

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Sixteenth Congress
Second Regular Session

HOUSE BILL NO. **5416**



INTRODUCED BY: REP. FLORENCIO T. FLORES, JR., REP. KARLO ALEXEI B. NOGRALES, AND REP. DEOGRACIAS B. RAMOS, JR.

EXPLANATORY NOTE

The Philippine Constitution recognizes the worker's right to security of tenure, which guarantees that an employee cannot be terminated from work for causes other than those provided by the Labor Code and only after due process is accorded to the employee. This recognition, however, equally acknowledges the principle that employers have the inherent right to exercise management prerogative including the right to hire and to fire.

Termination of employees is an exercise of management prerogative but tempered by the right of workers to security of tenure. Existing provisions of law allow termination of employment only upon the existence of just or authorized causes and observance of procedural due process. This framework created rigidity that have paralyzed both employers and employees in costly and long litigation process to determine the existence of the causes and observance of due process. The average time to dispose a case from the time of filing up to the Supreme Court is 8 years¹. The main areas of contention are: (1) the "analogous causes" in paragraph (e) of Article 282 on just causes or termination by the employer, which is open to varied and diverse interpretations for being over broad, and (2) validation of the invoked authorized cause as provided in Article 283, including payment of separation pay.

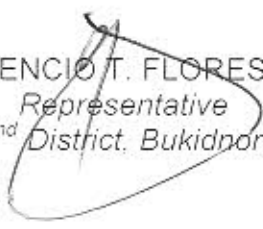
The direct cost of terminating an employee on the part of the employer is as high as 4.7 months wage of an employee (average) using the existing dismissal regulations e.g. separation pay, notice, period of litigation as variables. On the part of the employee, the direct cost is estimated at P100,500.00 on average using the cost of litigation and the cost of execution of judgment as variables².

¹ Based on record, the average time to dispose termination cases from filing to NLRC is 2 years; from NLRC to Court of Appeals is 2 years; from Court of Appeals to Supreme Court is 4 years.

² Variables used in the computation: Ordinary Attorney's fee (Paper fees - P1,000.00; Appearance fees - P3,000.00 per hearing; Acceptance fee - P60,000.00); Extraordinary Attorney's fee (P12,753.5 per case); Execution of judgment (P4,000 per case travel expenses).

Hence, this bill proposes to amend paragraph (e) of Article 282 of the Labor Code by replacing "analogous causes" with "acts or omission specified in the company rules and regulations or collective bargaining agreement" to remove the ambiguity. Article 283 on authorized causes of termination is also proposed to be simplified by: (1) providing at least one month pay for every year of service; (2) submission of proof of authorized cause; and (3) providing that upfront payment of separation pay bars the filing of claims and complaints arising from the separation.

Hence, the passage of this bill is earnestly sought.



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An Act Defining the Causes of Termination of Employment of Workers Amending for this Purpose Articles 282 and 283 of Presidential Degree No. 442. Otherwise known as the Labor Code of the Philippines, as amended.

SECTION 1. Article 282 of PD 442, otherwise known as the Labor Code of the Philippines, as amended, is hereby amended to read as follows:

ARTICLE 282. JUST CAUSES OF TERMINATION. An employer may terminate an employment for any of the following causes:

1. Serious misconduct or willful disobedience by the employee of the lawful orders of his/HER employer or representative in connection with his/HER work;
2. Gross and habitual neglect by the employee of his/HER duties;
3. Fraud or willful breach by the employee of the trust reposed in him/HER by his/HER employer or duly authorized representative;
4. Commission of a crime or offense by the employee against the person of his/HER employer or any immediate member of his/HER family or his/HER duly authorized representatives; and
5. ACT OR OMISSION EXPRESSLY SPECIFIED IN THE COMPANY RULES AND REGULATIONS OR COLLECTIVE BARGAINING AGREEMENT"

SECTION 2. Article 283 of PD 442, otherwise known as the Labor Code of the Philippines, as amended, is hereby amended to read as follows:

"ARTICLE 283. Closure of Establishment and Reduction of Personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the DEPARTMENT of Labor and Employment at least one (1) month before the intended date thereof AND PAYMENT OF SEPARATION PAY equivalent to at least his/HER one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

THE EMPLOYER SHALL PAY ALL SEPARATION BENEFITS TO THE EMPLOYEE FIFTEEN (15) DAYS BEFORE THE EFFECTIVITY OF THE SEPARATION OF EMPLOYEE. UPON RECEIPT OF SEPARATION PAY, AN EMPLOYEE SHALL BE BARRED FROM FILING CLAIMS OR COMPLAINTS ARISING THEREFROM.

SECTION 3. Article 283-A of the Labor Code, as amended, is hereby inserted to read as:

"ARTICLE 283-A. PROOF OF AUTHORIZED CAUSE. - IN CASE THE TERMINATION IS BASED ON AUTHORIZED CAUSES, THE EMPLOYER SHALL SUBMIT PROOF TO THE DEPARTMENT OF LABOR AND EMPLOYMENT FOR VALIDATION. IN CASE OF LOSS OR MEASURES TO PREVENT LOSSES, A CERTIFICATION ON ACTUAL OR POTENTIAL LOSSES ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION OR THE BUREAU OF INTERNAL REVENUE SHALL BE SUFFICIENT."

SECTION 4. Rules and Regulations. - The Secretary of Labor and Employment shall promulgate the necessary implementing rules and regulations within one hundred and twenty (120) days from the effectivity of this Act.

SECTION 5. Repealing Clause. - All laws, decrees, rules, and regulations or parts thereof, which are contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 6. Separability Provisions. - If any provision of this law or the application thereof to any person or circumstance, is held invalid, the remainder of this law, or the application of such provision or part to other persons or circumstances, shall not be affected thereby.

SECTION 7. Effectivity. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.