

Labor Code - Atty. Duka (Pt. 1)

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R.A. 11058 - Occupational Health and Safety Standard

- The worker has the right of refusal to work without threat or appraisal from the employer if, as determined by the DOLE, an imminent danger situation exists in the workplace that may result, in illness, injury or death, and corrective actions to eliminate the danger have not been undertaken by the employer

Article XIII, Section 3

- The state shall afford full protection to labor, local and overseas, organized and unorganized
- promote full employment and equality of employment opportunities for all
- guarantee the rights of all workers to self-organizations, and peaceful concerted activities, including the right to strike according to law

Basis of Labor Code

- **Police Power**
 - Labor contracts are subject to the police power of the State
 - Visitation and Enforcement Power
 - The Secretary of Labor and Employment or his duly authorized representatives, including labor regulation officers,
 - shall have access to employer's records and premises at any time of the day or night whenever work is being performed
 - and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations
- **Social Justice**

- neither communism, nor despotism, nor atomism, nor anarchy, but humanization of laws and the equalization of social and economic force by the State
- not intended to countenance wrongdoing simply because it is committed by the underprivileged
- cannot be permitted to be refuge of scoundrels
- those who invoke social justice may do so only if their hands are clean and not simply because they happen to be poor
- you can only invoke social justice only if you deserve it. Not because you are poor
- One manifestation is construction in favor of labor
 - all doubts in the Code shall be resolved in favor of labor
 - If there is no doubt:
 - do not resolve in anyone's favor
 - while the Labor Code is intended to protect workers, they are not intended to destroy or oppress the Capital
 - apply pure and simple meaning of the law

Kinds of Employees (Article 295)

- **Regular**
 - (a) those who have been engaged to perform activities which are necessary or desirable in the usual business or trade of the employer
 - Public school teachers (a school cannot operate without a teacher)
 - regular does not mean permanent - there is a probationary period
 -
- **Project and Seasonal**
 - perform activities only for a specific duration or time
- **Casual**

- those who perform work which are usually not necessary or desirable for the employer's business
- what is necessary or desirable depends on the industry
 - Delivery riders are necessary for Lazada because the industry is online selling. The transactions cannot be complete without the orders being delivered

Security of Tenure (Art. 294, Labor Code)

- right of every employee not to be dismissed without just or authorized cause and in the absence of due process
- in illegal dismissal cases (dismissals that violate the right to security of tenure), the burden of proof is on the employer (Art. 292, Paragraph B)
- the fact of dismissal, if disputed, must be duly proven by the complainant

Four-fold Test (Employee-Employer Relationship)

- Determines if the existence of an employer-employee relationship was duly satisfied, particularly:
 - selection and engagement of the employee
 - payment of wages
 - power of dismissal
 - employer's power to control the employee on the means and methods by which the work is accomplished

Control Test

- the power of the employer to determine the means by which an employee would perform the task

Award of Reinstatement and Backwages

- this is given to employees who have been illegally dismissed

- reinstatement to the former position, without loss of seniority
 - you cannot be reinstated to another position different from the position you held before being dismissed
- reinstatement is upon the discretion of the employer
 - physical reinstatement - back to former position
 - reinstatement by payroll - employee does no work but is being paid
- Computation of Backwages
 - from the time the employee was not allowed to work up to the time of reinstatement
 - inclusive of allowances and other benefits or their monetary equivalent
- Separation pay can be paid in lieu of reinstatement
 - one man's salary for every year of service
 - Grounds:
 - Strained Relations
 - payment of separation pay if reinstatement is no longer desirable or viable
 - separation pay in lieu of reinstatement because of strained relations frees the employee from a potentially highly oppressive work environment
 - it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker who they cannot trust

Probationary Period for Private School Teachers

- three consecutive school years according to the Manual of Regulations for Private Schools before they become permanent
- the teacher must be full-time, must have rendered 3 consecutive years and the service must be satisfactory to acquire permanent status
- Full-time Teacher
 - working day (8 hours per day, 6 days a week) is devoted to the school
 - has no other regular remunerative employment

- paid on a regular monthly basis regardless of the number of teaching hours
- In college, the load of a full-time instructor is 18 hours a week (or equal to 18 units)

Just Cause for Legal Dismissal (Art. 297)

