IN SICKNESS, HOW DO WE PART? DUE PROCESS ISSUES IN TERMINATIONS OF EMPLOYMENT ON THE GROUND OF DISEASE[*]

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ABSTRACT

Workers in the Philippines cannot be terminated unless just or authorized causes exist and notice is given prior to the dismissal. Among the legal causes for termination of employment under the Labor Code is the disease of the employee. However, there are gaps in the law with respect to the due process requirements that must be observed by employers to validly dismiss employees on account of their disease. Substantively, there is no definition in the law for a "competent public health authority" for the purpose of obtaining the essential certification concerning the incurability of the disease. Procedurally, while the Court has consistently applied the twin notice rule in terminations due to disease, Department of Labor and Employment Department Order No. 147-15, amending the Implementing Rules of the Labor Code, dispenses with such obligation and merely requires employers to serve a written notice indicating the grounds for termination to the employee and the DOLE Regional Office at least 30 days before the effectivity of the dismissal. This Note argues: (1) that "competent public health authority" must be defined as a competent medical practitioner, whether employed by the government or engaged in private practice, who has satisfactorily passed the mandatory medical licensure examination, is duly registered with the medical board, and is certified as a Diplomate or Fellow by the relevant specialty society related to the disease for which the dismissal of an employee is sought; and (2) that the twin notice rule applies in terminations of employment due to disease and thus, Section 5.3 of D.O. No. 147-15, insofar as it dispenses with the twin notice requirement, is unconstitutional and hence null and void. Resolving these due process issues will further balance the interests of both labor and management in case of severance of the employment relationship.

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I. INTRODUCTION

In the Philippines, constitutional and statutory safeguards exist to protect labor. The 1987 Constitution grants all workers the right to security of tenure, humane conditions of work, and a living wage.[1] The Labor Code provides the minimum standards for labor and governs the relations between employers and employees.[2] The Omnibus Rules Implementing the Labor Code further elaborate upon the provisions of the Code and fill in the details for its enforcement.[3]

Various pronouncements of the Supreme Court likewise reaffirm the State policy of affording protection to labor, especially regarding the security of tenure of workers. For instance, the Court has clarified that in all cases of termination of employment, two aspects of due process must be observed: substantive and procedural. Substantive due process refers to the existence of just or authorized cause in the dismissal of an employee, while procedural due process involves the appropriate process that the employer must observe in case of termination.[4] Corollarily, the Court has also reaffirmed the twin notice rule in compliance with procedural due process, which compels the issuance of two written notices to employees prior to their dismissal, after giving the employees reasonable opportunity to be heard on their defense.[5]

The Labor Code vests in the Department of Labor and Employment (DOLE) the power to enforce the Code, and for this purpose authorizes the said body to promulgate the necessary implementing rules and regulations.[6] Pursuant to its rule-making power, the DOLE in 2015 issued Department Order No. 147-15 ("D.O. No. 147-15") which governs the application of just and authorized causes of termination of employment under the Labor Code, amending for this purpose its implementing rules.[7] D.O. No. 147-15 establishes the standards of due process to be observed in terminating employees, including the elements of each cause. One of the authorized causes for termination is in case an employee suffers from a disease.[8]

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[1] CONST. art. XIII, § 3.

[2] LAB. CODE.

[3] LAB. CODE, Rules & Regs. (1989).

[4] Agabon v. Nat'l Lab. Rel. Comm'n (NLRC) [hereinafter "*Agabon*"], G.R. No. 158693, 442 SCRA 573, 605, Nov. 17, 2004.

[5] King of Kings Transport, Inc. v. Mamac [hereinafter "*King of Kings*"], G.R. No. 166208, 526 SCRA 116, 124–26, June 29, 2007.

[6] LAB. CODE, art. 5.

[7] Dep't of Lab. & Employment (DOLE) Dep't Order No. 147-15 (2015), § 5. Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as amended.

[8] *Id.* at § 5.4(e).

However, gaps continue to exist with respect to the due process requirements in case of termination of employment on the ground of disease. On the one hand, there is a lack of definition of "competent public health authority" for the purpose of acquiring the required certification about the incurability of the disease, and the numerous illegal dismissal cases before the Court involving employees with illnesses highlight the lack of understanding of employers as to what constitutes proper certification. On the other hand, while the Court has consistently applied the twin notice requirement in terminations due to disease, Section 5.3 of D.O. No. 147-15 dispenses with such obligation and requires employers only to serve a written notice specifying the grounds for termination to the employee and the appropriate DOLE Regional Office at least 30 days before the effectivity of the dismissal.[9]

This Note advances two main positions as regards these issues:

(i) The required certification that the disease is incurable for a period of six months, even with medical treatment, may be issued by a competent physician, whether or not employed by the government, who has passed the mandatory licensure examination, is duly registered with the medical board, and is certified by the relevant specialty society related to the disease for which the dismissal of the employee is sought; and

(ii) The twin notice rule applies in terminations of employment due to disease, and thus, Section 5.3 of D.O. No. 147-15, insofar as it dispenses with the twin notice requirement, is unconstitutional and hence null and void.

There is a need to address these gaps to better protect the rights of both management and labor in case of severance of the employment relationship. Resolving these due process issues in accordance with this Note's arguments will further both the right of workers to be secured in their employment and the interest of employers to prevent suits for illegal dismissal. Moreover, this will comply with the obligation of the Philippines under international conventions to protect the rights of workers, including the prohibition against discrimination of workers in respect of employment,[10] and the proscription against termination of employees without a valid reason, temporary absence from work due to illness not being considered as such

[9] *Id.* at § 5.3.

[10] International Labour Organization, Declaration on Fundamental Principles and Rights at Work, ¶ 2(d) (1998).

valid reason.[11] Finally, this will be in keeping with the current reality in the Philippines, which is still recovering from the effects of the COVID-19 pandemic, in which employees are vulnerable from displacement not only due to closure of establishments but also because of health concerns.

This Note is structured as follows. Part II provides a brief overview of the landscape of labor law in the Philippines, including constitutional and statutory developments in workers' rights, especially the right of workers to security of tenure. Part III discusses the due process requirements in cases of dismissal on the ground of disease of the employee as laid down in the Labor Code, its Implementing Rules, and D.O. No. 147-15. Part IV explores the gaps in the law pertaining to the substantive and procedural requirements for a valid termination of employment on account of disease. Part V takes into account recent medical developments and the legal implications of post-COVID condition, or "long COVID," in Philippine labor law. Finally, Part VI provides a summary of the foregoing discussions and offers recommendations regarding the law on termination of employment.

II. LEGAL BACKGROUND

A. Right of Workers under the Philippine Constitution

The Philippine Constitution is the cornerstone of the Philippines' social policy to protect labor, going as far back as the 1935 Constitution. Among the salient features of the 1935 Constitution was its attempt to create an equilibrium between individualism and socialism.[12] Article III of the 1935 Constitution comprises the Bill of Rights which enumerates the rights accorded to individuals. At the same time, numerous provisions indicate the social policy of the 1935 Constitution. Article II, Section 5 thereof states that "[t]he promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State."[13] More importantly, Article XIII, Section 6 mandates the State to afford protection to labor and to regulate the relations between labor and capital.[14] Indeed, the 1935 Constitution contains the first constitutional enunciation of the State policy to protect labor, and it may be considered as the genesis of the commitment of the Philippine fundamental law to social justice.

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[11] Convention Concerning Termination of Employment at the Initiative of the Employer, June 22, 1982, *available at* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158.

[12] Conrado Benitez, *The New Philippine Constitution*, 8 PAC. AFF. 428, 430 (1935).

[13] CONST. (1935), art. II, § 5.

[14] CONST. (1935), art. XIII, § 6.

Eventually, the 1973 Constitution came into effect during Martial Law in the Philippines.[15] Numerous provisions illustrate the social attitude of the 1973 Constitution. These include Article II, Section 6, on the promotion of social justice; Article II, Section 7 on the provision of social services to the people; and Article XIV, Section 12 on agrarian reform. Most of all, Article II, Section 9 of the 1973 Constitution, for the first time, expressly ensured the right of workers to security of tenure. It declared:

> SEC. 9. The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, *security of tenure*, and just and humane conditions of work. The State may provide for compulsory arbitration.[16]

In *BPI Credit Corporation v. National Labor Relations Commission*,[17] the Court had the opportunity to explain the advent of the constitutional guarantee of security of tenure to workers under the 1973 Constitution.[18] The Court explained the long-drawn-out development of the right to security of tenure in this wise:

> The enthronement of the worker's right to security of tenure in our fundamental law was not achieved overnight. For all its liberality towards labor, our 1935 Constitution did not elevate the right as a constitutional right. For a long time, the worker's security of tenure had only the protective mantle of statutes and their interpretative rules and regulations. It was as uncertain protection that sometimes yielded to the political permutations of the times. It took labor nearly four decades of sweat and tears to persuade our people thru their leaders, to exalt the worker's right to security of tenure as a sacrosanct constitutional right. It was Article II, Section 2 of our

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[15] Proc. No. 1102 (1973). In Javellana v. Exec. Sec'y, G.R. No. 36142, 50 SCRA 30, Mar. 31, 1973, the effectivity of the 1973 Constitution was upheld by the Supreme Court following the insufficiency of votes to declare the 1973 Constitution as ineffective. Four Justices voted that the 1973 Constitution was in force by virtue of the people's acceptance thereof. Four Justices did not vote regarding the effectivity of the 1973 Constitution, explaining that "they could not state with judicial certainty whether the people have accepted or not accepted the Constitution," while two Justices, including the Chief Justice, voted against the effectivity of the 1973 Constitution. Ultimately, the Court held that there were not enough votes to declare that the new Constitution was not in force.

