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PHILIPPINES

Law and Practice

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Angara Abello Concepcion Regala & Cruz (ACCRALAW) is one of the Philippines' leading law firms with a cohesive multidisciplinary team of legal professionals who possess in-depth knowledge in specialised fields of law, backed by 50 years' extensive experience in the practice of law. From a core group of seven lawyers at its inception in 1972, the firm has grown to a prestigious service organisation of more than 170 lawyers. Its principal office is in Bonifacio Global City, Taguig, Metro Manila. The firm has full-service branches in thriving commercial centres in the Visayas and Mindanao, in Cebu City and Davao City respectively. ACCRALAW's labour and employment department handles litigation and advisory services on all employment-related matters, including dismissal and suspension of employees, money claims, petitions for certification elections, union disputes, collective bargaining negotiations, unfair labour practices, strikes and lockouts, labour-related civil/criminal cases, social welfare benefits, labour law compliance and audits, and corporate reorganisations.

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1. Opening an HR Internal Investigation

1.1 Circumstances

An HR internal investigation commences upon the filing of an incident report or complaint by a concerned employee to their immediate superior, a member of management, and/or the HR department. These concerns are often passed through an internal grievance mechanism and upon receipt of the report or complaint, the relevant officer or HR department is tasked with verifying the truth and accuracy of the statements therein and commencing an administrative investigation, if necessary.

1.2 Legal Bases

Jurisprudence recognises the right of an employer to regulate all aspects of employment, including the imposition of rules, the investigation of acts of misconduct by its employees, and the disciplining of those who are found culpable of violating company policy. As the power to discipline employees is part of an employer's management prerogative, employees who are subject to an administrative investigation cannot ipso facto claim that they are being singled out or harassed by the employer.

An HR internal investigation forms part of procedural due process requirements under Article 292 of the Labour Code of the Philippines, as implemented by the Department of Labour and Employment (DOLE) Department Order No 147 Series of 2015 ("DO 147-15"), especially where acts or violations of company rules warrant the employee's dismissal from employment. As the burden of proving the propriety of the termination rests with the employer, conducting an HR internal investigation allows the latter to properly evaluate the factual circumstances of the case to justify the penalty imposed.

Moreover, under the Safe Spaces Act (SSA) or Republic Act No 11313, and the Anti-Sexual Harassment Act of 1995 (ASHA) or Republic Act No 7787, employers are required to investigate and decide on complaints regarding sexual harassment through a duly constituted Committee on Decorum and Investigation (CODI).

1.3 Communication Channels

Employers are not required, but are encouraged, to set up their grievance mechanisms in line with their internal policies and procedures. In practice, some companies allow complaints and grievances to be reported directly to their HR department, while others establish an electronic channel (eg, an ethics hotline) by which their employees can express their complaints or concerns to management. Through these systems, the concerned employee fills out an incident report describing the circumstances surrounding the complaint and naming the person responsible for the incident. There is no requirement that such complaints be anonymous, although most employers provide this option so that employees can raise concerns without fear of retaliation, victimisation, subsequent discrimination, or disadvantage in the workplace.

If the company is unionised, employers must adhere to the provisions related to the grievance procedure as set out in the Collective Bargaining Agreement (CBA). All grievances submitted to the grievance machinery which are not settled within seven calendar days from the date of submission, will automatically be referred to voluntary arbitration as prescribed in the CBA.

In sexual harassment cases, while complaints may be anonymous, they will not constitute a formal complaint unless made by the victim in their own name. Per the SSA and ASHA, formal

complaints must be resolved within ten days from receipt thereof.

1.4 Responsibility

Generally, the establishment of an employer's grievance mechanism forms part of its management prerogative; thus, there are no strict requirements as to who carries out an HR internal investigation. It may be carried out by the employee's direct managers, the HR department, or even the employer's counsel, as long as there is no conflict of interest with the parties involved, to maintain impartiality in the proceedings.

By way of exception, there are special rules for charges involving sexual harassment as these necessitate the creation of an independent CODI.

As mentioned in **1.2 Legal Bases**, a CODI must be established to investigate and decide cases of sexual harassment. The CODI must be chaired by a woman and not less than half of its members must be women. It must also be composed of at least a representative each from management, employees from the supervisory rank, rank-and-file employees, and the union's or employees' association, if any.

Further, if the company is unionised, the employers must adhere to the provisions in the grievance procedure as set out in the CBA.

1.5 Obligation to Carry Out an HR Internal Investigation

When a complaint involves a violation of company policy punishable by termination of employment, or acts constituting just causes under Article 297 of the Labour Code (ie, serious misconduct, wilful disobedience, gross and habitual neglect of duties, fraud or wilful breach of trust, commission of a crime, and causes analogous thereto), an administrative investigation must be carried out before such employee is dismissed from employment.

As part of due process, the HR department or any appointed responsible officer must first issue the erring employee a Notice to Explain, detailing the facts and circumstances that will serve as a basis for the charge against the employee, and the company rules, if any, that the employee violated and/or which among the just causes for termination the employee is being charged with.

The employee must also be given ample opportunity to be heard by submitting a written explanation within a reasonable period, or at least five calendar days from receipt of the Notice to Explain. Ample opportunity to be heard means any meaningful opportunity afforded to the employee to answer the charges against them and submit evidence in support of their defence.

In this connection, after service of the Notice to Explain, the employer may schedule and conduct a hearing or conference to give the employee the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. However, it is important to note that an actual administrative hearing is not required. An actual hearing only becomes mandatory when:

- it is requested by the employee in writing;
- substantial evidentiary disputes exist;
- a company rule or practice requires it; or
- similar circumstances justify it.

After determining whether the termination of employment is justified, the officer or the HR department must serve a Notice of Decision detailing that all circumstances involving the

charge against the employee have been considered and that grounds have been established to justify the severance of their employment. This procedure is also known as the "twin-notice rule".

Likewise, an HR internal investigation must be carried out in cases involving sexual harassment under the SSA and ASHA. In a 2024 case, the Supreme Court held that an employee had been constructively dismissed when her complaint about sexual harassment was not acted upon by her employer with promptness and sensitivity, thereby prompting her to forgo her employment.

1.6 Prohibition on Carrying Out an HR Internal Investigation

There are circumstances in which an HR internal investigation need not be carried out. By way of example, pursuant to DOLE DO 147-15, an employee cannot be dismissed and hence, cannot be subject to HR internal investigations, solely based on an actual, perceived or suspected case of HIV/AIDS, hepatitis B, or tuberculosis.

Similarly, with the increased focus on an individual's mental health, as espoused under the Mental Health Act or Republic Act No 11036, employees with mental health conditions cannot be discriminated against or investigated and terminated from employment due to their mental health conditions alone.

