lighter forms of offenses/violations, the penalty should be less than dismissal, such as a verbal warning, written reprimand, or suspension.

In case of a labor complaint, it is the employer who is required to justify the penalty in view of the offense/violation.

Step 3: 2nd Written Notice



Proof of service:

- 1) Signed receiving copy from the employee;
- 2) Affidavit of Personal Service;
- 3) Return Card from the Registered Mail with the Philippine Post Office;
- 4) Return of the Sealed Envelope with Postman's Annotations; or
- 5) Certification from the Philippine Post Office.

Section 5.1[a], DOLE Department Order No. 147, Series of 2015

Authorized Cause Procedure



30-Day
Employee
Notice

30-Day
DOLE
Notice

Separation
Pay

Step 1: 30-Day Employee Notice



This procedure enables an employee to contest the reality or good faith character of the asserted ground for the termination of his services before the DOLE.

Magnolia Products Corporation v. NLRC, supra.

Further, the advanced notice is designed to give the employee the opportunity to start looking for his/her next gainful employment. This is without prejudice to him/her completing the 30-day period for transition and turn-over.

Step 2: 30-Day DOLE Notice



The employer is required to issue a 30-day advance notice to the DOLE Regional Office which has jurisdiction over the establishment. This is usually accomplished through the RKS Form 5.

This advanced notice is designed to give the concerned office an opportunity to confirm/verify the existence of authorized causes by means of either calling for a hearing/conference or an inspection.

Step 3: Separation Pay



The affected employee is entitled to separation pay. This may be given together with his/her final pay or within a reasonable period of time, subject to completion of clearance, turn-over, and other exit documents or procedures.

The separation pay varies depending on the authorized cause.