[16] CONST. (1973), art. II, § 9. (Emphasis supplied.)

[17] G.R. No. 106027, 234 SCRA 441, July 25, 1994.

[18] *Id.* at 451.

> 1973 Constitution that declared as a policy that the State shall assure the right of workers to security tenure.[19]

The present 1987 Constitution declares it a state policy to safeguard the rights of workers and their welfare.[20] It also reincorporated the right of workers to security of tenure.[21] During the discussions of the 1986 Constitutional Commission, there was a deliberate intent to move the provision on the protection of labor from the Article on Declaration of Principles and State Policies to the Article on Social Justice. Commissioners Hilario Davide, Jr.—who would later serve as Chief Justice of the Philippines—and Decoroso Rosales both asserted the inclusion of the said provision in the newly created Article on Social Justice, emphasizing the increasing importance accorded to social justice in national development.[22]

Moreover, the 1986 Constitutional Commission intentionally avoided qualifying the right of workers to security of tenure. Specifically, Commissioner Felicitas S. Aquino pointed out that Congress cannot withdraw the entitlement of workers to security of tenure, but may only amplify, reinforce, and regulate such right in accordance with the Constitution.[23] In this regard, Commissioner Fr. Joaquin G. Bernas spoke against the attachment of the phrase "as may be provided by law" to the same sentence involving security of tenure. Fr. Bernas pointed out that the inclusion of such phrase would have both legal and political problems: legal, because the 1973 Constitution does not qualify the right of workers to security of tenure; and political, because this may be seen as a retrogression of the right of workers and may even be used to mislead them.[24] Accordingly, Fr. Bernas proposed an amendment of the provision, which reads: "They shall be entitled to security of tenure, humane conditions of work, and a living wage."[25] This was the version approved by the Constitutional Commission and finally contained in the 1987 Constitution.[26]

As it stands, Article XIII, Section 3 of the 1987 Constitution provides a more extensive enumeration of the rights of workers, including the unqualified right to security of tenure, while at the same time recognizing the

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[19] *Id.*
[20] CONST. art. II, § 18.
[21] CONST. art. XIII, § 3.
[22] 2 RECORD CONST. COMM'N 48, 690 (Aug. 5, 1986).
[23] 2 RECORD CONST. COMM'N 49, 764 (Aug. 6, 1986).
[24] *Id.* at 767.
[25] *Id.*
[26] *Id.* at 768.

right of employers to reasonable returns on investments and to expansion and growth. Thus:

> SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to *security of tenure*, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
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> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
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> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.[27]

The Constitution itself would serve as instruction for the legislative and the judiciary to take into account the security of tenure of workers in their acts. This would primarily manifest in the enactment of the Labor Code and in the abundant illegal dismissal cases decided by the Court.

B. Rights of Workers under the Labor Code

The Labor Code consolidated existing laws on labor. Prior to the Labor Code, laws regulating the relations between labor and management came from different sources enacted at different times, which sometimes resulted in conflicting applications.[28] It was with the enactment of the Labor Code in 1974 when statutory labor law became integrated. The Labor Code of the Philippines, or Presidential Decree No. 442, was passed on May 1, 1974 by the late President Ferdinand E. Marcos, who was then vested with

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[27] CONST. art. XIII, § 3. (Emphasis supplied.)

[28] Diego P. Atienza, *Problems of Transition*, 49 PHIL. L.J. 649, 649 (1974).

legislative powers. The Labor Code became effective six months later, or on November 1, 1974.[29]

During its promulgation on Labor Day of 1974, President Marcos declared the Labor Code as "a charter of human rights as well as a bill of obligations for every working man."[30] The codification of labor laws was intended by Marcos to harness the Filipino labor force through a shift from land-based to labor-based products. To achieve this goal, the Labor Code introduced various reforms including: the introduction of anti-graft measures such as the removal of labor laws facilitating graft on the part of labor enforcers and fly-by-night labor leaders; the institutionalization of the National Labor Relations Commission (NLRC); the integration of the social security system as administered by the Social Security System, for private employees, and the Government Service Insurance System, for public employees; strengthening of the deployment of overseas Filipino workers; and restructuring the labor system by region and by industry, instead of by union. According to Marcos, these reforms "demonstrate the truth of the claim that the labor laws have been revised to make them more responsive to development as well as to social justice."[31]

Consistent with the Labor Code's pledge toward social justice, Article 3 of the Labor Code reiterates the policy of the State to afford protection to labor and to promote full employment, especially guaranteeing the right of workers to security of tenure. In this regard, Article 294 of the Labor Code, as amended, provides that employees shall not be dismissed from employment without just or authorized cause, to wit:

> ART. 294. [279] Security of Tenure. – In cases of regular employment, *the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title*. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[32]

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[29] LAB. CODE, art. 2.

[30] Ferdinand E. Marcos, "Labor – Our Greatest Weapon," Speech delivered on the occasion of Labor Day Celebration, Maharlika Hall, Malacañang (May 1, 1974), *available at* https://www.officialgazette.gov.ph/1974/05/01/address-of-president-marcos-on-theoccasion-of-labor-day-celebration-may-1-1974/.

[31] *Id.*

[32] LAB. CODE, art. 294, *amended by* Rep. Act No. 6715 (1989), § 34. (Emphasis supplied.)

Furthermore, pursuant to its rule-making powers under Article 5 of the Labor Code, the DOLE promulgated the Omnibus Rules Implementing the Labor Code.[33] The Implementing Rules expressly state that "[n]o workers shall be dismissed except for a just or authorized cause provided by law and *after due process*."[34] Hence, aside from the presence of just or authorized causes, a valid dismissal must also comply with due process. What due process entails would eventually be the key issue in numerous illegal dismissal cases before the Supreme Court.

C. Due Process in Employer-Employee Relations

At the outset, it is important to note that the right of workers to security of tenure must be viewed in light of the interrelated principle of management prerogative. Management prerogative recognizes that the employer has discretion in regulating all aspects of employment, including the discipline of employees and the imposition of penalties, such as dismissal, upon erring employees.[35] Indeed, the discipline of employees is a basic management right. Employers may impose reasonable penalties, such as dismissal, upon employees who violate company rules and regulations.[36] Nevertheless, management prerogative should not be exercised contrary to law and with arbitrary or malicious motive.[37] It is also subject to limitations, including the security of tenure of employees.

Security of tenure is not an absolute right. Employees may be dismissed for legal cause,[38] while employers cannot be forced to keep workers who are prejudicial to their interests. But at the same time, security of tenure is a property right of which workers can be deprived only after due process is observed.[39]

Under the Labor Code, due process involves substantive and procedural aspects, and both must be observed in the dismissal of employees. Firstly, substantive due process requires the existence of a just or authorized cause, an enumeration of which is found under Articles 297 to 299 of the

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[33] Art. 5.

[34] LAB. CODE, Rules & Regs. (1975), bk. V, rule XIV, § 1. (Emphasis supplied.)

[35] The Coca-Cola Export Corp. v. Gacayan, G.R. No. 149433, 638 SCRA 377, 398, Dec. 15, 2010.

[36] Deles v. Nat'l Lab. Rel. Comm'n, G.R. No. 121348, 327 SCRA 540, 548, Mar. 9, 2000.

[37] Arabit v. Jardine Pacific Fin., Inc., 733 Phil. 41, 58 (2014).

[38] Sutherland Glob. Serv. (Phil.), Inc. v. Labrador, G.R. No. 193107, 719 SCRA 634, 644, Mar. 24, 2014.

[39] Diamond Taxi v. Llamas, 729 Phil. 364, 380 (2014).