Likewise, the National Integrated Cancer Control Act or Republic Act No 11215, provides that government agencies should ensure that people living with cancer and cancer survivors are free from any form of discrimination in school, at work and in the community. Thus, employees living with cancer, or who are cancer survivors, cannot be investigated and dismissed by virtue of their condition alone.

Relatedly, DOLE Department Order No 53 Series of 2003 mandates that before imposing disciplinary measures against an employee using prohibited drugs, the employee must first go through two tests – screening and confirmatory. Where the confirmatory drug test of an employee is positive, the company's assessment team, composed of occupational health and safety personnel, the HR manager, and the employer's and workers' representatives, must evaluate the results and determine the level of care and administrative intervention that can be extended to the employee concerned. It is only after the second test that the employee may be subject to disciplinary proceedings.

In other instances, even after a positive result is confirmed through a confirmatory test, disciplinary proceedings may not be commenced if the employee qualifies for rehabilitation. In this regard, the employer may commence disciplinary proceedings only if the employee refuses, without valid reason, to be rehabilitated or if there is repeated drug use, even after ample opportunity for treatment.

1.7 Other Cases

In cases where an investigation is neither obligatory nor prohibited by law (eg, where the imposable penalty is less than dismissal), the employer may be guided by its internal policies and procedures in deciding whether to conduct an HR internal investigation. Generally, the HR department may consider the completeness of a complaint and the veracity of its allegations to rule out spurious claims. It may also assess the gravity of the offence at the outset to determine whether an administrative investigation is actually necessary or whether mediation between the parties concerned, or a coaching session, will already be deemed sufficient to resolve the issue.

Should the employer decide to institute an investigation, it is recommended that the employer adhere to the principles of due process even if the imposable penalty is less than dismissal. Prudence dictates compliance with the twin-notice rule – the employee concerned must be notified of the charges against them, be given an opportunity to be heard, and be notified of the employer's decision.

2. Initial Steps

2.1 Communication to the Reporter

There is no requirement under law which gives the reporting employee the right to be informed whether an HR internal investigation will be conducted. In the National Privacy Commission (NPC) Advisory Opinion No 2020-013, the NPC clarified that information in connection with any proceeding for any offence committed, or alleged to have been committed by an individual, is classified as sensitive personal information. The term "proceeding" includes administrative proceedings or HR internal investigations. In this regard, the processing of such sensitive personal information is prohibited, except in cases laid out under the Data Privacy Act of 2012 (DPA).

As a matter of due process, the parties involved in the administrative proceeding, specifically the complainant and respondent, have the right to be informed of the details of the case. However, third parties to the proceeding, including the reporter (should they not be the complainant), witnesses and other individuals who may be affected by the case, are not given the same right to access such sensitive personal information.

As part of their management prerogative, employers have the right to regulate their employees' disciplinary proceedings and any such protocols that must be followed. In practice, the employer may inform the reporter that an HR internal investigation has been conducted, if only to assuage the reporter that the complaint is being taken seriously, or to seek their assistance in verifying the allegations therein. Nonetheless, the employer must be guided by the data privacy principles under the DPA.

2.2 Communication to the Respondent

Under Article 292 of the Labour Code, the respondent has the right to be informed whether an HR internal investigation will be conducted against them, especially if the acts complained of may be punishable by termination from employment. In this regard, the respondent should first be given a Notice to Explain, detailing the facts and circumstances that will serve as a basis for the charge against them and the company rules they violated and/or the just causes for termination that may apply. The said Notice should also direct the respondent to provide a written explanation as to the charges against them, within a reasonable period, which under jurisprudence has been held to be at least five calendar days.

2.3 Communication to Authorities

Generally, employers do not need to inform the authorities that an HR internal investigation is being conducted and in practice, these proceedings are kept strictly confidential to afford respect to the employee concerned, especially if there is no conclusive finding of fault yet.

However, if the employer discovers that the employee subject to the investigation may be involved in criminal activity, it is part of the employer's civic duty to inform the authorities, specifically, the Philippine National Police or the National Bureau of Investigation, of such fact.

Further, under the Implementing Rules and Regulations of the DPA, when the matter involves a personal data breach or "a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored, or otherwise processed", the employer must inform the NPC and the affected employee within 72 hours upon knowledge of, or where there is reasonable belief on the part of the employer that, a personal data breach has occurred.

2.4 Confidentiality Agreements and NDAs

It is common practice for employees to sign a confidentiality agreement and/or non-disclosure agreement (NDA) covering the conducting of an HR internal investigation and any such acts or discussions related thereto, as part of the confidential information disclosed to employees in the course of their employment.

However, even if a separate confidentiality agreement and/or NDA has not been signed, employees involved in an HR internal investigation must still keep the HR proceedings confidential in so far as they contain personal information or sensitive personal information, which is protected under the DPA. Several laws and regulations likewise require the confidentiality of proceedings depending on the nature of the case. For instance, under the ASHA and the SSA, the CODI must guarantee the confidentiality of the complaint and proceedings related thereto at any stage of the investigation of the offence. Likewise, under the Comprehensive Dangerous Drugs Act of 2002 or Republic Act No 9165, the medical records of a drug dependent must be kept confidential. Relatedly, DOLE Department Order No 53 Series of 2003 mandates an employer to maintain the confidentiality of all information relating to drug tests or to the identification of drug users in the workplace, except where disclosure is required by law or in the case of overriding public health and safety concerns.

In the case of breach of the confidentiality agreement by an employee, the employer may bring a suit for damages against said employee, as stated in the contract. On the same basis, an employee may claim damages against the employer or another employee based on the governing law prohibiting the disclosure, or mandating the confidentiality, of the proceedings, as the case may be.

The requirement for confidentiality is also discussed under **2.1 Communication to the Reporter**.

2.5 Preliminary Investigation and Scope-Setting

Before conducting a full HR internal investigation, a preliminary or fact-finding investigation may first be implemented to determine the veracity of the statements in a complaint against an employee, especially if the complaint contains serious allegations or is submitted anonymously. This preparatory investigation is not yet part of the actual disciplinary proceeding against the accused employee.

During the fact-finding investigation, the employer aims to establish the facts and circumstances surrounding the case, gather and preserve documentary and testimonial evidence, and determine whether to pursue a case and issue a Notice to Explain against the accused employee. This is typically done to avoid unnecessary investigations and to ensure that employees are not subject to unfounded or baseless charges that may affect their morale and disrupt their work.

3. Interviews and Fact-Finding

3.1 Interviewees

In practice, only parties who have personal knowledge of the circumstances surrounding a complaint, or involvement in the acts complained of, are interviewed in the course of an HR internal investigation. Apart from the employee at the centre of the complaint who is given an opportunity to be heard, there is no set number of witnesses who may be interviewed for this purpose. Where the interviewee is an employee charged with violation of company policy or a just cause of dismissal, the interview is known as an administrative hearing.

