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Strategies on Effective Employee Discipline and Dismissal in the Philippines

Overview

Effective employee discipline and dismissal strategies in the Philippines involve clear policies, progressive discipline, fair evaluations, due process, thorough documentation, legal compliance, consultation with experts, alternative dispute resolution, consideration of mitigating factors, and transparent communication.

Employers establish comprehensive policies, follow a progressive discipline approach, ensure fair evaluations, provide due process, maintain thorough documentation, comply with labour laws, consult legal experts, explore alternative dispute resolution, consider mitigating factors, and communicate transparently to manage disciplinary issues and terminations effectively while fostering a fair and respectful workplace.

Basic Country Facts



Capital
Manila



Population
117 million
[The World Bank](#)



Currency
Philippines Peso (PHP, ₱)



GDP per Capita
USD \$3,725.60 (as of 2023)
[The World Bank](#)

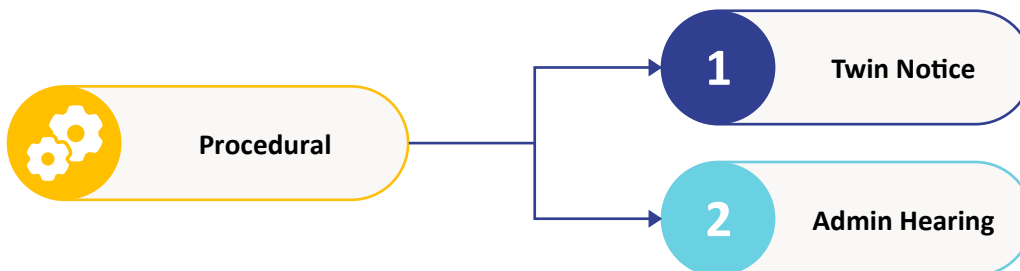
Mandatory Requirements

Substantive

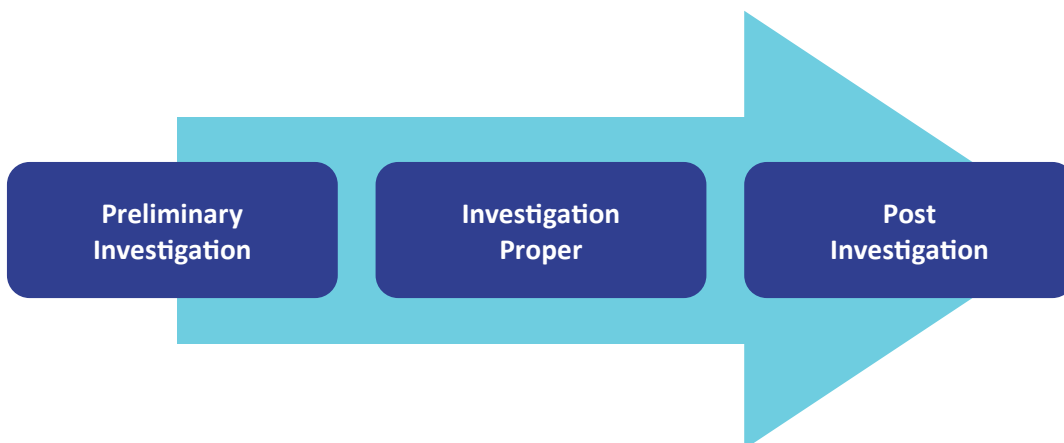
Lawful Grounds for terminating an employee (Article 297-299, Labour Code):

Just Cause Article 297 of the Philippines Labour Code	<ul style="list-style-type: none">• Serious Misconduct• Wilful Disobedience or Insubordination• Gross and Habitual Neglect of Duties• Fraud or Wilful Breach of Trust (loss of Confidence)• Commission of a Crime or Offense• Analogous Cases
Authorised Cause Article 298 of the Philippines Labour Code	<ul style="list-style-type: none">• Installation of Labour-saving devices• Redundancy• Retrenchment• Closing or cessation of operation
Diseases Article 299 of the Philippines Labour Code	<ul style="list-style-type: none">• An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees.