Labor Code.[40] On the one hand, just causes refer to causes directly attributable to the fault or negligence of the employee, including those enumerated under Article 297 of the Labor Code. These include: serious misconduct or willful disobedience by employees of the lawful orders of their employer or duly authorized representative in connection with their work; gross and habitual neglect by employees of their duties; fraud or willful breach by employees of the trust reposed in them by their employer or duly authorized representative; commission of a crime or offense by employees against the person of their employer or any immediate member of the latter's family or duly authorized representatives; and causes analogous to the foregoing.[41]

On the other hand, authorized causes are those due to the necessity and exigencies of business, changing economic conditions, and disease of the employee. The following are the authorized causes listed under Articles 298 and 299 of the Labor Code: installation of labor-saving devices; redundancy; retrenchment to prevent losses; closure or cessation of operation of the establishment or undertaking;[42] and disease of employees.[43]

Hence, the dismissal of an employee must be justified by a just or authorized cause. Otherwise, the dismissal becomes void and the employee is entitled to reinstatement without loss of seniority rights and other privileges and to their full backwages and other benefits.[44]

Secondly, termination of employment is likewise subject to procedural due process requirements. This requires employers to give employees a reasonable opportunity to be heard and to defend themselves. Specifically, Article 292 of the Labor Code provides that employers shall give employees sought to be dismissed a written notice containing a statement of the causes for termination, as well as ample opportunity to be heard and to defend themselves, in accordance with the regulations issued by the DOLE.[45]

Under the Implementing Rules of the Labor Code, employers must observe the following requirements in terminating employees, depending on the cause of dismissal:

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[40] LAB. CODE, arts. 297–99.
[41] Art. 297.
[42] Art. 298.
[43] Art. 299.
[44] Art. 294.
[45] Art. 292(b).

> SECTION 2. *Standards of due process; requirements of notice*. — In all cases of termination of employment, the following standards of due process shall be substantially observed:
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> I. For termination of employment based on just causes as defined in Article [297] of the Labor Code:
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> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side.
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.
> (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.
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> II. For termination of employment based on authorized causes defined in Article [298] of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before the effectivity of the termination, specifying the ground or grounds for termination.[46]

Thus, under the "twin notice rule," employees must first be given a written notice stating the particular act or omission constituting the grounds for their dismissal, with a directive that they be given the opportunity to submit their written explanation within a reasonable period.[47] "Reasonable opportunity" means a period of at least five calendar days from receipt of the notice to allow employees to prepare for their defenses against the complaint.[48] After service of the first notice, the employer shall give employees ample opportunity to be heard and to defend themselves with the

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[46] LAB. CODE, Rules & Regs. (1989), Book V, Rule XIII, § 2, *amended by* DOLE Dep't Order No. 009-97 (1997).

[47] *King of Kings*, 526 SCRA 116, 125.

[48] *Id.*

assistance of a representative, if they so desire.[49] "Ample opportunity to be heard" refers to any meaningful opportunity, whether verbal or written, extended to employees to answer the charges against them and submit evidence in support of their defense.[50] Hence, a formal hearing is not mandatory unless requested by employees in writing, substantial evidentiary disputes exist, a company rule or practice requires it, or similar circumstances justify such hearing.[51] Finally, if legal cause for the dismissal of the employees has been established, the employer serve a second written notice stating clearly the reasons for the dismissal.[52]

There have been divergent rulings as to the effect of non-observance of procedural due process requirements in the dismissal of employees. For a long time, the Court had held that dismissal is illegal if the employee was not given any notice, since this would be in violation of the employee's right to due process.[53] The Court explained that the right to labor is a person's property within the contemplation of the constitutional right to due process and equal protection of the laws, and thus a worker cannot be summarily and arbitrarily dismissed without proper notice.[54]

However, this rule would be overturned in the case of *Wenphil Corporation v. NLRC*.[55] In that case, private respondent Roberto Mallare, a department assistant head of petitioner Wenphil, had an altercation with his co-employee. The morning after the incident, Mallare was suspended, and on the afternoon of the same day, a memorandum was issued informing him of his dismissal pursuant to the company's Personnel Manual. The notice of dismissal was served on Mallare four days later. He then sued Wenphil for illegal dismissal. The Labor Arbiter dismissed the complaint but on appeal, the NLRC reversed and found his termination as illegal.[56]

The Court upheld the validity of the termination but ordered the employer to indemnify the employee. It agreed that the initial failure of Wenphil to afford Mallare the benefit of a hearing prior to his dismissal

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[49] *Id.*

[50] Perez v. Phil. Telegraph & Telephone Co., G.R. No. 152048, 584 SCRA 110, 127, Apr. 7, 2009.

[51] *Id.*

[52] *King of Kings*, 526 SCRA at 126.

[53] Batangas Laguna Tayabas Bus Co. v. Ct. of Appeals, G.R. No. 38482, 71 SCRA 470, 480, June 18, 1976.

[54] *Id.*, *citing* Phil. Movie Pictures Workers' Ass'n v. Premiere Productions, 92 Phil. 843 (1953).

[55] [Hereinafter "*Wenphil*"], G.R. No. 80587, 170 SCRA 69, Feb. 8, 1989.

[56] *Id.* at 72–73.

constituted a violation of his right to due process.[57] However, the Court also recognized that upon filing his complaint with the Labor Arbiter, Mallare was given the right to an investigation and was able to present his petition paper.[58] Therefore, albeit late, he was still given due process, the Labor Arbiter having found just cause for his dismissal on the ground of grave misconduct and insubordination.[59] Subsequently, Mallare could no longer be reinstated. In justifying the "belated due process rule," the Court explained: "It will be highly prejudicial to the interests of the employer to impose on him the services of an employee who has been shown to be guilty of the charges that warranted his dismissal from employment. Indeed, it will demoralize the rank and file if the undeserving, if not undesirable, remains in the service."[60]

Nonetheless, there was still a failure on the part of the employer to afford the employee the benefit of a hearing prior to his dismissal, which is a requirement of due process under the Implementing Rules of the Labor Code. Hence, Wenphil was ordered to indemnify Mallare. The amount awarded would depend on the facts of each case and the gravity of the violation by the employer.[61]

The "belated due process rule" would be revisited and eventually overturned in *Serrano v. NLRC*.[62] Petitioner Ruben Serrano was the head of security checkers of private respondent Isetann Department Store. Pursuant to its retrenchment program, Isetann phased out the entire security section and wrote a notice of dismissal to Serrano, effective immediately. Petitioner thus filed a complaint for illegal dismissal. The Labor Arbiter ruled that he was illegally dismissed for failure of the employer to establish that it had retrenched its security section to prevent or minimize losses to its business, and that it failed to accord due process to petitioner. On appeal, the NLRC reversed the decision of the Labor Arbiter and upheld the dismissal of Serrano.[63]

The Court recognized that the *Wenphil* decision resulted in a significant number of termination cases involving lack of notice to employees due to the increasingly rampant "dismiss now, pay later" policy by employers.[64] To address this, the Court declared that a violation of the notice

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[57] *Id.* at 74–75.
[58] *Id.* at 75.
[59] *Id.*
[60] *Id.* at 76.
[61] *Id.*
[62] [Hereinafter "*Serrano*"], G.R. No. 117040, 323 SCRA 445, Jan. 27, 2000.
[63] *Id.* at 456–59.
[64] *Id.* at 465.

requirement is not a denial of due process that invalidates the dismissal; instead, the dismissal is merely ineffectual and the employer must pay *full backwages*, not merely indemnity, from the time of termination until it is declared with finality that the dismissal was for cause.[65] The Court gave three reasons as to why non-compliance with the notice requirement does not constitute a deprivation of due process. First, the due process clause in the Constitution limits governmental powers and does not apply to private relations, including the termination of employment under the Labor Code.[66] Second, in case of dismissal of an employee pursuant to Article 298 of the Code, the law only requires a 30-day written notice to the DOLE and the employee before an employee is laid off in order to afford them an opportunity to be heard on any charge against them.[67] Third, an employer dismissing an employee under Article 298 of the Labor Code cannot be fully expected to be an impartial judge of its own cause.[68]

Finally, in *Agabon v. NLRC*,[69] the Court reversed *Serrano* and reverted to its ruling in *Wenphil*. In that case, petitioners Jenny and Virgilio Agabon were dismissed for abandonment of work and later sued private respondent Riviera Home Improvements, Inc. for illegal dismissal. The Labor Arbiter found the dismissal illegal, but both the NLRC and Court of Appeals ruled that the termination was valid on the ground of abandonment. In upholding the validity of the dismissal, the Court found that petitioners had indeed abandoned their work, which is one of the analogous causes under Article 297 of the Labor Code.[70] However, it also noted that the twin notice requirement was not complied with by the employer. In this regard, the Court made a distinction as to the notice requirement depending on the cause of dismissal, such that if the dismissal is based on a just cause, the twin notice rule must be complied with; whereas if the dismissal is based on an authorized cause, the employer must only give the employee and the DOLE written notices 30 days prior to the effectivity of the termination.[71]

Hence, the Court ruled that if the dismissal is based on just or authorized cause although notice was not given to the employee, the dismissal is valid, but the employer should be meted sanctions. The Court justified its decision by recognizing the unfairness that may be caused to employers if the Court were to rule otherwise, thus:

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[65] *Id.* at 467.
[66] *Id.* at 468.
[67] *Id.*
[68] *Id.* at 470.
[69] *Agabon*, 442 SCRA 573.
[70] *Id.* at 605.
[71] *Id.* at 608.