As part of its management prerogative, an employer may require an employee to co-operate and/or participate in administrative investigations in the performance of their duties. Moreover, under the SSA, employees have a duty to report acts of sexual harassment witnessed in the workplace.

3.2 Participation

An employee who refuses to participate in the investigation may be subject to disciplinary sanctions, subject to the employer's existing policies on the conduct of disciplinary proceedings.

Alternatively, the employer can provide an incentive to encourage the interviewee to co-operate with those conducting the investigation or, where there is a security issue, guarantee the interviewee's protection through internal policies, such as a whistle-blower policy, or by maintaining their anonymity.

Should the employee being charged fail to attend an administrative hearing or submit a written response to the charges posed against them, the employee's refusal or failure to comply will be deemed a waiver of their right to be heard and the HR department or the officer conducting the investigation may resolve the case based on the available evidence.

3.3 Format

Philippine law does not prescribe a format for carrying out HR internal investigations. Hence, it is acceptable practice for interviews related to the same to be carried out remotely through videoconferencing applications.

3.4 Interviewers

The employer has the prerogative to decide the manner in which HR internal investigations are conducted. In this regard, internal policies will govern the number of interviewers required to preside over such investigations and their respective qualifications.

Notably, there are special rules that govern complaints on sexual harassment, as such complaints must be acted upon by an independent internal CODI (see discussion under **1.4 Responsibility**).

3.5 Neutral Party

There is no requirement under law that neutral third parties must be present during administrative interviews. An employer may prescribe or limit the attendees of an interview during an HR internal investigation.

3.6 Support Person

As stated in **3.5 Neutral Party**, the employer may prescribe the rules to be observed during an interview to ensure the confidentiality of the proceedings and to obtain candid responses from the interviewee without external pressure or coaching. However, during administrative hearings where the person being interviewed is

the subject of the disciplinary proceedings, they may be assisted by a representative or counsel of their choice. Under Article 292 of the Labour Code, the employer is mandated to give the employee ample opportunity to be heard and to defend themselves with the assistance of a representative of their choice if they so desire. The right to counsel attaches in every stage of the investigation (ie, fact-finding and disciplinary proceedings) but it only becomes mandatory when the employee personally requests to have counsel or a formal hearing.

3.7 Lawyer

See discussion under **3.6 Support Person**.

3.8 Information

As a matter of practice, before the start of an interview, the interviewee is generally apprised of why an interview is being conducted and how the information elicited will be used. Pursuant to the principle of transparency under the DPA and the Anti-Wire Tapping Law, the interviewer must also secure the consent of the interviewee before recording the interview or using such information for whatever lawful purpose.

3.9 Stopping the Interview

If an interviewee requests to stop the interview, the interviewer cannot compel the former to proceed.

3.10 Minutes

Before an interview commences, the interviewee will be informed that the meeting will be recorded by the HR department, either by means of an actual recording or by taking the minutes of the meeting. There is no requirement to take minutes, nor is there a prescribed form for this. In practice, however, interviews and administrative hearings are documented, either in the form of a transcript or summarised points, as evidence of their occurrence. While the interviewees need not sign the minutes of the meeting, they are given the option to review the same if only to ensure the accuracy of the statements therein. It would also be prudent to have the employee who is the subject of the investigation sign the minutes to secure proof that they were given an opportunity to present their case and defend their side.

3.11 Recording

Typically, interviews conducted pursuant to HR internal investigations are recorded not only to ensure the accuracy of the information obtained during the proceedings, but also to gather the necessary evidence should the case proceed to litigation. However, pursuant to the principle of transparency under the DPA and the Anti-Wire Tapping Law, the interviewer must first secure the consent of the interviewee before recording the interview. The interview transcript is then prepared by the interviewer or by a member of the HR department who was present. Such transcript should only be made accessible to the employees in charge of the investigation of the subject employee, however, to ensure the confidentiality of the proceedings.

If the interviewee refuses to give consent to the recording, the interviewer may instead take minutes and have the same reviewed by or, at the very least, transmitted to the interviewee.

3.12 Other Fact-Finding

Aside from conducting interviews, the employer may also gather physical evidence throughout the administrative proceedings. This includes, among other things, reviewing close circuit television (CCTV) footage taken from the premises, the employee's attendance logs, past performance, official correspondence, or any other physical evidence relevant to the charge against

the subject employee. The type of documents needed varies depending on the nature of the case.

For the purposes of the investigation, the employer can process documents that contain personal information and sensitive personal information as defined under the DPA with the consent of the subject employee or, in the absence of such consent, on the basis of Sections 12 (f) and 13 (f) of the said Act. Under these sections, the processing of personal information may be conducted pursuant to the employer's legitimate interests and for the protection of the rights and interests of an individual in court proceedings, or for the establishment, exercise or defence of legal claims, among other things.

Moreover, in the course of such fact-finding, especially when investigating and gathering evidence, the employer must be mindful of the employee's reasonable expectation of privacy in the workplace. That is, before processing the subject employee's personal information, the employer must ensure that the processing is pursuant to a legitimate interest, is necessary to fulfil such interest, and does not override the fundamental rights and freedom of the subject employee.

Further, the collection and processing of employee's personal data must adhere to the principles of transparency, legitimate purpose, and proportionality. In this regard, an individual must be aware of the nature, purpose and extent of the processing of their personal data. In addition, an employer may only collect data for a declared and specified legitimate purpose made known to the employee. Such data must also be processed only to the extent necessary and relevant to the legitimate purpose.

4. Protection of the Parties During an HR Internal Investigation

4.1 Protection of the Reporter

While there is no law that protects whistle-blowers in the Philippines, an employer is generally expected to take action to protect the reporter from any acts of retaliation, discrimination and intimidation from the subject employee. Thus, if the reporter requests that their identity be kept confidential, the employer should respect this and avoid its disclosure, particularly to the subject employee. The employer may also put the subject employee under preventative suspension.

Preventative Suspension

Incidental to an employer's prerogative to instil discipline over erring employees is the discretion to place employees under preventative suspension. Preventative suspension is, first and foremost, not a penalty. Rather, it is merely a preventative measure against an employee whose alleged transgression against the employer is subject to an investigation and whose continued presence at the work premises may threaten the security of the other employees or the integrity of the proceedings. In this regard, preventative suspension may only be imposed when the employee's presence at the employer's premises could pose a serious and imminent threat to the life or property of the employer or the employee's co-workers, and generally, such suspension cannot exceed a period of 30 days. After the 30-day period, the employer is obliged to reinstate the employee. Otherwise, the employer runs the risk of being held liable for constructive dismissal, which is also a form of illegal dismissal.

However, there are situations where the extension of the period of preventative suspension is necessary, such as when the case is complex

and cannot be concluded within the 30-day period. In these situations, the period of preventative suspension may be extended beyond the initial period, in which case, the employer is obliged to continue paying the salary and other employment-related benefits of the employee.

