

How to Deal with Illegal Dismissal Cases and Avoid Labor Litigation

Michelle is a supervisor for a call center located in Makati. She has been performing exceedingly well and is being considered for promotion to manager within the next six (6) months. She has an unblemished record and her co-workers like her. Through the grapevine, you heard that she is dating Jon, another supervisor.

This morning, your security guards submitted an incident report describing an altercation between Michelle, Jon and another employee Janis, a secretary whom Jon was reportedly wooing, in your company's cafeteria. In the report, Michelle allegedly cursed, punched, kicked, and threw hard objects at Jon and Janis when she spotted the two of them taking their breakfast together. Both Jon and Janis were brought to the hospital due to their bruises and contusions. In her explanation, Michelle admitted that she acted irrationally and in a fit of jealousy. According to your company's guidelines, inflicting bodily injury on a co-worker and using foul/disrespectful language are grounds for termination of employment. When you discussed the possibility of termination with Michelle, she said that the dismissal is unfair and unduly harsh and that she would sue your company. She explained that the incident happened for the first time and without any major injuries on the part of Jon and Janis. She also said that she has not received any disciplinary action from the time she started working for your company. Her manager does not want to let Michelle go because she is an excellent worker.



It should also be clear which offenses would cause the immediate termination of an employee's employment such as theft, sexual harassment, and endangering other employees.

All employees should have a copy of the rules and regulations, and sign an acknowledgment receipt for the handbook and indicate willingness to comply with the rules and regulations of the company. This is normally done at the beginning of employment.

Your company should have a clear and systematic disciplinary process that should be followed by all personnel.

Supervisors and managers should be properly trained to implement the procedures for disciplinary action.

Your company should also develop standard forms or templates for the verbal and written warnings that supervisors can use. The disciplinary action imposed should be recorded or filed for every employee.

You should document any disciplinary action taken against the employee. In describing the incident, be careful not to pre-judge the employee or make a conclusion. The statements written in the document should be made by witnesses who have personal knowledge of the incident or by people who were within the immediate vicinity when the incident transpired.

In cases where the employee's presence in the company poses a serious and imminent threat to the life or property of the employer and co-workers, preventive suspension may be imposed for up to thirty (30) days.

There must be a decision or recommendation before the lapse of this period because after thirty

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"In order to constitute a just cause for dismissal, the act complained of must be related to the performance of the duties of the employee which would show him to be unfit to continue working for the employer."

Aris Philippines vs. NLRC
G.R. No. 97817,
Nov. 10, 1994, 238 SCRA 59



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Are you going to terminate Michelle?

Instances like these open the floodgates of litigation. To avoid that, here are some simple tips to make certain that you as the employer will be protected by law:

Ensure that your company has well-established policies, rules and regulations, especially for common concerns such as work performance, attendance and employee conduct.

THE BASIC RULES OF DEMOTION

Eric propelled his climb from being an analyst to senior analyst in just eight months. He was also a recipient of the President's award in his first year with your company. He never failed to participate in sports activities and company outings. He is known to constantly crack jokes, invigorate huddles, and offer the most unique ideas. He is clearly passionate about what he does and enjoys his work.

You did not hesitate to promote Eric as a manager when an opening came up. You figured that he is well-loved by the other workers who would give him 100% support, so it should work out. Eager to prove himself, Eric did not cringe at the set of expectations and metrics that he needed to hit every month. He was driven, he was ambitious, and he convinced you that he could do it.

Eric's performance for the first month was bad but worse in the second month.

You intervened and coached Eric to improve his time-keeping and leadership style. He was an obvious newbie who had a hard time managing his team because he did not strictly impose rules, timelines, and expectations. By the third month, his stats hit rock bottom. It is now affecting the entire account. You gave Eric another chance to redeem himself but it was all for naught.

It was another case of too much, too soon.

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reports. The burden of proving the offense/s committed by the employee lies with the employer.

In cases of possible termination for just cause, ensure compliance with the mandatory requirement for two notices and hearing. During the hearing or conference (or at least an opportunity to be heard), the employee is given a chance to respond to the charge, present his evidence or rebut the evidence presented against him, with the assistance of his counsel, if so desired by the concerned employee.

The meetings and conferences conducted with the employee should be documented. All those who attended or participated should sign the minutes. If possible, request the assistance of your retained counsel to personally conduct the investigation. Your lawyer is in a better position to pose questions that will help you in coming up with the best recommendation or the proper penalties.

Be sure to notify the employee of your decision to terminate his employment either personally or by registered mail at his last known address or both. If the employee refused to personally receive the Notice of Termination, you can make an annotation "REFUSED TO RECEIVE" at the back of the letter but an impartial witness is required to attest to the refusal to receive the notice. Finally, send a copy of the letter of termination to the last known address of the employee according to company records.