> This would encourage frivolous suits, where even the most notorious violators of company policy are rewarded by invoking due process. This also creates absurd situations where there is a just or authorized cause for dismissal but a procedural infirmity invalidates the termination. Let us take for example a case where the employee is caught stealing or threatens the lives of his co-employees or has become a criminal, who has fled and cannot be found, or where serious business losses demand that operations be ceased in less than a month. Invalidating the dismissal would not serve public interest. It could also discourage investments that can generate employment in the local economy.
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> The employer should not be compelled to continue employing a person who is admittedly guilty of misfeasance or malfeasance and whose continued employment is patently inimical to the employer. The law protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer.[72]

However, to avoid the aforementioned "dismiss now, pay later" practice created by *Wenphil*, employers are now held liable for a stricter penalty of nominal damages for violating the procedural requirements of due process.[73] Nominal damages are currently valued in the amount ranging from PHP 30,000[74] to PHP 50,000,[75] depending on the cause of dismissal.

While *Agabon* remains the rule to this day regarding the effect of non-compliance with the notice requirement,[76] it reinforces the distinction as to the notice requirement depending on the cause of dismissal. This ostensible distinction would be carried over in later cases, where the twin notice requirement will only be applied in case of just cause termination, but not in case of dismissal due to authorized causes.[77] This is the dilemma existing when DOLE D.O. No. 147-15 came into effect.

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[72] *Id.* at 614–15.

[73] *Id.* at 616.

[74] Bernardo v. Dimaya, G.R. No. 195584, Nov. 10, 2021, at 11. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

[75] Jaka Food Processing Corp. v. Pacot, G.R. No. 151378, 454 SCRA 119, 127, Mar. 28, 2005.

[76] *See* Bernardo v. Dimaya, G.R. No. 195584, Nov. 10, 2021, at 11. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

[77] *King of Kings*, 526 SCRA 116, 125–26.

III. DUE PROCESS IN TERMINATION OF EMPLOYMENT DUE TO DISEASE

A. Requirements under the Labor Code and its Implementing Rules

Among the authorized causes for termination of employment under the Labor Code is due to disease suffered by an employee. Article 299 of the Labor Code states that an employee suffering from any disease may be terminated from employment, *viz.*:

> ART. 299. [284] *Disease as Ground for Termination.* — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.[78]

In explaining that the disease contemplated in this provision is not limited to contagious diseases but also includes non-contagious illnesses, the Court adopted a liberal construction of the phrase "prejudicial to his health *as well as* to the health of his co-employees" as meaning "prejudicial to his health *or* to the health of his co-employees."[79] This phrase is also preceded by "*any* disease," and Article 299 may thus also be used in termination cases due to disease, whether contagious or not.[80]

The Implementing Rules also impose the additional requisite of certification by competent public health authority in case of termination of employment due to disease, thus:

> SECTION 8. *Disease as a ground for dismissal.* — Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by competent public health authority that the disease is of such nature of at such a stage that it cannot be cured within a period of six (6) months even with proper medical

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[78] LAB. CODE, art. 299.

[79] Deoferio v. Intel Tech. Phil., Inc. [hereinafter "*Deoferio*"], G.R. No. 202996, 726 SCRA 676, 687, June 18, 2014.

[80] *Id.*

> treatment. If the disease or ailment can be cured within the period, the employee shall not terminate the employee but shall ask the employee to take a leave of absence. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health.[81]

Hence, under the Labor Code and its Implementing Rules, three substantive elements must concur for disease to be considered as a valid ground for termination of an employee: first, that the employee is suffering from any disease, whether contagious or not; second, that the continued employment of the employee is prohibited by law or prejudicial to their health or to the health of their co-employees; and third, that there must be certification by a competent public health authority that the disease is incurable within a period of six months even with proper medical treatment.

Nevertheless, neither the Labor Code nor its Implementing Rules provide for the procedure for dismissing employees on account of their disease. Notably, the Implementing Rules only refer to Articles 297 and 298 of the Labor Code in prescribing the procedural requirements. They do not mention Article 299 on disease, despite it being a recognized authorized cause for dismissal.[82] It was only upon the promulgation by DOLE of D.O. No. 147-15 when express reference to Article 299 regarding the procedural requirements for terminating employees due to disease was made.

B. Requirements under D.O. No. 147-15

D.O. No. 147-15 establishes the standards of substantive and procedural due process to be observed in terminating employees, amending for this purpose Book VI of the Labor Code IRR. Section 5.4(e) of D.O. No. 147-15 affirms the Labor Code and its Implementing Rules in prescribing the three aforementioned substantive elements for terminating an employee due to disease.[83] However, D.O. No. 147-15 fails to define the "competent public health authority" in charge of issuing the required certification that the disease is incurable within a period of six months even with proper medical treatment, despite this being arguably the most essential requisite, as this Note will point out later.[84]

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[81] LAB. CODE, Rules & Regs. (1989), Book VI, Rule 1, § 8.

[82] *See* LAB. CODE, Rules & Regs. (1989), Book V, Rule XIII, § 2, *amended by* DOLE Dep't Order No. 009-97 (1997).

[83] *See supra* Part III.A.

[84] *See infra* Part IV.A.

Furthermore, as to the due process requirements for terminations on the ground of disease, Section 5.3 of D.O. No. 147-15 merely requires a single notice to the DOLE and the employee, to wit:

> Section 5. *Due Process of Termination of Employment.* In all cases of termination of employment, the standards of due process laid down in Article 299 (b) of the Labor Code, as amended, and settled jurisprudence on the matter, must be observed as follows:
>
> * * *
>
> 5.3 *Termination of Employment Based on Authorized Causes.* As defined in Articles 298 and 299 of the Labor Code, as amended, the requirements of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment (DOLE) at least thirty days (30) before the effectivity of the termination, specifying the ground or grounds for termination.[85]

Evidently, D.O. No. 147-15 dispenses with the twin notice requirement and only obliges employers to furnish written notice specifying the grounds for termination to the employee and the appropriate DOLE Regional Office at least 30 days before the effectivity of the dismissal. It reinforces the apparent distinction between just causes and authorized causes for termination, including disease, with respect to the twin notice requirement. To some extent, this conclusion is understandable. After all, the Implementing Rules clearly state "authorized causes," and the DOLE in crafting the same could have only unintentionally omitted Article 299.[86] Besides, the Court itself in *Agabon* had somehow made the same delineation.[87] However, as this Note will discuss, such distinction is more apparent than real in cases of termination due to disease.

IV. RESOLVING THE GAPS IN THE LAW

Two issues arise in relation to the due process requirements in terminations of employment on the ground of disease. First, substantively, there is a lack of definition of a "competent public health authority" for the purpose of acquiring the required certification that the disease is incurable within a period of six months even with proper medical treatment. Second,

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[85] DOLE Dep't Order No. 147-15 (2015), § 5.3.

[86] LAB. CODE, Rules & Regs. (1989), Book V, Rule XIII, § 2, *amended by* DOLE Dep't Order No. 009-97 (1997).

[87] *Agabon*, 442 SCRA 573, 608.

procedurally, while the Court has consistently applied the twin notice requirement in terminations due to disease, D.O. No. 147-15 does not follow the same but only requires employers to serve a written notice specifying the grounds for termination to the employee and the appropriate DOLE Regional Office at least 30 days before the effectivity of the dismissal.

This Note puts forward two main arguments: first, that the required certification that the disease is incurable within a period of six months even with proper medical treatment need not be obtained solely from government doctors, but may be obtained also from qualified private physicians, as will be defined; and second, that the twin notice rule still governs cases of dismissal due to the disease of the employee.

A. "Competent Public Health Authority" Must Not be Limited to Government Doctors

While there is no glaring conflict between the Labor Code and its Implementing Rules and D.O. No. 147-15 with respect to the substantive requirements in terminations due to disease, there is still a need to reevaluate the certification by a competent public health authority as one of these requisites. Notably, there is a lack of statutory and jurisprudential basis expressly defining who or what is a "competent public health authority," despite the fact that the certification is an essential requirement in terminating employees due to their illness.