Consequences of Failure to Protect an Employee

As an exercise of their management prerogative, employers are given full discretion to craft their own policies to ensure the protection of their employees. Should an employer fail to provide such protection to a reporter, other employees will be hesitant to raise concerns or grievances with the HR department, possibly impacting workplace satisfaction and efficiency. In extreme cases where an employee is constrained to resign due to the employer's inaction, the employee may claim that they have been constructively dismissed. In several cases, the Supreme Court has ruled that an act of clear discrimination, insensibility or disdain by an employer can become so unbearable for an employee as to leave them no choice but to resign from such employment. In such cases, employees who forgo their employment may be deemed to have been constructively dismissed.

Further, under the SSA and ASHA, the duly constituted CODI is under obligation to protect the complainant from retaliation.

4.2 Protection of the Respondent

Employers must provide protection to the respondent employee by ensuring the confidentiality of the HR internal investigation instituted against them to avoid any intimidation, discrimination or harassment towards the respondent, especially during the fact-finding stages of the investigation. Should the employer not take measures to protect the respondent, the latter may likewise claim constructive dismissal as a consequence of being subject to a hostile environment, harassment or prejudice in the workplace. A finding of constructive dismissal may entitle the employee to reinstatement (or separation pay in lieu thereof) if they have resigned, plus the payment of back wages, attorney's fees, and damages.

Note the discussions in **1.6 Prohibition on Carrying Out an HR Internal Investigation** and **2.4 Confidentiality Agreements and NDAs** in relation to the confidentiality requirements under law for the protection of employees.

4.3 Measures Against the Respondent

An employer may not prematurely impose disciplinary measures against the respondent employee prior to concluding an HR internal investigation, lest the employee claims that they have been deprived of due process. However, during the pendency of the investigation, the respondent employee may be placed on preventative suspension if their continued presence at the work premises threatens the security of the other employees or the integrity of the proceedings (see **4.1 Protection of the Reporter**).

4.4 Protection of Other Employees

The erring employee may be placed on preventative suspension where their presence at the employer's premises poses a serious and imminent threat to the life or property of the employer or their co-workers (see **4.1 Protection of the Reporter**).

An employer may likewise take alternative measures, such as placing the respondent in a work-from-home arrangement and restricting their access to the work computer systems, especially where they are able to remove or alter evidence that may compromise the investigation.

5. Procedural Requirements and Proof

5.1 Requirements

Generally, an employee subject to an HR internal investigation has the following rights:

- the right to be informed of the charges against them;
- the right to/not to respond to the charges;
- the right to be heard and to present evidence;
- the right to counsel or a representative;
- the right to be notified of the decision;
- the right against self-incrimination;
- the right against unreasonable searches and seizures;
- the right to the speedy resolution of the case;
- the right to privacy and confidentiality; and
- the right to leave the company.

Should the acts of the erring employee be punishable by termination of employment, the employer must comply with due process requirements under the law, as discussed in **1.5 Obligation to Carry Out an HR Internal Investigation**.

If an employee is dismissed for cause but the employer fails to comply with procedural due process under the law, the procedural infirmity does not necessarily invalidate the termination. However, the employer will be held liable for nominal damages as indemnity to the employee. Based on recent jurisprudence, the amount for nominal damages is PHP30,000 for dismissals based on just causes, and PHP50,000 for separation based on authorised causes.

5.2 Internal Regulations

Employers may have internal regulations that go beyond the procedural due process requirements under law and these regulations are binding on the employer, as long as the parameters set out by law are observed. Thus, an employer may implement a policy providing concessions to the employee, such as a longer period to prepare and submit their written explanation or the right to appeal an adverse decision. If such internal regulations are not complied with before an employee is penalised or terminated from employment, the employer may similarly be held liable for nominal damages as indemnity to the employee, although the employer may argue, as a defence, that the minimum requirements of due process have been observed.

5.3 Burden of Proof

Under the law, the burden of proving the existence of a just or authorised cause for subjecting an employee to any disciplinary sanction, including dismissal from employment, rests on the employer. The employer must discharge this burden of proof with substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Failure to do this could result in a finding that the sanction imposed is unjustified and, therefore, illegal.

Meanwhile, in constructive dismissal cases, while the employer is charged with the burden of proving that its conduct and action are for valid and legitimate grounds, the employee has the burden to first prove the fact of dismissal by substantial evidence. It is only when the fact of dismissal is established that the burden shifts to the employer to prove that the dismissal was for cause.

5.4 Degree of Proof

In labour proceedings, labour tribunals require that allegations be proved with substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

6. Conclusion and Outcome of an HR Internal Investigation

6.1 Deciding to End an HR Internal Investigation

An HR internal investigation may be ended when the employer has sufficient grounds to resolve the case. That is, after careful deliberation and evaluation of the available evidence, which includes the subject employee's explanations, representations, admissions and adduced evidence, the employer should be able to make an informed decision on whether an offence has been committed and the commensurate penalty to be imposed.

Generally, in the exercise of its prerogative to discipline employees, the employer should be guided by the following principles:

- constitutional and statutory guarantee of security of tenure;
- the rule on reasonable proportionality;
- flexibility in the imposition of penalties;
- totality of conduct doctrine;
- resolution of doubt in favour of labour; and
- the burden of proof in illegal dismissal cases.

Security of Tenure

The right to security of tenure is constitutionally and statutorily guaranteed to employees. Employees in the Philippines cannot be dismissed or separated from employment without just or authorised cause, and compliance with due process.

Doctrine of Reasonable Proportionality

In imposing the appropriate penalty against an erring employee, employers should always be mindful of the principle of reasonable proportionality. Under this principle, not every infraction of an employee warrants the penalty of dismissal. Thus, where a less punitive penalty will suffice, an erring employee should not receive the ultimate penalty of dismissal. Simply put, there must be a reasonable proportionality between the offence committed and the penalty to be imposed.

Flexibility Doctrine

The employer reserves the right to exercise flexibility in determining whether an act, not explicitly stated in the company's rules or code of conduct, warrants disciplinary action, and the appropriate penalty to impose given the circumstances.

Totality of Conduct

While there is no hard-and-fast rule in determining the reasonableness of the penalty to be imposed against an employee, the Supreme Court has considered the totality of the circumstances applicable to the case in assessing whether the penalty imposed is commensurate or too harsh vis-à-vis the offence committed. Some of the factors that may affect the determination of the penalty are tenure, disciplinary history, amount of damage suffered by the employer, remorse on the part of the employee, etc. Hence, where the respondent has been with the company for a long period of time, is a first-time offender, or has taken responsibility and apologised for the infraction, and/or where the employer has incurred minimum to no damage, these may be taken as mitigating circumstances to temper the imposable penalty.

