

## 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

SEE How to deal...page 2

*"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



Darwin C. Khan  
Editor-in-Chief

Atty. Roderick R.C. Salazar III  
Atty. Bayani B. Loste  
Managing Editors

Manny T. Tamondong  
Editorial Assistant

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.

*How to deal...from page 1*



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