- employee has conducted some serious misconduct, guilty of some fraud, or has neglected his duties
- misconduct is defined as improper or wrong conduct
 - the misconduct must be in connection with the work of the employee (no matter how serious)
 - minimum and students is considered a serious misconduct
- abandonment
 - deliberate or unjustified refusal
 - just cause for separation from service
 - analogous neglect of duty
 - Elements:
 - failure of employee to report to work without just or valid reason
 - existence of overt acts which show that the employee has no intention to return to work
 - two aforementioned elements must be present to justify termination based on abandonment
 - employer must adduce clear evidence of deliberate, unjustified refusal is done by the employee through overt acts

Procedure for Dismissal Due to Just Cases

- employer must give two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment.
 - 1st written notice must specify the grounds for dismissal

- give the employee the opportunity to be heard
- after the hearing, the 2nd notice contains the notice of termination
- Reasonable time to explain
 - 5 calendar days from receipt of the first notice (NTE - Notice to Explain)
 - this span of time is given to give employees opportunity to study the accusation, consult a union official or lawyer, gather data and evidence, and decide on their defenses
- If the employer does not give the two notices, the dismissal could be considered illegal
- **Hearing Requirement**
 - A trial-type hearing is not needed as long as the employee is given the opportunity to explain whether by writing or verbally, that is a compliance to the hearing requirement of the law
 - hearing is not equal to verbal argumentation alone
- Even though the burden of proof is on the employer, the one who alleges must also prove his affirmative allegation
 - Bare allegations are not enough; these must be supported by substantial evidence at the very least
- Employees airing out grievances in a public forum is out of their right to free expression and does not constitute a violation. Although accusing the employer of anything may become libelous

Authorized Causes of Dismissal (Art. 298)

- authorized because the employee is not at fault
 - the employer gave the grounds for the dismissal, therefore they have separation pay
- installation of labor-saving devices
 - automation
- redundancy
 - when the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise

- madaming manggagawa, kaunti ang trabaho
- management must declare redundancy with sufficient basis
- retrenchment to prevent losses
 - no need for actual losses
 - even projected losses, if substantial, can be grounds for dismissal
- closing or cessation of operation
- **Due Process Requirement**
 - give two notices given at least one month before the intended date of dismissal:
 - one to the employee
 - to warn him of an impending loss of livelihood or income
 - and one to the DOLE
 - to ascertain whether the grounds for termination are valid
 - payment of separation pay
 - if due to labor-saving devices or redundancy
 - at least one month pay
 - 9 months service - one month salary
 - or at least one month pay for every year of service, whichever is higher
 - 4 years service - 4 months salary
 - if due to retrenchment to prevent losses and closures or cessation of operations
 - one month pay
 - 9 months service - one month salary
 - or 1/2 month pay for every year of service, whichever is higher
 - 4 years service - 2 months salary
 - this is to provide the employee wherewithal (panggastos) while looking for another employment
 - based on amount of monthly salary and number of years of service

- good faith in abolishing the redundant position
- fair and reasonable criteria in determining what positions are to be declared redundant
- No separation pay if the closure is due to serious business losses or financial reverses
 - burden of proving serious business losses is with the employer
 - employer must show proof that losses on the basis of financial statements covering a sufficient number of time

Ineffectual Dismissal

- an employee is dismissed through just or authorized means, but the employer did not follow due process or violated the employee's right to due process
- no reinstatement, no backwages, and no separation pay
- employer must pay nominal damages
 - the Court shall decide on the amount of nominal damages

Constructive Dismissal

- the continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits
- dismissal in disguise caused by bad behavior of the employer
- occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable
- employee is considered constructively dismissed if they were sexually harassed by their supervisor and their employer failed to act on this complaint with prompt and sensitivity
- when strong words from employer happen without palpable reason or are expressed only for the purpose of degrading the dignity of the employee, then a hostile work environment will be created, thus can be counted as constructive dismissal

Disease as Ground for Termination (Art. 299)

- Employee who is sick may be dismissed
- Employee must suffer from diseases that cannot be cured within six months and their continued employment is prohibited by law or prejudicial to their health or the health of their co-employees (if staying in work ay mas nakaka-harm sa kanya or nakaka-harm sa ibang employees)
- A certification must be issued by a competent public health authority
- They are entitled to separation pay equal to dismissal based on retrenchment or closure
 - 1 month salary
 - 1/2 month salary for every year of service, whichever is higher

Putting the Employee on a Floating Status (Art. 301)

- should not exceed six months
- D.O. 215
 - allows the extension of floating status for another six months
 - accdg. to the Supreme Court, this is not valid as floating status beyond six months is tantamount to constructive dismissal

Summary

CAUSE (J/A)	DUE PROCESS	DISMISSAL
✓	✓	Legal
X	X	Illegal
X	✓	Illegal
✓	X	Ineffectual