The Court has consistently held that an employee could be validly terminated only upon the certification of a competent public authority that the disease afflicting him or her is of such nature or at such stage that it cannot be cured within six months even with proper medical treatment.[88] The Implementing Rules of the Labor Code precisely impose this duty upon the employer.[89] According to the Court, the certification is meant to protect employees. Absent such certification, "the characterization or even diagnosis of the disease would primarily be shaped according to the interests of the parties rather than the studied analysis of the appropriate medical professionals."[90] In other words, without the certification obtained by an employer from the competent public health authority, the determination of

[88] Tan v. NLRC, G.R. No. 116807, 271 SCRA 216, 222, Apr. 14, 1997.

[89] Marina's Creation Enter. v. Ancheta, G.R. No. 218333, 813 SCRA 531, 539, Dec. 7, 2016.

[90] Crayons Processing, Inc. v. Pula, G.R. No. 167727, 528 SCRA 564, 575, July 30, 2007.

the gravity of the illness of the employee would depend solely on the employer, defeating public policy geared toward the protection of labor.[91]

Despite the lack of explicit identification of the "competent public health authority," the Court has nevertheless offered some guidance as to what does not constitute a proper certification. In *Cebu Royal Plant v. Deputy Minister of Labor*,[92] petitioner employer dismissed private respondent Ramon Pilones allegedly because of his minimal pulmonary tuberculosis. The employer claimed that his termination was necessary to protecting public health, since he was employed in the beverage industry.[93] The Court found the dismissal of Pilones to be illegal because the certification presented by the employer, which came from its own company physician, was not proper. The said physician could not be considered a competent public health authority and the certification merely stated the employee's disease without indicating its incurability.[94] The Court pointed out that the lack of the certification probably means that the disease was not incurable within six months if the employee was given proper treatment.[95]

A similar decision was reached by the Court in *Cathay Pacific Airways, Ltd. v. NLRC*.[96] Private respondent Martha Singson was hired by petitioner as a cabin attendant. Upon visiting the company doctor, Singson was diagnosed with moderately severe asthma and was prescribed medication. Eventually, her condition improved but she was still dismissed from work for being unfit to fly and perform air safety functions as part of the cabin crew.[97] As in *Cebu Royal Plant*, the Court found that Singson was illegally dismissed because her termination was based only on the recommendation of petitioner's company doctors. These doctors concluded that she was afflicted with asthma, without stating its incurability even with proper treatment. The Court also noted the fact that the employee's condition greatly improved only five days after her initial examination.[98]

However, in *Sevillana v. I.T. (International) Corp.*,[99] the Court made reference to a "medical practitioner" without qualifying the nature of the

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[91] *Id.*
[92] [Hereinafter "*Cebu Royal Plant*"], G.R. No. 58639, 153 SCRA 38, Aug. 12, 1987.
[93] *Id.* at 41.
[94] *Id.* at 44.
[95] *Id.*
[96] [Hereinafter "*Cathay Pacific*"], G.R. No. 141702, 362 SCRA 316, Aug. 2, 2001.
[97] *Id.* at 318–19.
[98] *Id.* at 323.
[99] [Hereinafter "*Sevillana*"], G.R. No. 99047, 356 SCRA 451, Apr. 16, 2001.

latter's employment.[100] In that case, petitioner Omar Sevillana was a driver working in Saudi Arabia who was repatriated to the Philippines by his foreign principal allegedly due to his hypertension. Sevillana thus sued respondents I.T. (International) Corp. and Samir Maddah, the placement agency and foreign principal, respectively. According to I.T. Corp, Sevillana's health condition was monitored for more than one year, and when his condition did not improve and his frequent headaches started affecting his work, Samir was forced to repatriate Sevillana to avoid further complications to his health.[101] The Court found the dismissal illegal and stressed that in *all* termination cases, strict compliance by the employer with the demands of both procedural and substantive due process is a necessary condition for the same to be declared valid.[102] The Court found in this case that respondents failed to prove that petitioner's alleged hypertension made his continued employment prohibited by law or prejudicial to his health as well as to the health of his co-employees, absent the necessary certification from the competent public health authority as imposed by the Implementing Rules of the Labor Code.[103] The Court ruled that the Philippine Overseas Employment Administration (POEA) Adjudication Office properly applied the rule and adopted its decision regarding the lack of certification, to wit:

> While an employer […] may validly terminate the services of an employee who has been found to be suffering from any disease, it is authorized only if his continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees […]. This is not present in the instant case, for *there is no finding from a medical practitioner* certifying that complainant is really hypertensive.[104]

Significantly, in quoting verbatim the decision of the POEA, the Court in *Sevillana* indicated that what is required is only a certification from a "medical practitioner." And yet, the Court in *Triple Eight Integrated Services, Inc. v. NLRC*[105] returned its emphasis to the certification being issued by a "public health authority."[106] In that case, private respondent Erlinda Osdana, a food server working in Saudi Arabia, was diagnosed with Bilateral Carpal Tunnel Syndrome (CTS). She underwent two surgeries and was allowed to do light work by her doctor. However, her foreign principal dismissed her from work

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[100] *Id.* at 467–68.

[101] *Id.* at 457–58.

[102] *Id.* at 467.

[103] *Id.* at 468.

[104] *Id.* at 467–68, *citing* Sevillana v. I.T. (Int'l) Corp., POEA Case No. (L) 88-12-1048 (Phil. Overseas Emp't Admin. Dec. 29, 1989). (Emphasis in the original.)

[105] G.R. No. 129584, 299 SCRA 608, Dec. 3, 1998.

[106] *Id.* at 617–18.

and repatriated her to the Philippines due to her health.[107] In holding that Osdana was illegally dismissed, the Court rejected the employer's claim that because the employee was in Saudi Arabia, it was impossible to obtain a certification from a Philippine public health authority that her CTS is incurable.[108] The Court said that the rule only requires a "certification by a competent public health authority" and not a "Philippine public health authority." Thus, the employer could have secured the certification from a competent public health authority in Saudi Arabia to prevent any claims for illegal dismissal, but it did not.[109] The Court further noted that Osdana's condition vastly improved after her second surgery, and that CTS is not even a contagious disease.[110]

Finally, in *Deoferio v. Intel Technology Philippines*,[111] the Court upheld the validity of the dismissal of the employee on the strength of a psychological report issued by a psychiatrist from a government hospital. Petitioner Marlo Deoferio was a product quality and reliability engineer of respondent Intel Technology Philippines, which assigned him to the United States for two years. However, Deoferio was diagnosed with major depression and psychosis in the U.S. and was eventually repatriated to the Philippines, where he was made to undergo further treatment. Intel terminated his employment based on the psychiatric report made by a consultant psychiatrist of the Philippine General Hospital, concluding that Deoferio was suffering from schizophrenia, that his symptoms are incurable within six months, and that his condition will negatively affect his work and relations with his co-workers.[112] The Court found that the psychiatric report substantially complies with the certification requirement by the law; hence, the dismissal was valid.[113]

Neither the Labor Code nor any other law expressly defines a "competent public health authority" in the context of an employment relationship. However, reference may be made to other health laws in the Philippines. For example, under Republic Act (R.A.) No. 11332 or the Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act, "*public health authority*" is defined as:

> [T]he DOH (specifically the Epidemiology Bureau, Disease Prevention and Control Bureau, Bureau of Quarantine and

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[107] *Id.* at 612–13.
[108] *Id.* at 617.
[109] *Id.* at 618.
[110] *Id.* at 617.
[111] *Deoferio*, 726 SCRA 676.
[112] *Id.* at 681.
[113] *Id.* at 688.

> International Health Surveillance, Health Emergency Management Bureau, Food and Drug Administration, government hospitals, Research Institute of Tropical Medicine and other National Reference Laboratories, and DOH Regional Offices), the local health office (provincial, city or municipality), or any person directly authorized to act on behalf of the DOH or the local health office."[114]

However, it must be noted that said law primarily relates to the mandatory reporting of infectious diseases for public health concerns, and not to private employer-employee relations as contemplated under Philippine labor law.[115]

Thus, it appears that based on the aforementioned authorities, a "competent public health authority" refers to a government or public physician and not to a doctor engaged in private practice, especially a company doctor. Nevertheless, this Note contends that the required certification need not be obtained solely from government doctors, but also from qualified private physicians, whether or not hired by the employer. Accordingly, for the purpose of obtaining the certification required by the Labor Code, "competent public health authority" must be construed simply as a competent medical practitioner, whether employed by the government or engaged in private practice, who complies with the following requirements:

(i) That they satisfactorily passed the mandatory medical licensure examination;

(ii) That they are duly registered with the medical board; and

(iii) That they are certified as a Diplomate or Fellow by the relevant specialty society related to the disease for which the dismissal of the employee is sought.