Procedural



Overview of Due Process



Preliminary Investigation

1	Creation of Incident Report	<ul style="list-style-type: none">• Must contain the sequence of events• Gather evidence documentary and/or testimony
2	Identify Allege Violation	<ul style="list-style-type: none">• Specific rules or regulations that allegedly violated
3	Identify is Prevent Suspension Necessary?	<ul style="list-style-type: none">• Employment poses a serious and imminent threat to the life or property of the employer or of his co-workers
4	Issuance of Notice to Explain	<ul style="list-style-type: none">• Contains details of committed offense and allege violation(s) and possible consequence(s)
5	Issuance of Admin Hearing	<ul style="list-style-type: none">• Includes date, time and location

Reminders:

1. Study the 201 file of the employee to be charged

- Is this his 1st offense
- Previously found guilty of another offence
- Years in service
- Personal background and/or profile of the employee

2. Notice to Explain

- Specific cause/ground
- Detailed narration of the facts
- Directive: Employee to submit a written explanation (5 days)
- Inclusion of the admin hearing schedule

3. Administrative Hearing

- Calendar and compliance to due notice
- Venue, time and recording system

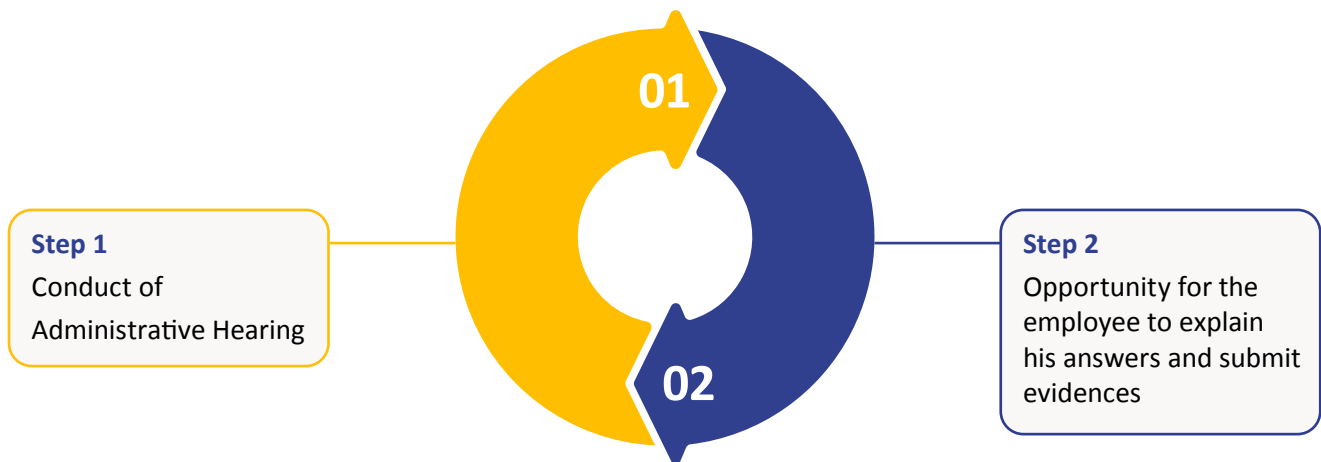


Preventive Suspension is only available in case there is a threat to the life or property of the company.

Preventive Suspension

- Temporary removal of an employee who was charged with violating company policies from his present position.
- The employer may place the worker concerned under preventive suspension **ONLY** if his continued employment **poses a serious and imminent threat to the life or property of the employer or of his co-workers.**

Investigation Proper



Reminders:

- Establish rapport.
- Create an impression of impartiality.
- Never be afraid of lawyers.
- Mandatory question: Confirm if the employee received the 1st notice.
- Set parameters and process flow of questioning.
- Never forget the minutes of the admin hearing and screenshot of the CCTV.

Post Investigation



Reminders:

- Narration of the due process requirements.
- Summarise the findings and admissions.
- Never forget the doctrine of “Dismissal Too Harsh a Penalty”.
- Make a firm decision.
- Screenshot of the CCTV footage.
- Transcripts of the recordings.
- Effective service of the notice of decision.

Graceful Exit

- Be mindful of the dates and its effectivity.
- Resignation can still result in Illegal Dismissal.
- An appreciative parting words.
- There is nothing in the law or case law that declares the act of an employer allowing the employee the opportunity to resign instead of going through an admin case as illegal.

Poor Performance

- Should be anchored on “other causes analogous to the foregoing” under Article 297 (letter e) of the Labour Code in relation to paragraph (b).
- Requires proper documentation.
- Dismissal through poor performance requires a certain period and NOT a “one time” deal.
- If an employee being dismissed is still on probationary period of employment, the ground is failure to pass probation requirements and not under Article 297.

Poor Performance + Probation

- Observe 180 days rule.
- The non-applicability of the twin notice rule.
- Importance of performance review, “**Read, Understood and Accepted**”.
- Make sure employee signed all documents from day 1 including but not limited to Contract, JD, NDA, Non-Complete.