Resignation (Art. 300)

- An employee may terminate without just cause the employee-employer relationship by serving a written notices on the employer at least one month in advance
 - When there is no notice, the employee may be held liable for damages
 - Employee may dispense with the giving of notice if there is serious insult by the employer
- Inhuman and unbearable treatment accorded by the employee by the employer or his representative
- Commission of crime or offense by the employer or representative against the employee or any immediate family members
- Other causes analogous to the foregoing

Separation Pay Upon Resignation

- Voluntary resignation does not deserve payment of any separation pay
- Exception:
 - if there is an employment contract stipulating separation pay upon resignation

- Collective Bargaining Agreement (CBA) policy
- if it is company practice
- Burden of Proof
 - in illegal dismissal cases, the burden to establish the voluntariness of such resignation rests on the employer (prove that there was no compulsion on employee)
- Resignation Cannot be Recalled
 - resignation, once accepted, cannot be withdrawn without the consent of the employer

Retirement Pay (Art. 302)

- Employee may retire at the age of 60 to 65 years old provided that they have rendered at least five years in the said establishment
- 65 years old is the declared compusory retirement age
- shall be entitled to at least 1/2 month salary for every year of service
 - 15 days + 2.5 days of the 13th month pay and the cash equivalent of not more than five days of service incentive leaves (in the absence of a retirement plan)
 - equal to salary of 22.5 days per month salary for every one year of service
 - based on the latest salary before the employee retires
- a fraction of at least 6 months being considered as one whole year
- employee is not required to pay for their retirement
- Retirement age for underground and surface miners: 50-60 years old with 60 years old as compulsory retirement age
 - because of the nature of their work
- Retirement Plan must be fair
- Retirement must be voluntary

Compulsory Retirement

- An employee is free to impose a retirement age less than 65 for as long as it has the employees' consent
- Having terminated solely on the basis of a provision of a retirement plan which was not freely assented to by the employee, will be considered guilty of illegal dismissal
- retirement at the age of 60 is voluntary (consent of every employee)
- The employee can contribute to the retirement plan, but at the time of retirement, the contributions of the employee must be deducted before the 22.5 days per year of service is to be computed

Part-time Employees' Retirement

- Retirement Pay Law did not distinguish the kind of employees who are entitled to retirement pay
- retirement pay is smaller than full-time employees

Prescription of Action (Art. 306)

- Prescriptive periods
 - period up to when a legal action may be filed or instituted; otherwise, after the said period, the cause of action is barred forever
- covers claims for overtime pay, holiday pay, service incentive leave pay, bonuses, salary differentials, and illegal deductions by an employer
- the provision does not include money claims based on illegal dismissal
 - as consequence to illegal dismissals, we have backwages and damages which are money claims
- an action for illegal dismissal is essentially a complaint for "injury to rights"
 - injury to property rights
 - it is covered by Art. 1146 of the Civil Code. The following must be instituted within four years:
 - upon an injury to the rights of the plaintiff

- upon a quasi-delict
- Prescriptive Period for
 - Illegal dismissal - 4 years
 - Service Incentive Leave - 3 years (Art. 95)
 - start of the prescription period is at the time that the employee demanded for the payment of this money claim
 - Pure Money Claims - 3 years
 - arising out of the employer-employee relationships
 - from when the time the cause of action accrued; otherwise they shall be forever barred

The Right to Unionize

- right of employees to form unions, associations, or societies for purposes not contrary to law shall not be abridged
- when anyone interferes with the right to unionize, it is unfair labor practice (Art. 219)
 - any act of the employer, the union, officers or members that interferes with the right of the employee to join or not to join a union
 - violative of the constitutional right of workers to self-unionize
- **Totality Test**
 - in determining whether an act is considered unfair labor practice, the totality of circumstances must be considered
 - if unfair treatment does not relate to or affect the right to unionize, then it is not unfair labor practice
- **Dismissal of Union Officers**
 - unnecessary, discriminatory dismissal of a union officer
 - it is not unnecessary and discriminatory if the officer committed an act of misconduct
 - the worst kind of unfair labor practice