Resolution of Doubt in Favour of Labour

The Labour Code mandates that all doubts in the interpretation of the Labour Code and other labour laws must be resolved in favour of labour. This principle also applies to how labour courts assess evidence brought before them by the parties. In one case, the Supreme Court held

that where both parties in a labour case have not presented substantial evidence to prove their allegations, the evidence is considered to be in equipoise. In such a case, the scales of justice are tilted in favour of labour.

Burden of Proof

See **5.3 Burden of Proof**.

6.2 Procedure for Ending an HR Internal Investigation

At the end of an HR internal investigation, the subject employee must be served a Notice of Decision, laying out the charges against them, the policies they violated, if any, and the basis for the employer's decision.

Jurisprudence explicitly mandates that where the penalty to be imposed is dismissal from employment, said notice must state that (i) all circumstances involving the charge against the employee have been considered; and (ii) grounds have been established to justify the severance of employment. The Notice should also indicate the effective date of dismissal and may also include or refer to the employer's exit procedures for the employee's guidance.

If the penalty is less than dismissal, such as suspension from employment, the Notice should indicate the period of suspension and the restrictions imposed upon the employee in the interim. If applicable, any mitigating circumstances attendant to the case considered by the employer in mitigating the penalty may also be stated, with a warning that similar future conduct may warrant a stricter penalty, including dismissal from employment.

Aside from serving the Notice of Decision on the respondent employee, the employer is under no obligation to inform other parties (eg, the reporter or the respondent employee's co-workers) of the outcome of the internal investigation. In fact, employers are generally expected to keep the details of such proceedings confidential.

6.3 Conclusion

See **6.2 Procedure for Ending an HR Internal Investigation**.

6.4 Reports

See **6.2 Procedure for Ending an HR Internal Investigation**.

6.5 Information

As discussed under **2.1 Communication to the Reporter**, as a matter of due process, the parties involved in the administrative proceeding, specifically the complainant and respondent, have the right to be informed of the details of the case and can demand such information. However, third parties to the proceeding, including the reporter (should this not be the complainant), witnesses, other individuals who may be affected by the case and the public are not given the same right to access such sensitive personal information.

6.6 Communications to Authorities

See **2.3 Communication to Authorities**.

6.7 Other Communications

Other employees (eg, witnesses, co-workers, etc) are not entitled to be informed of the results of an HR internal investigation, unless otherwise provided in company policy. In practice, however, they are usually at least informed of the conclusion of such investigation to apprise them that their concerns have been duly acted on by the employer.

6.8 Disciplinary Measures

See **6.1 Deciding to End an HR Internal Investigation** and **6.2 Procedure for Ending an HR Internal Investigation**.

6.9 Other Measures

Aside from formal disciplinary proceedings, employers have the prerogative to take other measures to build employee rapport or informally address employee grievances, through organising team-building activities, townhall meetings, coaching sessions or mediation conferences.

7. Data Protection

7.1 Collecting Personal Data

To lawfully collect an employee's personal data for the purposes of an HR internal investigation, the employer must be guided by the DPA.

In general, the processing of employee's personal data must adhere to the principles of transparency, legitimate purpose, and proportionality. Under the DPA, an employer may only collect data for a declared and specified legitimate purpose. Such data must be processed fairly and lawfully and must be relevant to the legitimate purpose. Further, the data collected by the employer can only be retained for the fulfilment of the purposes for which it was obtained.

See **3.12 Other Fact-Finding**.

7.2 Specific Rules

Generally, the DPA provides that the processing of personal data is allowed, subject to compliance with the requirements under the law and adherence to general data privacy principles.

While the DPA does not limit the types of information that may be requested, the criteria for the lawful processing of personal information are provided under Section 12 of the said Act. Moreover, Section 13 of the Act provides that the processing of sensitive personal information and privileged information will only be allowed in the instances enumerated under the law.

As laid out in NPC Advisory 2024-02, the processing of sensitive personal information under Section 13 (f) of the Act is proper when the processing is necessary for the protection of the lawful rights and interests of natural or legal persons in court proceedings. In this regard, the NPC has clarified that such processing of personal data may be conducted even during the stages preparatory to a case, such as during an administrative investigation. Nonetheless, in practice, it would be prudent at the commencement of employment or upon stipulation in the relevant employment agreement, to secure the consent of the employee for the processing of their personal data for employment-related purposes.

7.3 Access

Both the employer and the subject employee have the right to access personal data collected in connection with an HR internal investigation.

In NPC Advisory Opinion No 2018-042, the NPC clarifies that the processing of an employee's personal data at work is indispensable, especially when the collection, use, and retention of the personal data are necessary for the performance of a contract, compliance with a legal obligation, or when the employee expressly gives their consent to the personal information controller for processing. Nonetheless, the processing of such personal data must adhere to the data privacy principles of transparency, legitimate purpose, and proportionality.

In this regard, the subject employee may exercise their right to reasonable access to the following information:

- the contents of their processed personal information;
- the sources from which personal information was obtained;
- the names and addresses of the recipients of the personal information;
- the manner in which such data was processed;
- the reasons for the disclosure of the personal information to the recipients;
- information on automated processes where the data will or is likely to be used as the sole basis of any decision significantly affecting or that will affect the data subject;
- the date when personal information concerning the data subject was last accessed and modified; and
- the designation or name or identity and address of the personal information controller.

Similarly, employees are generally allowed reasonable access to their files. However, if the personnel files are given in confidence, the employee will not be permitted to access the said files. Instead, the employer can give general information related to the same.

Upon the employee's cessation of employment (ie, resignation or separation), the employer may retain the records and files of the employee in accordance with the retention period, as may be provided for by existing laws on the matter and/or as stated in its policies. If the subject employee requests access to their personal data, as long as the request falls within the employer's retention period, the employer must provide reasonable access to the requested information.

8. Special Cases

8.1 Whistle-Blowing

The Philippines does not have a specific law to protect whistle-blowers.

8.2 Sexual Harassment and/or Violence

In the Philippines, there are two types of cases that require special accommodation – sexual harassment under the ASHA and gender-based sexual harassment under the SSA.

Sexual Harassment Under the ASHA

The ASHA punishes sexual harassment committed in the workplace or schools/training institutions, when such acts are committed by persons who, having authority, influence or moral ascendancy over another in a work or training environment, demands, requests or otherwise requires any sexual favour from the other. Sexual harassment in a work-related or employment environment is committed when:

- the sexual favour is made as a condition in the hiring or in the employment, re-employment or continued employment of the employee;
- the sexual favour is made as a condition in granting the employee favourable compensation, terms, conditions, promotions or privileges;
- the refusal to grant sexual favours results in limiting, segregating or classifying the employee in a way that would discriminate, deprive or diminish the employment opportunities or otherwise adversely affect said employee;
- the foregoing acts impair the employee's rights or privileges under existing labour laws; or

- the foregoing acts result in an intimidating, hostile, or offensive environment for the employee.