Will you put Eric back to being a senior analyst? Is this a demotion? What are the procedural requirements that you have to follow if you need to assign Erick back as a senior analyst?

There is a demotion when there is a reduction in position, rank, or salary as a result of a transfer.

The right to demote falls within the exercise of management prerogatives.

You may demote and transfer an employee who has failed to observe proper diligence in his work; who has failed to meet productivity standards; or who has incurred habitual tardiness, absences, and indolence in his assigned work.

Note, however, that demotions are punitive in nature and affect the employment of a worker whose right to continued employment is protected by law. To comply with the requirements of due process, you should notify the employee of his impending demotion, give him an opportunity to

refute the grounds or reasons for the demotion, and notify him of the final decision.

You should also be careful that the demotion will not be construed as a constructive dismissal. The employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve an arbitrary demotion in rank or a diminution of his salary, privileges and other benefits without valid and legitimate grounds such as genuine business necessity to justify the demotion or transfer.

This article is intended to provide general background information in an effort to make legal information more readily accessible to clients or to the general public. It is not intended to be used as a basis for any particular course of action or as a substitute for legal advice.

(30) days, the employer is required to either reinstate the worker and pay his salary or terminate his services.

Observe extreme caution in dismissing employees on minor offenses such as tardiness, absence without official leave and other similar violations because our labor laws tend to favor the property rights of the employees rather than the disciplinary rules of employers. The penalty should always correspond with the offense committed.

Once you have determined that disciplinary action is proper, set up a meeting with the employee and serve a "show cause" letter which provides the details of what transpired and what rules the employee violated. This will notify the employee of the charges that are being made against him. Thereafter, you should ask the employee to submit a written explanation.

Investigate and collect data discreetly. Keep the proceedings confidential. Limit the dissemination of information only to those who need to know.

Keep all records of the case and gather evidence certified by those who prepared the



New Paradigm in Tax Collection

(BIR Revenue Memorandum Circular 32-2007)

We should be aware of the new policies released by the Bureau of Internal Revenue (BIR) which will have an effect on the manner by which assessments and applications for refunds shall be resolved. We should also take note of the target industries for audit that have been identified. Due to this new directive, the BIR will be stricter in imposing penalties and collection proceedings.



On the resolution of assessments and refund claims

1. All claims for exemptions, cash refunds and issuance of tax credit certificates (TCCs) shall be strictly evaluated. Any doubt must be resolved in favor of the government. Claims for refund shall be resolved expeditiously. Reports granting claims of more than P1 million shall be cleared with the Deputy Commissioner for Operations while those amounting to at least P10 million shall pass through the Commissioner.

2. All periods in the audit and assessment process shall be scrupulously observed as prescribed in Revenue Memorandum Order (RMO) No. 11-2006 and brought to the Preliminary Assessment Notice (PAN)/Final Assessment Notice (FAN) stage without prolonged and unnecessary discussions with the taxpayers.

3. All protests on PANs/FANs not containing substantial issues shall be summarily denied without any prolonged discussion and brought to the payment stage, unless the taxpayer elects to go to court.

4. Taxpayers shall be enjoined to avail of the Improved Voluntary Assessment Program and the one-time administrative abatement.

Priority industries for audit

1. Hotels and other tourism-related establishments
2. Stockbrokers
3. Lessors/lessees and sellers/dealers/buyers/brokers of real properties
4. Mining companies
5. TV stations
6. Advertising companies
7. Recruitment agencies
8. Hospitals, clinics, medical and dental laboratories
9. Business agents and their clients reporting no payment returns
10. Professionals like doctors, lawyers, and accountants.
11. Government contractors
12. Duly identified top 10,000 private corporations under Revenue Regulation No. 17-2003
13. Taxpayers reporting exempt, net loss/no operations in their filed returns.

Use of information as basis for development of assessment cases

1. Tax mapping operations (e.g., TCVD) and third party information mining to add new taxpayers to the rolls and enhance voluntary compliance.
2. Generation of discrepancy reports from the Summary Lists of Sales and Purchases (SLSP)
3. Accelerated database registration clean-up and build-up
4. Strict monitoring of returns of stop/non-filer taxpayers
5. Stocktaking and surveillance activities on business establishments

6. Development of fraud cases as prescribed under RMO No. 40-2006

Enforcement of penalties and collection of receivables

1. Closure of establishments violating the provisions of the Tax Code.
2. Collection of Accounts Receivable through the issuance warrants of restraint and/or levy
3. Audit of accounts that are closed in the Integrated Tax Systems (ITS) shall be initiated.
4. Filing of proceedings against erring financial officers/tax practitioners pursuant to RMC No. 31-2007.