- **Yellow Dog Contract**
 - employees are employed if they vow to not join, assist, form, or even attempt to foster a union for the duration of their employment with the employer
 - this is a void undertaking
- **Run-away shop**
 - employer moves its business in another location or it temporarily closes its business for anti-union purposes
 - a plant removed to a new location in order to discriminate against employees at the old plant because of their union activities
 - “kahit magstrike kayo sa Metro Manila, lilipat ako sa Laguna para tuloy pa rin ang operations”
 - this is unfair labor practice
- **Blue-Sky Bargaining**
 - demanding too much
 - unreasonable proposals
 - ex. union wants to raise minimum wage in a company which is way beyond the wage set by the Regional Wage Board
- **Boulwarism**
 - “take it or leave it” stand
 - offer or counteroffer that is not meant to be negotiated
 - this is prohibited in Philippine Labor laws because the employer and labor union are mandated to bargain in good faith
- **Surface Bargaining**
 - they go through the motion of bargaining without the intention to reach an agreement
- **Featherbedding**
 - committed by the union against the employer
 - union attempts to cause an employer to pay for services which are not to be performed

- requiring the employer to hire more workers so their work becomes lighter
- unfair labor practice of the union through coercive means
- there is no featherbedding if the paid work is performed (featherbedding lang if the unperformed work is being demanded to be paid)
- **Sweetheart Contract or Sweetheart's Deal**
 - Art. 260(e)
 - to ask for or accept negotiation or attorney's fees from employers as part of the settlement of any issue in collective bargaining or any other dispute
 - will not improve the life of the employees
 - negotiators are the only one paid

Bargaining Unit (Art. 267)

- bargaining unit is a department sought to be represented by a petitioning union
- the union representing the bargaining unit is the bargaining representative
- **Certification Election**
 - process of determining through secret ballot the sole and exclusive representative of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiation
 - ordered by DOLE
 - filing a petition to the regional office
 - Consent Election - gentleman's agreement without petition
 - Win by getting the double majority vote
 - First majority - majority of the bargaining unit must have voted
 - Second majority - winning union must have garnered majority of the valid votes cast
 - Failure of Election
 - number of votes is less than the majority of the number of voters (first majority)

- Effects:
 - anyone may file another petition for certification election within six months from date of declaration of failure of election
- If there is no winner (“no union” got the double majority vote), there must be a run-off election
 - occurs when there is a certification or consent election with at least three or more choices
 - 2 unions = 3 choices (no union being the 3rd)
 - the two unions who garnered the highest votes in the certification election will have another bout
 - “no union” is no longer a choice in a run-off election. it would have won if it garnered more than half of the valid voters
 - those who did not vote in the certification election CAN VOTE in the run-off election
- **Re-run Election**
 - if a certification, consent, or run-off election results to a tie between two choices, the election officers will notify each party of a re-run election within five days
 - within ten days, there will be a scheduled election between the two tied parties to determine a winner
- Winners of elections are called Certified Bargaining Agent

Collective Bargaining Agreement

- a contract between the employer and the bargaining union incorporating the agreement reached after negotiations with respect to wages, hours of work, and all other terms and conditions of employment
- *Note*
 - during elections = contending union
 - as a winner of elections = bargaining agent/representative

- while bargaining = bargaining union
- having a contract (CBA) = contracting union
- CBA must be published
 - posting in at least two conspicuous places (places where people would normally congregate)
 - 5 days prior to the day of ratification
- Non-posting is a fatal defect
 - violated the rights of the bargaining unit to information
 - they are not informed of the content of the CBA
- posting of CBA is employer's responsibility

Ratification and Registration

- **Ratification**
 - majority of all workers in the bargaining unit must vote to ratify the contents or the CBA itself
 - if majority did not vote, it cannot be registered
 - it will be returned to the bargaining table so that objected provisions by the employees will be re-negotiated for it to be acceptable for them
- **Registration**
 - if it is ratified, it should be registered to the Bureau of Labor Relations
 - if not registered, it is still valid and binding between the union and employer, but you cannot invoke the operation of the Contract Bar Rule (Art. 238)
 - if there is a valid (registered) CBA between employer and contracting union, but it cannot bind another union
 - CBA must be registered to avoid filing of petition for certification election
 - the contract will bar any petition for certification election for five years
 - exception is freedom period: 60 days before the end of the 5 years

- Lifetime of the CBA (Art. 264 and 265)
 - one is representation issue (max 5 years)
 - 3-year period
 - on the 3rd year, the economic benefits alone can be renegotiated
 - it is not mandatory
 - Freedom Period:
 - 60 days before 5 years completed
- Automatic Renewal Clause
 - when CBA expires and there is no new CBA, all terms and conditions will be renewed until the new CBA is concluded between the union and the employer
 - also called Evergreen Clause
- Automatic Retroaction
 - pertains to economic provisions
 - any economic provisions concluded by the union and employer, within 6 months from expiration, shall retroact to the day after each expiration
 - effectivity of such agreement will retroact before the day before the expiration of the CBA and will persist until the time when it was agreed upon.