Gender-Based Sexual Harassment Under the SSA

On the other hand, the SSA punishes gender-based sexual harassment which may be committed in public spaces, schools, online, and the workplace. Gender-based sexual harassment in the workplace as defined, includes the following acts committed by a superior against their subordinate, or vice versa, and even between peers:

- an act or series of acts involving any unwelcome sexual advances, requests or demands for sexual favours or any act of a sexual nature that has or could have a detrimental effect on the conditions of an individual's employment or education, job performance or opportunities;
- conduct of a sexual nature affecting the dignity of a person, which is unwelcome, unreasonable and offensive to the recipient; or
- conduct that is unwelcome and pervasive and creates an intimidating, hostile or humiliating environment for the recipient.

The CODI

Under both laws, a CODI must be established to investigate and decide cases of gender-based sexual harassment within ten working days. The following qualifications must also be adhered to:

- the Committee must be chaired by a woman and not less than half of its members must be women;
- the Committee must also be composed of at least one representative each from management, employees from the supervisory rank, rank-and-file employees, and the union/s or employees' association, if any (the representatives of the workers will be selected among them and by vote);
- the Committee must be composed of members who should be impartial and not connected or related to the alleged perpetrator; and
- the employer must also ensure that there is a sufficient number of people who can immediately replace any member of the Committee, where necessary, so as not to cause any delay in the process being undertaken.

Workplace Policy

All employers are mandated by law to have a workplace policy against sexual harassment and gender-based sexual harassment. Otherwise, the erring employer may be penalised by imprisonment and/or the imposition of a fine.

Should the employer be found non-complaint with workplace policies against sexual harassment and gender-based sexual harassment during a labour inspection, the DOLE may issue a Compliance Order with a corresponding computation of penalties. Failure to comply with such Order may lead to the further imposition of fines.

8.3 Other Forms of Discrimination and/or Harassment

Pursuant to the state's policy under Article 3 of the Labour Code, all employers are enjoined to prevent discrimination in the workplace based on sex, race or creed. Providing lesser compensation to a particular employee compared to another for work of equal value, or favouring one employee over another with respect to promotion, training opportunities, study and scholarship grants, solely on account of a difference in sex, race or creed, are examples of such acts of discrimination.

The following Labour Code provisions and statutes likewise aim to curb discrimination in the workplace:

- Articles 133–135 of the Labour Code, Republic Act No 9710, or the Magna Carta for Women, Republic Act No 7192, or the Women in Development and Nation Building Act, on discrimination against women;
- Section 32 of Republic Act No 7277, or the Magna Carta for Disabled Persons, on discrimination against disabled persons;
- Republic Act No 10911, or the Anti-Age Discrimination in Employment Act, on discrimination on account of age;
- Article 138 of the Labour Code, on discrimination against working children, on account of their age;
- DOLE Department Order No 5 Series of 2010, on discrimination against persons afflicted with hepatitis B;
- Republic Act No 8504, or the Philippine AIDS Prevention and Control Act of 1988, in relation to Department Order No 102 Series of 2010, on discrimination against persons afflicted with HIV or AIDS;
- DOLE Department Order No 73 Series of 2005, on discrimination against persons afflicted with tuberculosis;
- DOLE Labor Advisory No 20 Series of 2003 and Republic Act No 11215, or the National Integrated Cancer Control Act, on discrimination against persons living with cancer and cancer survivors;
- Republic Act No 8371, or the Indigenous Peoples' Rights Act, on discrimination against indigenous cultural communities and indigenous peoples;
- Section 7 of Republic Act No 11861, or the Expanded Solo Parents Welfare Act, on discrimination against solo parents; and
- Republic Act No 11036, or the Mental Health Act, on discrimination against persons with mental health conditions.

Currently, while there are calls to prevent discrimination against people based on their sexual orientation, gender identity, or expression, the Sexual Orientation and Gender Identity Expression (SOGIE) Equality Bill has still not passed into law in this jurisdiction. In 2022, the Bill passed through the Senate Committee on Women, Children, Family Relations, and Gender Equality but nothing significant has happened since then. Note, however, that despite the absence of a law, gender inclusion and gender equality are customarily expected to be upheld in the workplace.

8.4 Bullying and/or Mobbing

At present, there are no specific laws for bullying and/or mobbing in the workplace. However, policies related to the same may be carried out and implemented by an employer.

In this connection, the Supreme Court has held that an employee's attitude problem is a valid ground for job termination, as it is a situation analogous to the just cause of loss of trust and confidence under Article 297 of the Labour Code. As held by the Supreme Court, an employee who cannot get along with their co-employees is detrimental to the company, as they can upset and strain the working environment. Without the necessary teamwork and synergy, the organisation cannot function well. Thus, management has the prerogative to take the necessary action to correct the situation and protect its organisation.

As with the requirements for terminations due to just cause, the employer must be able to prove by substantial evidence that such infraction is founded on clearly established facts and must

likewise comply with the twin-notice requirement. In a Supreme Court case, the employer presented negative feedback from the employee's workmates and alleged that because of the employee's attitude, the company's work atmosphere had become very strained and this had gravely affected the workers and their outputs. The Supreme Court held, however, that such negative feedback, even if unrefuted, was not proof of the employee's attitude problem. Ultimately, despite its pronouncement that an employee's attitude problem is a valid ground for termination, the dismissal in this case was held as illegal because the employer failed to show adequately that a valid cause existed, and because it failed to comply with the twin-notice requirement.

8.5 Criminal Cases

An employer is not generally required by law to report any allegations that are criminal in nature to the authorities. However, if the employer has probable cause (ie, evidence showing that, more likely than not, a crime has been committed and that it was committed by the employee) to believe that the employee is engaged in criminal activity or that the employee has committed, is committing, or will commit a crime, it is part of the employer's civic duty to report such fact to the relevant authorities (see **2.3 Communication to Authorities**).

Notably, where the crime is committed against the employer (eg, theft or swindling of company funds, destruction of property, unlawful access to computer systems and other related cybercrimes, etc), the employer may have standing to file a complaint and litigate the case against the employee with the guidance of the public prosecutor. In this regard, all documentary and object evidence must be preserved in the original in anticipation of a preliminary investigation where a reasonable likelihood of conviction is determined to formally file charges, or for trial proceedings where such evidence is presented.

Witnesses may likewise be summoned or subpoenaed to be present during the preliminary investigation and/or the trial. During the preliminary investigation, the sworn statements of persons with personal knowledge of the circumstances of the case are submitted to the prosecutor in support of the criminal complaint, while during the trial, such persons are presented as witnesses, and their statements are submitted as testimonial evidence. Thus, where the acts subject to the HR internal investigation constitute a criminal offence, the employer may already consider informing the persons it has or will have interviewed of the possibility of a criminal complaint against the respondent and, consequently, the necessity for their participation.