First, R.A. No. 2382, or the Medical Act of 1959, requires for the practice of medicine that a person has satisfactorily passed the Physician Licensure Examination ("PLE") administered by the Professional Regulatory Board of Medicine ("Board").[116] R.A. No. 2382 provides that candidates for the PLE must hold the degree of Doctor of Medicine or its equivalent

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[114] Rep. Act No. 11332 (2019), § 3(k). Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act.

[115] *See* § 2.

[116] Rep. Act No. 2382 (1959), §§ 8, 21, *amended by* Rep. Act No. 4224 (1965), § 1. The Medical Act of 1959.

conferred by a college of medicine duly recognized by the government, and must have completed one year of post-graduate internship in a hospital duly accredited by the Association of Philippine Medical College ("APMC"), among other qualifications.[117] The PLE consists of twelve subjects, and candidates must get a general average of 75% without a grade lower than 50% in any subject to pass the examination.[118]

Second, R.A. No. 2382 also requires that a person hold a valid Certificate of Registration duly issued by the Board.[119] Those who have passed the PLE and satisfactorily complied with the requirements of the Board will be issued a Certificate of Registration signed by the Commissioner of Civil Service and the Chairperson, Members, and the Secretary of the Board.[120] However, any candidate who has been convicted of any criminal offense involving moral turpitude, found guilty of immoral or dishonorable conduct after investigation by the Board, or declared to be of unsound mind shall be denied registration.[121]

Third, to ensure that physicians issuing the certification are sufficiently competent to evaluate the incurability of the disease for which the dismissal is sought, they must be certified as "Diplomates" or "Fellows" by the relevant specialty or subspecialty society. R.A. No. 8981 or the PRC Modernization Act authorizes the Board to regulate the practice of medicine and to adopt measures to enhance the standards of medical profession in the Philippines.[122] Understanding that there had been no regulatory body supervising the conduct of residency programs in the Philippines, the Board issued Resolution No. 25-15 recognizing specialty societies and specialty boards in the Philippines.[123] Specialty societies have specialty boards which

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[117] § 9, *amended by* Rep. Act No. 5946 (1969), § 1.

[118] § 21, *amended by* Rep. Act No. 4224 (1965), § 1. The subjects covered under the PLE are: (1) Anatomy and Histology; (2) Physiology; (3) Biochemistry; (4) Microbiology and Parasitology; (5) Pharmacology and Therapeutics; (6) Pathology; (7) Medicine; (8) Obstetrics and Gynecology; (9) Pediatrics and Nutrition; (10) Surgery and Ophthalmology, Otolaryngology and Rhinology; (11) Preventive Medicine and Public Health, and (12) Legal Medicine, Ethics and Medical Jurisprudence.

[119] § 8.

[120] § 20, *amended by* Rep. Act No. 4224 (1965), § 1.

[121] § 20.

[122] Rep. Act No. 8981 (2000), § 9. PRC Modernization Act of 2000.

[123] Professional Regulatory Board of Medicine Resolution No. 25-15, Mar. 9, 2015. The PRC and the Board has recognized the following specialty societies: (1) Philippine Society of Anesthesiologists; (2) Philippine Academy of Family Physicians; (3) Philippine College of Physicians; (4) Philippine Obstetrical and Gynecological Society; (5) Philippine Society of Pathologists; (6) Philippine Pediatric Society; (7) Philippine College of Radiology; and (8) Philippine College of Surgeons. Each of these specialty societies will also have specialty boards as well as sub-specialty societies.

administer certifying examinations for residents, and those who successfully pass will be certified as specialists in that field and earn the title of "Diplomate." Afterwards, diplomates who remain as members in good standing and complete their subspecialty training under the respective subspecialty societies may obtain the title of "Fellow."

The Court had already acknowledged specialty boards as a reasonable exercise of the State's inherent police power in *St. Luke's Medical Center Employees' Association-AFW v. NLRC*.[124] Petitioner Maribel Santos was hired as X-ray Technician by private respondent St. Luke's Medical Center in 1984. In 1992, Congress passed R.A. No. 7431, which required a certification from the Board of Radiologic Technology before any person may practice as an X-ray technologist.[125] When Santos failed to submit her certification, she was dismissed by the hospital.[126] The Court upheld the validity of the dismissal, explaining that the requirement of passing the board licensure exam is a proper exercise of the state's police power in order to protect the health and safety of public by ensuring that only those qualified may practice medicine.[127]

The proposed construction by this Note of the term "competent public health authority" is justified. In the first place, there is no substantial distinction between a government doctor and a private doctor. According to Department of Health (DOH) Administrative Order No. 172-01, "government physicians" refer to those with a Doctor of Medicine, registered with the Professional Regulation Commission, and are employed in government-owned hospitals or public health facilities.[128] Meanwhile, "private practice" is defined as the rendering of health services with remuneration.[129] Hence, aside from being employed by the government, there are no additional qualifications for one to be a government doctor. In fact, government physicians may also engage in private practice upon issuance of a permit for private practice.[130] Lastly, both government and private physicians may be certified as diplomates or fellows without difference as to the requirements.[131]

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[124] [Hereinafter "*St. Luke's*"], G.R. No. 162053, 517 SCRA 677, Mar. 7, 2007.

[125] Rep. Act No. 7431 (1992), § 15. Radiologic Technology Act of 1992.

[126] *St. Luke's*, 517 SCRA at 680–81.

[127] *Id.* at 686–87.

[128] Dep't of Health (DOH) Adm. Order No. 172-01 (2001), § II(b). Policies and Guidelines on the Private Practice of Medical and Paramedical Professionals in Government Health Facilities.

[129] *Id.* at § II(a).

[130] *Id.* at § IV(c).

[131] *Id.* at § II(c).

Moreover, the decisions of the Court ruling against the propriety of the certification appear to be more hinged on the failure to indicate the incurability of the disease of the employee rather than the nature of employment of the physician who issued the certification. Although the Court in *Cebu Royal Plant*[132] and *Cathay Pacific*[133] rejected the certification issued by company doctors on the ground that they were not "competent public health authority," it did not really explain why they were not considered as such. Meanwhile, in *Sevillana*, the Court quoted with approval the finding that there was no certification from "a medical practitioner," which suggests a wider class of medical professionals.[134] Notwithstanding the inconsistency of the Court as to the meaning of the "competent public health authority," what was uniform in its decisions was the failure of the medical certificates to state that the disease was incurable. Thus, it is argued that the essence of the certification requirement is the correctness of the finding that the disease is incurable within a period of six months even with proper medical treatment. Indeed, as long as the physician is knowledgeable about the disease and is able to correctly diagnose the same as incurable, it does not matter whether they work in a government or private hospital. This is precisely the purpose for requiring the higher standard of qualification as a diplomate or fellow—it ensures that the physician has received special training in the relevant field of medicine as to enable them to properly diagnose the condition of the employee.[135]

At this juncture, acknowledgment must be made of the fact that public health is a distinct field of practice in medicine. It has been defined as "the science and the art of preventing disease, prolonging life, and promoting physical health and efficiency through organized community efforts."[136] In the Philippines, preventive medicine and public health are among the subjects included in the licensure examination for doctors.[137] The Philippine Society of Public Health Physicians ("PSPHP") is also one of the recognized specialty societies in the country which offers continuing education to its members.[138]

However, in *Deoferio*, there is no indication that the doctor who issued the certification, which was given credence by the Court, is one who

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[132] *Cebu Royal Plant*, 153 SCRA 38, 43–44.

[133] *Cathay Pacific*, 362 SCRA 316, 323.

[134] *Sevillana*, 356 SCRA 451, 467–68.

[135] Manuel Dayrit et al., *The Philippines Health System Review*, 8 HEALTH SYST. TRANSIT. 21, 53 (2018).

[136] Charles-Edward Amory Winslow, *The Untilled Fields of Public Health*, 51 SCIENCE 23, 30 (1920).

[137] Rep. Act No. 2382 (1959), § 21, *amended by* Rep. Act No. 4224 (1965), § 1.