- The CBA expired on **June 9, 2018**
- The parties agreed to implement a **P20/day** wage increase
- The agreement was finalised on **November 9, 2018**, this is five months after the expiration of the CBA
- The effectivity of the agreement would retroact to **June 10, 2018** which is the day after the expiration of the CBA

- if after 6 months, it is by agreement of the parties

Effectivity of Arbitral Award

- will take effect on the day set by the voluntary arbitrator
- this happens when the CBA is a result of arbitration (union and employer cannot come to an agreement)
- Grievance (Art. 273)
 - refers to any question by either the employer or the union
 - sources:
 - interpretation and implementation of CBA provisions
 - interpretation or enforcement of company personnel policies
- Establishment of grievance machinery
 - parties of a CBA establishes a machinery for expeditious resolution of grievances
 - unresolved grievances will be referred to voluntary arbitration
- Establishment of grievance committee
 - created by employer and union
 - within 10 days from signing the CBA
- All grievances must be submitted to the grievance machinery or committee and they shall act on it within 7 calendar days. If still unresolved, it will be automatically forwarded to voluntary arbitrators
 - accredited by the National Conciliation and Mediator Board
 - selected by the parties to act as voluntary arbitrator
- **Compulsory Arbitrators**
 - mandated by law to resolve all issues in labor and jurisdiction is provided for by law

Article 274

- all CBA violations are called grievances except the gross violation of the CBA
 - flagrant or malicious refusal to comply with the economic provisions of the CBA
 - they are considered unfair labor practices
- CBA violations = voluntary arbitrator
- gross violations = labor arbiter

Jurisdiction of voluntary arbitrator

- they have jurisdiction over wage distortion issues in organized establishments (Art. 124)
- parties may agree to submit other labor issues like unfair labor practices or illegal dismissal to the voluntary arbitrator's jurisdiction
 - there is a need for an expressed stipulation in the CBA that the parties agree to submit to the voluntary arbitrators the issues of ULP and illegal dismissal
 - in absence of stipulation, they cannot give these issues to the voluntary arbitrators because these are under the jurisdiction of the labor arbiter

Article 276 - Procedures

- voluntary arbitrators, upon receipt of unresolved grievances, must rule or issue a ruling within 20 calendar days (can be extended by agreement of parties)
- this is final and executory after 10 calendar days from receipt of the copy of the decision made by parties and are allowed to file for a motion for reconsideration
- after the motion is denied, that is the time to go to the Court of Appeals within 15 calendar days

Strike

- Art. 219
- means any temporary stoppage of work caused by the employees due to a labor dispute
- Requisites

- Valid Ground
 - bargaining deadlock
 - unfair labor practice
 - union busting
 - dismissal of union officers without grounds
- Notice of Strike
 - filed with the NCMB
 - 30 days before the intended date
 - 15 days in case of unfair labor practice
 - in the case of union busting, there is no need to file the strike vote will be mandatory
- Cooling - off period
 - 30 days for economic strike
 - 15 days for ULP
 - no period required for union busting
 - period where workers are not allowed to strike
 - Purpose:
 - designated to afford parties the opportunity to resolve the dispute with the assistance of the NCMB conciliator/mediator (preventive mediation)
- Notify the NCMB prior to the conduct of strike vote report
 - in case it was unresolved
 - a strike vote is to be conducted within 24 hours
 - Failure to notify
 - renders the strike as illegal
- Strike Vote
 - gather all the union members' votes through secret balloting

- Purpose of notice
 - for the NCMB to supervise the election
- Strike Vote Report
 - reported to NCMB at least seven days before the intended strike
- 7-day Strike Ban
 - the time the notice of strike is given to the DOLE (NCMB) of the results of the strike voting
 - gives time to the NCMB to determine if the decision to conduct the strike has the vote of the majority

Lockout

- Temporary refusal of the employer to furnish work because of a labor dispute

Picketing

- right of workers to peacefully march to and fro before an establishment involved in a labor dispute
- exercise of freedom of expression

Consequences of Illegal Strike

- the union officers may be dismissed after due process
- union members may not be dismissed unless they participated in the commission of illegal activities
- it is not illegal to have a strike in hospitals
 - maintain a skeletal force

Power to assume jurisdiction

- Secretary of Labor may assume jurisdiction over the dispute and decide

- Power can be assumed by the President

Aliens and Union Activities

- aliens are not allowed to participate in union activities
- Exceptions (Art. 284):
 - if the alien has a valid working permit
 - in their country of origin, Filipinos are also given the same right to unionize (principle of reciprocity)