In so far as HR internal investigations are concerned, the standard procedure for carrying out the same and possibly dismissing an employee for cause will not be affected. Notably, the mere commission or conviction for a crime/offence punishable by imprisonment is not, in itself, a ground for termination of employment under Article 297 of the Labour Code. To be a ground for termination, the offended party must be the employer and/or its representatives. More importantly, the crime/offence committed should be related to the person's work.

Significantly, a conviction in a criminal case does not necessarily mean liability in an administrative case, and vice versa. The two cases are separate and distinct from one another. Moreover, while administrative cases only require substantial evidence, the quantum of proof required in criminal cases is proof beyond reasonable doubt. As defined in jurisprudence, proof beyond reason-

able doubt does not mean such degree of proof as to produce absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. In other words, the conscience must be satisfied that the accused is responsible for the offence charged.

8.6 Multi-Jurisdictional HR Internal Investigations

Generally, should Filipino employees be engaged by an employer for work rendered in the Philippines (including working remotely for a foreign employer), despite stipulation to the contrary, the Philippine labour courts can still take cognisance of such cases, considering that labour cases are imbued with public interest. Unless a foreign employer is able to establish, based on the rules of evidence, that a foreign law applies with respect to an employee's rights, Philippine labour laws will still apply, especially when the application of such foreign law is prejudicial to the employee.

Because the Philippines is not an "at will" jurisdiction, a Filipino employee is specifically entitled to the constitutional right of security of tenure and may only be dismissed on the basis of just or authorised causes under the law, upon compliance with due process.

There are also no restrictions on foreigners carrying out HR internal investigations in the Philippines. They should be mindful, however, to apply Philippine law in conducting such investigations (eg, compliance with substantial and procedural due process). Employers in the Philippines are likewise not prohibited from carrying out HR internal investigations abroad, subject to the same restriction.

Trends and Developments

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Angara Abello Concepcion Regala & Cruz (ACCRALAW) is one of the Philippines' leading law firms with a cohesive multidisciplinary team of legal professionals who possess in-depth knowledge in specialised fields of law, backed by 50 years' extensive experience in the practice of law. From a core group of seven lawyers at its inception in 1972, the firm has grown to a prestigious service organisation of more than 170 lawyers. Its principal office is in Bonifacio Global City, Taguig, Metro Manila. The firm has full-service branches in thriving commercial centres in the Visayas and Mindanao, in Cebu City and Davao City respectively. ACCRALAW's labour and employment department handles litigation and advisory services on all employment-related matters, including dismissal and suspension of employees, money claims, petitions for certification elections, union disputes, collective bargaining negotiations, unfair labour practices, strikes and lockouts, labour-related civil/criminal cases, social welfare benefits, labour law compliance and audits, and corporate reorganisations.

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Dealing With Sexual and Gender-Based Sexual Harassment in the Workplace in the Philippines

Harassment in the workplace may take many forms. However, the most abhorrent form of harassment in the workplace is the kind that devalues and disrespects the dignity of persons, such as harassment that is sexual in nature or based on a person's sense of identity. Clearly, there is no place for any type of harassment in the workplace in any civilised society.

Consequently, many jurisdictions, including the Philippines, have enacted laws, rules and regulations to eradicate or, at the very least, come up with procedures or protocols to prevent or discourage instances of workplace harassment from occurring.

In the Philippines, harassment in the workplace is essentially governed by two laws – Republic Act No 7877, otherwise known as the Anti-Sexual Harassment Act of 1995 (ASHA), and Republic Act No 11313, otherwise known as the Safe Spaces Act of 2019 (SSA).

Salient provisions of the ASHA

The ASHA was the first law enacted in the Philippines that was specifically aimed at addressing sexual harassment in the workplace. Under the ASHA, work-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, or any other person who, having authority, influence or moral ascendancy over another in a work environment demands, requests or otherwise requires any sexual favour from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said act.

Moreover, it is committed when:

- the sexual favour is made as a condition in the hiring or in the employment, re-employment, or continued employment of said individual, or in granting said individual favourable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favour results in limiting, segregating, or classifying the employee in any way that would discriminate, deprive or diminish employment opportunities, or otherwise adversely affect said employee;
- the sexual favour would impair the employee's rights or privileges under existing labour laws; or
- the sexual favour would result in an intimidating, hostile or offensive environment for the employee.

Jurisprudence, however, has clarified that the demand, request or requirement of a sexual favour need not be articulated in a categorical or written oral statement. Instead, it may be discerned from the acts of the offender.

Apart from the offender, the ASHA further states that any person who directs or induces another to commit any act of sexual harassment, or who co-operates in the commission thereof by another, without which it would not have been committed, will also be held liable under the law.

It is also significant to note that the ASHA enumerates the employer's duties in dealing with sexual harassment in the workplace. Overall, the employer has a duty to prevent or deter the commission of acts of sexual harassment and provide procedures for the resolution, settlement or prosecution of such acts.

In doing so, the employer must first issue proper rules and regulations in consultation with and jointly approved by the employees through their

duly designated representatives, and prescribe the procedure for the investigation of sexual harassment cases and its administrative sanctions.

Secondly, the employer must create a Committee on Decorum and Investigation (CODI) which conducts meetings with officers and employees to increase understanding and prevent incidents of sexual harassment, and to conduct the investigation of alleged sexual harassment cases. Specifically, the CODI should be composed of at least one representative each from the management, the union (if any), the supervisory employees, and rank-and-file employees.

As regards the legal consequences under the ASHA, in addition to the offender, the employer and/or the employer's responsible officers may be held civilly, administratively and criminally liable.

Firstly, the employer may be liable for damages arising from acts of work-related sexual harassment if the employer is informed of such acts by the offended party and no immediate action is taken thereon.

Secondly, and in relation to the first point, the employer may be held administratively liable by the labour courts in the Philippines for constructively dismissing the offended party if no action is taken despite being informed of the acts of sexual harassment in the workplace. Constructive dismissal occurs when continued employment becomes impossible, unreasonable or unlikely because, among other things, an act of clear discrimination, insensibility or disdain by an employer makes the employee's position so unbearable that they are left with no other choice but to give up their employment. In such a case, as a rule, the employer will be directed to pay the constructively dismissed employee back wages and reinstate the latter to their former position without loss of seniority rights.

Thirdly and finally, the employer and/or its responsible officers may be held criminally liable for violating the provisions of the ASHA, and the penalties may be in the form of imprisonment, fine or both.

Salient provisions of the SSA

As seen above, the ASHA provides specific requirements before certain acts can be considered work-related sexual harassment. However, due to changing times, the protections provided under the ASHA have become outdated and insufficient to address the ever-evolving dynamics of the modern workplace.

Lawmakers in the Philippines sought to keep up with these changes through the enactment of the SSA. It is worth noting that the ASHA was not repealed by the enactment of the SSA; rather, the SSA expanded the scope of the ASHA.