[138] *Membership*, PHIL. SOC'Y OF PUB. HEALTH PHYSICIANS WEBSITE, *available at* http://psphp.org/membership (last accessed June 19, 2023).

specializes in public health. The Court only referred to a "consultant psychiatrist of the Philippine General Hospital" without elaborating further on the specific qualifications of the physician.[139] Nevertheless, what is clear in that case is that the doctor who issued the certification is a psychiatrist, who is presumably knowledgeable in mental disorders, including schizophrenia, and thus competent to diagnose the condition of the employee. Hence, this Note posits that a physician need not have a specialty in public health to be able to issue the required certification. Following *Sevillana*, a medical practitioner must be considered as competent if he or she has been certified by the relevant specialty society related to the disease for which the dismissal of the employee is sought.[140]

Finally, the law already provides existing means to prevent the unilateral and arbitrary determination by the employer of the gravity and incurability of the disease of the employee, which is the very intent of the certification requirement. R.A. No. 2382 empowers the Board to conduct administrative investigations and may reprimand, suspend, or revoke the registration of erring physicians.[141] Doctors may be disciplined when they knowingly issue any false medical certificate, or when they violate any provision of the Code of Ethics as approved by the Philippine Medical Association.[142] Under the said Code of Ethics of the Medical Profession, physicians "shall exercise good faith, honesty, and tact in expressing opinions as to the diagnosis, treatment options, risks involved, and prognosis to a patient under care" and "shall neither conceal, understate nor exaggerate the patient's condition."[143] Hence, the possible revocation of medical license for issuing a false certification regarding an employee's health should be sufficient deterrent for the evil sought to be prevented by the law.

Interestingly, federal laws in the United States do not require certifications from government doctors in seeking reasonable accommodations due to disability or for availing of family and medical leave. At the outset, it is important to note that employment in the United States is presumed to be *at will*, meaning that employers may terminate their employees at will, for any or no reason, as long as the dismissal is not prohibited by law.[144]

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[139] *Id.* at 681.

[140] *Sevillana*, 356 SCRA 451, 467–68.

[141] The Medical Act of 1959, § 22.

[142] § 24.

[143] Code of Ethics of the Medical Profession Jointly Adopted and Approved by the Philippine Medical Association and the Professional Regulation Commission (2019), art. III, § 3.5.

[144] Guz v. Bechtel Nat'l, Inc., 24 Cal. 4th 317, 100 Cal. Rptr. 2d 352, 8 P.3d 1089 (2000).

This is different from employment in the Philippines, where employees enjoy security of tenure and may only be dismissed upon causes provided by law.[145] Nevertheless, among the grounds for dismissal prohibited under U.S. federal law are the disability and sickness of the employee.

Under the Americans with Disabilities Act ("ADA"), discrimination on the basis of disability in relation to the dismissal of employees is prohibited.[146] Instead, reasonable accommodations such as job restructuring, modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices may be extended to individuals with disabilities.[147] The ADA defines disability as "a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment."[148] In turn, major life activities include, among others, performing manual tasks and working.[149] Moreover, the ADA does not cover individuals who have transitory and minor impairments, or those impaired for not more than six months.[150] The ADA does not require the employee to present any certification by a government doctor to be granted reasonable accommodations; instead, the employer may require the health care provider of the employee to provide the medical information or documentation.[151]

Likewise, the Family and Medical Leave Act ("FMLA") prohibits employers from dismissing employees who have availed themselves of leave due to serious health conditions which render them unable to perform work.[152] The FMLA defines a "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider.[153] Eligible employees are entitled to avail themselves of leave due to a serious health condition which makes them unable to perform the functions of their position.[154] Employers may require returning employees to present certification from their health care provider that said

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[145] LAB. CODE, art. 294.

[146] 42 U.S.C. § 12112(a), *as amended*. Americans with Disabilities Act of 1990.

[147] § 12111(9)

[148] § 12102(1).

[149] § 12102(2).

[150] § 12102(3).

[151] *Health Care Workers and the Americans with Disabilities Act*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION WEBSITE, *at* https://www.eeoc.gov/laws/guidance/health-care-workers-and-americans-disabilities-act.

[152] 29 U.S.C. 2601, §§ 2612, 2615. Family and Medical Leave Act of 1993.

[153] § 2611(11).

[154] § 2612(a)(1)(D).

employees are fit to resume work.[155] "*Health care provider*" is defined as "a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices."[156] Thus, the FMLA only requires a certification from a licensed doctor, regardless of the nature of their practice. While neither the ADA nor the FMLA are considered binding in the Philippines, they still offer valuable insights as to the medical certification required to afford rights to employees.

B. The Twin Notice Rule Applies in Termination of Employment Due to Disease

Jurisprudence is replete with cases applying the twin notice requirement in cases involving termination due to disease. Even before the issuance of D.O. No. 147-15, when there was still no rule regarding the procedural requirements for termination under Article 299 of the Labor Code, the Court has always used the twin notice rule in deciding illegal dismissal cases filed by employees with illnesses.

For instance, in *Sy v. Court of Appeals*,[157] the Court found the dismissal of the employee illegal for violation of both substantive and procedural aspects of due process.[158] Private respondent Jaime Sahot, a helper hired by petitioner Sy's SBT Trucking Corp., filed a week-long leave to be treated for his various eye conditions, hepatosplenomegaly, urinary tract infection, and heart enlargement. When Sahot tried to extend his leave, SBT threatened to terminate his employment, and actually did so when Sahot failed to go to work due to his painful left thigh.[159] The Court found that aside from the failure of management to show the required medical certificate, it also did not observe the proper procedure in dismissing the employee.[160] Prior to the dismissal of an employee, the employer must furnish such employee with two written notices: one apprising them of the particular acts or omissions for which their dismissal is sought, which is the equivalent of a charge; and another notice informing them of their dismissal, to be issued after the employee has been given reasonable opportunity to answer and to be heard on their defense.[161] None of these were followed in the case.

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[155] § 2614.
[156] § 2611(6)(A).
[157] G.R. No. 142293, 398 SCRA 301, Feb. 27, 2003.
[158] *Id.* at 312.
[159] *Id.* at 303–04.
[160] *Id.* at 312.
[161] *Id.*

Likewise, in *Manly Express, Inc. v. Payong*,[162] the Court affirmed the need to comply with the twin notice requirement prior to terminations due to disease.[163] The case involved the dismissal of respondent Romualdo Payong, Jr., a welder, after he was diagnosed with eye cataract. Even after getting his cataract removed, he was barred from returning to work and was issued a termination letter about seven months later.[164] The Court found that Payong was illegally dismissed as petitioner Manly Express, Inc. failed to prove the substantive elements for a valid dismissal due to disease and failed to comply with the twin notice rule.[165] It elucidated that the first written notice must state that the employee is being sought to be dismissed for their act or omission, or health condition if applicable. Otherwise, it will not suffice to comply with the rules.[166]

The mandatory nature of the twin notice requirement in termination of employment due to disease was underscored by the Court in the aforementioned case of *Deoferio*.[167] In that case, Deoferio was given a single termination letter stating his dismissal, without giving him the first notice informing him of the charge and without affording him the opportunity to be heard. The Court affirmed its previous rulings to the effect that the twin notice rule applies in cases of termination due to disease and explained that this is in line with the security of tenure guaranteed to workers, to wit:

> The Labor Code and its IRR are silent on the procedural due process required in terminations due to disease. Despite the seeming gap in the law, Section 2, Rule 1, Book VI of the IRR expressly states that the employee should be afforded procedural due process in all cases of dismissals.
>
> In *Sy v. Court of Appeals* and *Manly Express, Inc. v. Payong, Jr.,* promulgated in 2003 and 2005, respectively, the Court finally pronounced the rule that the employer must furnish the employee two written notices in terminations due to disease, namely: (1) the notice to apprise the employee of the ground for which his dismissal is sought; and (2) the notice informing the employee of his dismissal, to be issued after the employee has been given reasonable opportunity to answer and to be heard on his defense. These rulings reinforce the State policy of protecting the workers

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[162] G.R. No. 167462, 434 SCRA 323, 330, Oct. 25, 2005.
[163] *Id.* at 330.
[164] *Id.* at 325.
[165] *Id.* at 330.
[166] *Id.*
[167] *Deoferio*, 726 SCRA 676, 689.

> from being terminated without cause and without affording them the opportunity to explain their side of the controversy.[168]

The Court thus adjudged Intel liable for nominal damages in the amount of PHP 30,000 for violating Deoferio's right to statutory procedural due process.[169] According to the Court, terminations due to disease involve neither fault on the part of the employee nor a willful exercise of the employer of its management prerogative. Instead, terminations due to disease occur due to matters beyond the control of the employer and the employee.[170] Various factors must be considered in determining nominal damages for violations of procedural due process requirements in terminations due to disease. Hence:

> In fixing the amount of nominal damages whose determination is addressed to our sound discretion, the Court should take into account several factors surrounding the case, such as: (1) the employer's financial, medical, and/or moral assistance to the sick employee; (2) the flexibility and leeway that the employer allowed the sick employee in performing his duties while attending to his medical needs; (3) the employer's grant of other termination benefits in favor of the employee; and (4) whether there was a *bona fide* attempt on the part of the employer to comply with the twin-notice requirement as opposed to giving no notice at all.[171]

Meanwhile, in *Fuji Television Network, Inc. v. Espiritu*,[172] respondent Arlene Espiritu was employed by petitioner Fuji as a correspondent for Philippine news. When she was diagnosed with lung cancer, Fuji informed her that it will no longer be renewing her contract and subsequently made Espiritu sign a non-renewal contract under the threat of withholding her salary.[173] In finding respondent to be illegally dismissed, the Court did not explicitly mention the twin notice requirement but noted that Espiritu was not given any chance to explain how her condition could affect her job or to present medical certificates to the effect that she could still perform her job despite undergoing chemotherapy.[174] This is consistent with the twin notice requirement, which compels employers to provide employees reasonable opportunity to answer and to be heard on their defense.

