

[BLR Department Order No. 147-15, September 07, 2015]

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

*Adopted: 07 September 2015
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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

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]

(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) 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.
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(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.

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]

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.