The SSA essentially seeks to prevent or eliminate gender-based sexual harassment (GBSH) in the workplace, among others. This kind of harassment incudes:

- an act or series of acts involving any unwelcome sexual advances, requests, or demands for sexual favours, or any act of a sexual nature that has or could have a detrimental effect on the conditions of an individual's employment, education, job performance or opportunities;
- conduct of a sexual nature and other conduct based on sex affecting the dignity of a person, which is unwelcome, unreasonable and offensive to the recipient; or

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- conduct that is unwelcome and pervasive, and creates an intimidating, hostile or humiliating environment for the recipient.

It was also clarified in the Implementing Rules and Regulations of the SSA that workplaces include all sites, locations and spaces where work is being undertaken by an employee within or outside the premises of the usual place of business of the employer. Jurisprudence has likewise recognised that sexual harassment in the workplace may be committed even if the acts complained of are carried out after office hours and outside the employer's premises.

Unlike the ASHA, therefore, harassment under the SSA need not be premised on a demand, request or requirement of a sexual favour. As long as the conduct in question can be characterised as unwelcome and/or pervasive, and it creates an intimidating, hostile or humiliating environment for the offended party, such conduct can fall within the purview of the SSA.

Emphasising the fact that the SSA has expanded the ASHA's scope of what constitutes GBSH in the workplace, the SSA has expressly laid out that:

- GBSH now covers acts committed between peers and to a superior by a subordinate;
- GBSH now covers acts committed not just against fellow employees, but also against individuals engaged as contractors; and
- the manner of GBSH's commission can be verbal, physical or through the use of technology.

It should likewise be stressed that the SSA gave employers additional duties over and above what is provided under the ASHA. Like the ASHA, the SSA also obliged employers to prevent, deter, or punish acts of GBSH in the workplace.

However, under the SSA, the employer must also, among other things:

- provide measures to prevent GBSH in the workplace, such as by conducting seminars on the subject; and
- create an independent internal mechanism or CODI to investigate and address GBSH complaints.

Significantly, under the SSA, the CODI should:

- adequately represent the management, supervisory employees, rank-and-file employees, and the union (if any);
- designate a woman as its head and ensure that not less than half of its members are women;
- be composed of members who should be impartial and not connected or related to the alleged perpetrator;
- investigate and decide on GBSH complaints within ten working days or less, upon receipt of such complaints;
- observe due process;
- protect the complainant from retaliation; and
- guarantee confidentiality to the greatest extent possible.

If the employer fails to adhere to its duties under the SSA or does not act on reported acts of GBSH in the workplace, the employer and/or its responsible officers may be held civilly, administratively and/or criminally liable in the same way as in the ASHA.

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Issues usually faced by employers in dealing with harassment in the workplace

Undoubtedly, the intention of the ASHA and SSA to curb or eliminate harassment in the workplace is something employers in the Philippines should actively take part in and promote. Nonetheless, the additional responsibilities provided under the SSA seem to create more problems than solutions for employers.

The main ongoing problem faced by employers is their difficulty in complying with the period during which they should resolve complaints of GBSH in the workplace. To recap, under the SSA, one of the duties of an employer is for its CODI to investigate and decide on a GBSH complaint within ten working days or less from receipt thereof. If the employer does not comply with the said ten-day period, it may be held liable for its failure to comply with its duties under the SSA.

Thus, this ten-day period may be detrimental to the employer's interests because investigating complaints of GBSH in the workplace is not always straightforward. Given the severity of the charge of sexual harassment, a thorough investigation is almost always needed for the employer to arrive at a fair, just and objective resolution of the complaint. After all, not all complaints of GBSH in the workplace should automatically lead to the imposition of the supreme penalty of termination of employment.

Accordingly, to ensure that the resolution of the complaint is done fairly, justly and objectively, the investigative process in GBSH may entail the gathering and examination of independent evidence to verify factual claims, the conducting of interviews with key witnesses, and so on. Not to mention that, by express provision of the SSA, employers are likewise duty-bound to observe due process.

In the Philippines, before the appropriate disciplinary sanction can be imposed on an erring employee, including those found culpable of sexual harassment in the workplace, the employer must ensure that the employee in question is accorded procedural due process, which entails compliance with specific steps.

Firstly, according to jurisprudence, a written notice must be served on the employee. This notice should contain the specific causes or grounds for the imposition of the appropriate disciplinary penalty, which may include termination of employment. The same notice should likewise inform the employee that they are being given an opportunity to submit their written explanation within a period of at least five calendar days from receipt of said notice.

To enable the employee to intelligently prepare their explanation and defences, the notice should contain a detailed narration of the facts and circumstances that will serve as a basis for the charge against the employee. A general description of the charge will not suffice.

Secondly, after serving the first notice, the employer should schedule and conduct a hearing or conference wherein the employee will be given another opportunity to:

- explain and clarify their defence;
- present evidence in support of their defence; and
- rebut the evidence presented against them.

However, such hearing or conference is not always mandatory. It only becomes mandatory when it is requested in writing, when a company

rule or practice requires it, when substantial evidentiary disputes exist, or when similar circumstances justify it.

Thirdly, and lastly, after determining that the imposition of a disciplinary penalty (including termination of employment) is justified, the employer is also required to serve the employee with another written notice indicating that:

- all circumstances involving the charge against the employee have been considered; and
- grounds have been established to justify the imposition of the appropriate disciplinary penalty.

Considering the substantial time and effort it may take for an employer to perform the entire investigative process and its legal duty to ensure that due process is observed, it is understandable that most employers view the ten working-day period to investigate and decide complaints of GBSH in the workplace as insufficient.

Although it was not the intention of the SSA for harassment complaints to be resolved hastily at the expense of observing due process, it appears that strict adherence to the SSA's ten working-day period may constrain an employer to hastily or haphazardly investigate and decide complaints of GBSH in the workplace.

However, the SSA's provisions on how to deal with GBSH in the workplace should not be read in isolation. Rather, the SSA should always be read together with the Philippines' state policy under its constitution and its Labour Code, which ensures that the rights of workers should always be protected.

To be clear, the 1987 Philippine Constitution expressly recognises labour as a primary social economic force and, as such, it is the state's policy to protect the rights of workers and promote their welfare. Moreover, the Labour Code of the Philippines also mandates that the state will, among other things, afford protection to labour and assure the rights of workers to security of tenure.

Given the foregoing, the ten working-day period referred to in the SSA may more appropriately be interpreted as optimal rather than mandatory.

Thus, while employers should always endeavour to adhere to the ten working-day period for investigating and deciding complaints of GBSH in the workplace, they should never do so at the expense of due process and the workers' constitutional rights. A GBSH complaint should never be erroneously resolved merely for the sake of expediency. Employers should rather exert every effort to ensure that the GBSH complaint is resolved fairly, justly and objectively.

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