Case Study

CAVITE APPAREL versus MARQUEZ February 06, 2013, GR172044

Facts:

Michelle has an employment tenure of six (6) years.

- 1st offense (Dec 1999) – one day AWOL = written warning
- 2nd offense (Jan 2000) – one day AWOL = written warning with 3 days suspension
- 3rd offense (Apr 2000) – one day AWOL = six (days) suspension
- 4th offense (May 8, 2000) – one day due to sickness
- 5th offense (May 15-27) due to sickness

After serving the 6 days suspension (for her 3rd offense), she was met with a penalty of dismissal for gross and habitual neglect of duty for her supposed AWOL last May 8, 2000.

Case Rulings

Labour Arbiter

In a decision dated April 28, 2001, LA Ramos dismissed the complaint. He noted that punctuality and good attendance are required of employees in the company’s Finishing Department. For this reason, LA Ramos considered Michelle’s four absences without official leave as habitual and constitutive of gross neglect of duty, a just ground for termination of employment.

Labour Arbiter	LA Ramos also declared that due process had been observed in Michelle’s dismissal, noting that in each of her absences, Cavite Apparel afforded Michelle an opportunity to explain her side and dismissed her only after her fourth absence. LA Ramos concluded that Michelle’s dismissal was valid.
National Labour Relations Commission	<p>The NLRC noted that for Michelle’s first three absences, she had already been penalised ranging from a written warning to six days suspension. The NLRC declared, should have precluded Cavite Apparel from using Michelle’s past absences as bases to impose on her the penalty of dismissal, considering her six years of service with the company. It likewise considered the penalty of dismissal too severe.</p> <p>The NLRC thus concluded that Michelle had been illegally dismissed and ordered her reinstatement with backwages. When the NLRC denied Cavite Apparels motion for reconsideration in a resolution dated March 30, 2005, Cavite Apparel filed a petition for certiorari with the CA to assail the NLRC ruling.</p>
Court of Appeals	<p>The CA agreed with the NLRC that since Cavite Apparel had already penalised Michelle for her three prior absences, to dismiss her for the same infractions and for her May 8, 2000 absence was unjust.</p> <p>Citing jurisprudence, The CA concluded that her dismissal was too harsh, considering her six years of employment with Cavite Apparel; it was also a disproportionate penalty as her fourth infraction appeared excusable.</p>

Ruling

- We resolve the petition for review on *certiorari* filed by petitioners Cavite Apparel, Incorporated (Cavite Apparel) and Adriano Timoteo to nullify the decision dated January 23, 2006 and the resolution dated March 23, 2006 of the Court of Appeals (CA) in C.A.-G.R. SP No. 89819 insofar as it affirmed the disposition of the National Labour Relations Commission (NLRC) in NLRC CA No. 029726-01.
- The NLRC set aside the decision⁵ of Labour Arbiter (LA) Cresencio G. Ramos in NLRC NCR Case No. RAB-IV-7-12613-00-C dismissing the complaint for illegal dismissal filed by respondent Michelle Marquez against the petitioners.
- As a final point, we reiterate that while we recognise management’s prerogative to discipline its employees, the exercise of this prerogative should at all times be reasonable and should be tempered with compassion and understanding. **Dismissal is the ultimate penalty that can be imposed on an employee.**
- Where a penalty less punitive may suffice, whatever missteps may be committed by labour ought not to be visited with a consequence so severe for what is at stake is not merely the employee’s position but his very livelihood and perhaps the life and subsistence of his family.



Important Reminder

Do not panic. Review the Complaint. First Step is Single Entry Approach (SENA). If concern is a delay in the non-payment of last pay, just try to ensure that you can release the last pay on the day of the hearing.

- Review the case and do not immediately secure a lawyer
- Offer and be open to amicable settlement

Key Takeways

1	<p>The State is bound under the Constitution to afford full protection to labour and when conflicting interests of labour and capital are to be weighed on the scales of social justice the heavier influence of the latter should be counterbalanced with the sympathy and compassion the law accords the less privileged working man.</p> <p><i>Fuentes vs. NLRC, 266 SCRA 24, January 02, 1997</i></p>
2	<p>Observe Mandatory Requirement</p> <ul style="list-style-type: none">• Substantative (Article 297-299 of the Philippines Labour Code)• Procedural (Twin Notice Rule and Admin Hearing)
3	<p>Termination/Dismissal Too Harsh Penalty</p> <p>Penalties must be commensurate to the offense involved and degree of infraction.</p>
4	<p>Secure a Strong Documentation</p>

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