

CLIENT ADVISORY BULLETIN NO. 2020-001B
(Lay-Offs and Suspension of Operations)

April 30, 2020

Gentlemen/Mesdames,

The COVID-19 outbreak, and the resulting Enhanced Community Quarantine (ECQ), which has now been extended until the end of the month, has caused a considerable strain on the lives of the ordinary Filipino people. Most businesses were forced to stop operations during the ECQ, which greatly affected their cash flow and profits.

The Department of Labor and Employment (DOLE), bearing in mind the interest of the workers, issued **Labor Advisory Nos. 9 and 11**, which urges and encourages employers to adopt **flexible work arrangements**¹, as remedial measures, instead of, outright termination of employees or closure of business.

However, in case of certain employers, these remedial measures may not be enough and resort to more drastic action is warranted. Thus, in order to stay afloat and keep on operating, **Article 298 (formerly 283) of the Labor Code of the Philippines** provides for the **authorized causes for terminating employment**, where an employer may legally downsize its workforce or suspend its business operations.

The following table provides for an overview as to the different types of authorized causes for terminating employment, together their respective features:

	Definition/Requirements	Amount of Separation Pay
INSTALLATION OF LABOR-SAVING DEVICES	Introduction of machinery or automation process in the work system to improve productivity, thereby resulting in positions held by employees adversely affected thereby to be redundant and unnecessary. Requirements: (a) Done in good faith;	One (1) month pay or one (1) month pay for every year of service, whichever is higher, a fraction of at least six (6) months being considered a year

¹ Examples of which are reduction of workhours and/or workdays, rotation of workers, forced leave.

	<p>(b) The purpose is to save cost, improve efficiency, and other justifiable economic reasons;</p> <p>(c) There is no other available option except for the introduction of such improvement; and</p> <p>(d) Written notice to the DOLE and the concerned workers at least one (1) month before the intended date.</p> <p>(e) The purpose for such installation of labor saving devices must be valid.</p>	
<p>REDUNDANCY</p>	<p>When the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the enterprise. A redundant position is one that is rendered superfluous by several factors, such as over hiring of employees, decrease in the volume of the business, dropping of a particular product line previously manufactured by the company, phasing out of a service activity previously undertaken by the business, company reorganization which transfers to another department the work previously being handled by an employee.²</p> <p>Requirements:</p> <p>(a) Written notice served on both the employees and the DOLE at least one (1) month prior to the intended date of termination of employment;</p> <p>(b) Payment of separation pay;</p>	<p>One (1) month pay or one (1) month pay for every year of service, whichever is higher, a fraction of at least six (6) months being considered a year</p>

² *Nippon Housing Phil. Inc., and/or Tadashi Ota, Horoshi Takada, Yusuhiro Kawata, Mr. Noboyushi and Joel Reyes vs. Maiah Angela Leynes*, G.R. No. 177816, 3 August 2011.

	<p>(c) Good faith in abolishing the redundant positions; and</p> <p>(d) Fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.³</p>	
<p>RETRENCHMENT</p>	<p>The severance of employment, through no fault of and without prejudice to the employee, resorted to by management during the periods of business recession, industrial depression, or seasonal fluctuations, or during lulls caused by lack of orders, shortage of materials, conversion of the plant to a new production program or the introduction of new methods or more efficient machinery, or of automation. Elsewise stated, lay-off is an act of the employer of dismissing employees because of losses in the operation, lack of work, and considerable reduction on the volume of its business, a right recognized and affirmed by the Court.⁴</p> <p>Requirements:</p> <p>(a) Retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely <i>de minimis</i>, but substantial, serious and real, or only if expected, are reasonably imminent as perceived objectively and in good faith by the employer;</p>	<p>One (1) month pay or one-half (1/2) month pay for every year of service, whichever is higher, a fraction of at least six (6) months being considered a year</p>

³ *Lambert Pawnbrokers and Jewelry Corporation and Lambert Lim vs. Helen Binamira*, G.R. No. 170464, 12 July 2010.

⁴ *Crispin B. Lopez vs. Irvine Construction and Tomas Sy Santos*, G.R. No. 207253, 20 August 2014.

	<p>(b) Written notice served both to the employee/s concerned and the DOLE at least one (1) month before the intended date of retrenchment;</p> <p>(c) Payment of separation pay;</p> <p>(d) Done in good faith; and</p> <p>(e) Fair and reasonable criteria in ascertaining who would be retrenched or retained⁵</p> <p>However, when a lay-off is only temporary, the employment status of the employee is not deemed terminated, but merely suspended. Pursuant to Article 286 of the Labor Code, the suspension of the operation of business or undertaking in a temporary lay-off situation must not exceed six (6) months. Within this six-month period, the employee should either be recalled or permanently retrenched. Otherwise, the employee would be deemed to have been dismissed, and the employee held liable therefor.⁶</p>	
<p>CLOSURE/CESSATION OF BUSINESS OPERATIONS</p>	<p>May either be due to serious business losses, financial reverses, or otherwise.</p> <p>Under the first kind, the employer must sufficiently and convincingly prove its allegations of substantial losses; while under the second kind, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations was <i>bona fide</i> in character and not impelled by a motive</p>	<p>One (1) month pay or one-half (1/2) month pay for every year of service, whichever is higher, a fraction of at least six (6) months being considered a year, if the closure or cessation of operations is not due to serious business losses or financial reverses</p>

⁵ *Supra* note 3.

⁶ *Supra* note 4.

	<p>to defeat or circumvent the tenorial rights of employees.⁷</p> <p>The employer's prerogative to close or abolish a department or section of his establishment for economic reasons, such as to minimize expenses and reduce capitalization is as much recognized as management's prerogative to close the entire establishment and cease operations due to adverse economic conditions.⁸</p> <p>Requirements:</p> <p>(a) Service of a written notice to the employees and to the DOLE at least one month before the intended date thereof;</p> <p>(b) The cessation of business must be <i>bona fide</i> in character; and</p> <p>(c) Payment of separation pay, except if closure is due to serious business losses.⁹</p>	
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⁷ *Manila Polo Club Employees Union (MPCEU) FUR-TUCP vs. Manila Polo Club, Inc.*, G.R. No. 172846, 24 July 2013.

⁸ *Rommel M. Zambrano, et al. vs. Philippine Carpet Manufacturing Corporation, et al.*, G.R. No. 224099, 21 June 2017; *Danzas Intercontinental, Inc. and Claude F. Schaer vs. Henry M. Daguman, et al.*, G.R. No. 154368, 15 April 2005.

⁹ *PNCC Skyway Corporation vs. The Secretary of Labor and Employment, PNCC Skyway Traffic Management, and Security Division Workers Organization*, G.R. No. 196110, 6 February 2017.



In keeping with our commitment of providing our clients and the public with the best possible service we can, we will continue to provide you with relevant updates on issuances made by the various government agencies during the period of ECQ.

Keep safe.

Thank you very much.


DAMIAN M. PLACIDO, JR.
Managing Partner

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