The Tax Amnesty Law

The tax amnesty law grants a one-time amnesty on all unpaid national internal revenue tax liabilities of taxpayers incurred as December 31, 2005. However, it does not extend to withholding tax liabilities, pending cases under the jurisdiction of the PCGG, pending cases with the Sandiganbayan involving unexplained wealth, pending investigations/cases involving violation of the Anti-Money Laundering Act and other unlawful activities, pending criminal cases for tax evasion and other criminal offenses, and the felonies of fraud, illegal exactions and transaction, and malversation of public funds and property, with final and executory judgment by the courts. The law's goal is to encourage tax delinquents to come clean regarding their assets and income so that the size of the tax base can be increased in the future.

A taxpayer availing of the tax amnesty shall enjoy immunity from penalties (civil, criminal or administrative) and audit (except in cases of application for refund, credit, exemption or incentive).



Schedule of the tax amnesty rate:

- Individuals, cooperatives, foundations, and other juridical entities, 5.0 percent of net worth or P50,000, whichever is higher;
- Corporations with subscribed capital of more than P50 million, 5.0 percent of net worth or P500,000, whichever is higher;
- Corporations with subscribed capital of P20 million to P50 million, 5.0 percent of net worth or P250,000, whichever is higher;
- Corporations with subscribed capital of between P5 million and P20 million, 5.0 percent of net worth or P100,000, whichever is higher; and
- Corporations with subscribed capital of below P5 million, 5.0 percent of net worth or P25,000, whichever is higher.

Taxpayers availing of the tax amnesty shall file a Statement of Assets, Liabilities and Networth (SALN) which shall accompany their tax amnesty tax return. The SALN shall contain a declaration of the assets, liabilities and net worth as of December 31, 2005.

The tax amnesty law likewise requires the annual publication of list of taxpayers which shall contain the names, their gross income, and amount they paid in at least two newspapers of general circulation.

TRADEMARKS Frequently Asked Questions (Part One)

1. What is a mark?

A "mark" means any visible sign capable of distinguishing either the goods (which is called a "trademark") or services (referred to as "service mark") of a particular enterprise. It includes a stamped or marked container of the goods.

2. What is a trade name?

A "trade name" means the name or designation identifying or distinguishing an enterprise. A name or designation may be used if it is not contrary to public order or morals or if it will not deceive trade circles and the public as to the nature of the enterprise identified by the name or designation.

3. How do I choose a trademark?

Your trademark can be any written representation, drawing or design, subject to the general limitation that it is not immoral, deceptive, scandalous, or identical to a registered mark belonging to a different proprietor which may likely deceive or cause confusion.

4. How do I obtain rights in my mark?

Since January 1998, the Philippines follows the "first-to-file" rule.

14th Anniversary of FNS

On 16 June 2007, Fortun Narvasa & Salazar Law Offices celebrated its 14th Anniversary at the Tagaytay High lands.

The Bowling Tournament Championship was held in the morning at the Sports Center. After the tournament, lunch was served at the China Palace. Attorneys Denise Arenillo and Paul Enriquez emceed a short program after lunch. Attorney Roderick R.C. Salazar III delivered the opening remarks and welcomed everyone to the celebration. Atty. Philip Sigfrid A. Fortun gave a brief history of the Firm. Part of the program was the awarding ceremony for the bowling tournament. The winners are as follows:

- Champion – Red Strikers
- Second Place – Blue Lofters
- Third Place – Green Hornets
- Fourth Place – White Tattoos

Starting a tradition of recognizing the efforts put in by the members of the Firm, the partners recognized Attorney Walter Robin C. Go for his exemplary performance as an associate. Mr. Gerardo Ortiz was likewise distinguished for his outstanding performance as administrative personnel.

Attorney Gregorio Y. Narvasa II ended the program with his inspiring closing remarks.



2007 FNS Inter Color Tournament
CHAMPION

As an owner of a mark, you should file your trademark application with the Intellectual Property Office. However, foreign nationals who filed their trademark applications before January 1998 in states who are members of or signatories to any convention, treaty or agreement relating to intellectual property rights to which the Philippines is also a member or a signatory shall also have the same right as of the date the applications are filed with said states.

5. What are the advantages of registration?

The Certificate of Registration of a mark shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the mark in connection with the goods and services of those that are related thereto as specified in the certificate.

The owner of a registered mark shall have the exclusive right to prevent all persons not having the owner's consent from using, in the course of trade, identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In the event use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

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For entertainment, the band Reckless Imprudence showcased its musical prowess with songs. To the delight of the audience, Attorney Philip Sigfrid A. Fortun also played his saxophone and clarinet with the band.

After the program, the group went to Anton's Place where refreshments were served and fun games were held.

The group headed back to Manila late in the afternoon after an activity-filled day.

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