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[168] *Id.* at 689–90.
[169] *Id.* at 692.
[170] *Id.*
[171] *Id.*
[172] [Hereinafter "*Fuji*"], G.R. Nos. 204944, 744 SCRA 31, Dec. 3, 2014.
[173] *Id.* at 41.
[174] *Id.* at 95.

Notwithstanding the decisions of the Court in *Deoferio* and *Fuji*, DOLE issued D.O. No. 147-15 in 2015, which waives the twin notice requirement in terminations due to disease under Article 299 of the Labor Code and merely requires a notice each to the employee and the appropriate DOLE Regional Office specifying the grounds for termination at least thirty days before the effectivity of the dismissal.[175] This is also despite the fact that Section 5 of D.O. No. 147-15 itself states that the standards of due process are laid down in "settled jurisprudence."[176]

Notably, the Court still has not decided a case involving dismissal due to illness applying D.O. No. 147-15. And yet, just recently, the Court in *Jerzon Manpower and Trading, Inc. v. Nato*[177] cited *Deoferio* and applied the twin notice rule in ruling on the merits of the illegal dismissal case.[178] Respondent Emmanuel Nato was hired by petitioner Jerzon Manpower and Trading, Inc. as a machine operator on behalf of a foreign principal. About a year after his deployment to Taiwan, Nato was confined due to chronic kidney disease and had to undergo daily dialysis for 10 days. Afterwards, he was repatriated to the Philippines.[179] The Court found his repatriation illegal, there being no medical certification issued by a competent public authority showing his condition.[180] It also found that Jerzon violated the twin notice rule, because after Nato's dialysis sessions, he was immediately brought to the airport without any explanation as to his repatriation. In fact, even when Nato was still confined at the hospital, no notice was given to him informing him about the employer's intent to dismiss him from work.[181]

Hence, it is clear that the consistent position of the Court is to follow the twin notice rule in deciding cases involving termination due to disease. As the Court explained in *Deoferio*, this is in line with the policy of the State to protect labor, including the right to security of tenure of workers, by preventing them from being removed from work without cause and without due process.[182] Furthermore, it bears mentioning that D.O. No. 147-15 was only promulgated pursuant to the power given by the Labor Code to the DOLE to create rules and regulations implementing the Code, and while such

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[175] DOLE Dep't Order No. 147-15 (2015), § 5.3.

[176] *Id.* at § 5.

[177] G.R. No. 230211, Oct. 6, 2021.

[178] *Id.* at 14 n.58. This pinpoint citation refers to the copy of this decision uploaded to the Supreme Court Website.

[179] *Id.* at 2–3.

[180] *Id.* at 14.

[181] *Id.* at 14–15.

[182] *Deoferio*, 726 SCRA 676, 690.

rule has the force and effect of law and should be accorded great respect,[183] its application must always be in harmony with the law it seeks to interpret.[184] D.O. No. 147-15 is still subject to the interpretation by the Court pursuant to its power to interpret the law.[185] In this regard, the reasonable construction that may be derived from the Labor Code and jurisprudence is that the twin notice rule applies in cases of termination due to disease under Article 299 of the Labor Code. Therefore, the new rule created by Section 5.3 of D.O. No. 147-15, that the twin notice requirement does not apply to dismissals under Article 299 of the Labor Code, is devoid of legal basis and must be declared as unconstitutional, being contrary to law and jurisprudence.

V. LEGAL IMPLICATIONS OF POST-COVID CONDITIONS

There are medical conditions which the law expressly prohibits as grounds for termination. For instance, employees who have or had tuberculosis shall not be discriminated against and shall be entitled to work for as long as they are certified by the company's accredited health provider as medically fit. They shall also be restored to work as soon as their illness is controlled.[186] Likewise, employees shall not be terminated on basis of actual, perceived, or suspected hepatitis B[187] and HIV-AIDS status.[188] Those who are found to be positive shall not be terminated from work without proper medical testing.[189] Finally, employees shall not be terminated from work on the basis of actual, perceived or suspected mental health condition, unless the condition progresses to such severity that it affects the employees' own safety or the safety of their co-workers and work performance and productivity.[190] A certification issued by a "competent public health authority with expertise on mental health" is required to prove the same.[191]

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[183] Land Bank of the Phil. v. Obias [hereinafter "*Obias*"], G.R. No. 184406, 668 SCRA 265, 271, Mar. 14, 2012.

[184] Land Bank of the Phil. v. Franco, G.R. No. 203242, 896 SCRA 148, 178, Mar. 12, 2019.

[185] *Obias*, 668 SCRA 265, 271.

[186] Exec. Order No. 187 (2003); DOLE Dep't Order No. 73-05 (2005); DOLE Dep't Order No. 147-15 (2015), § 6.

[187] DOLE Dep't Order No. 147-15 (2015), § 6.

[188] Rep. Act No. 8504 (1998), § 37; DOLE Dep't Order No. 147-15 (2015), § 6.

[189] DOLE Dep't Advisory No. 05-2010 (2010), § III(C)(1). Guidelines for the Implementation of a Workplace Policy and Program on Hepatitis B.

[190] DOLE Dep't Order No. 208-20 (2020), § IV(C)(1)(e); Rep. Act No. 11036 (2018), § 25.

[191] *Id.*

However, a peculiar situation is presented by post-COVID-19 conditions, also known as "long COVID." According to the World Health Organization, long COVID "occurs in individuals with a history of probable or confirmed SARS-CoV-2 infection, usually 3 months from the onset of COVID-19 with symptoms that last for at least 2 months and cannot be explained by an alternative diagnosis."[192] Common symptoms of long COVID include "fatigue, dyspnea, cardiac abnormalities, cognitive impairment, sleep disturbances, symptoms of posttraumatic stress disorder, muscle pain, concentration problems, and headache."[193] Per estimates by the US Centers for Disease Control and Prevention, more than 30% of hospitalized COVID-19 patients in the United States eventually develop long COVID after six months.[194] Meanwhile in the Philippines, 10–15% of COVID-19 patients have been estimated to be affected by long COVID.[195]

The increasing prevalence of and risks caused by long COVID has legal implications in the labor sector. According to one study, 45.2% of individual respondents afflicted with long COVID had to reduce their work hours prior to their illness, while 22.3% of respondents stopped working altogether due to their condition.[196] Because of its lingering effects, persons allegedly suffering from long COVID had sought reasonable accommodations for their work, to differing results. In the United States, one district court had ruled that persons afflicted with a post-COVID-19 condition may be treated as a person with disability for purposes of reasonable accommodation under the ADA.[197] In *Burbach v. Arconic Corp.*, the district court dismissed the motion to dismiss filed by defendant employer against the suit of plaintiff employee after being dismissed from work.[198] The employee alleged that his COVID-19 illness was not merely temporary and substantially limited his major life activity, and thus, he should be regarded as disabled

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[192] World Health Organization, A clinical case definition of post COVID-19 condition by a Delphi consensus, at 1, ¶ 3, WHO Doc. WHO/2019-nCoV/Post_COVID-19_condition/Clinical_case_definition/2021.1 (Oct. 6, 2021).

[193] Harry Crook et al., *Long COVID—Mechanisms, Risk Factors, and Management*, 374 THE BMJ n1648, at 1 (2021).

[194] Centers for Disease Control and Prevention, Long COVID, *at* https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html (last updated Sept. 1, 2022).

[195] Cristina Eloisa Baclig, *New Studies Shine Light on Need for Long COVID Research in PH*, INQUIRER.NET, Aug. 31, 2022, *at* https://newsinfo.inquirer.net/1656262/new-studies-shine-light-on-need-for-long-covid-research-in-ph.

[196] Hannah E. Davis et al., *Characterizing Long COVID in an International Cohort: 7 Months of Symptoms and Their Impact*, 38 ECLINICALMEDICINE 101019, at 1 (2021).

[197] Burbach v. Arconic Corp., 561 F. Supp. 3d 508 (W.D. Pa. 2021).

[198] *Id.*

under the ADA.[199] The court found that the employee had indeed sufficiently alleged facts to show that he was disabled and regarded as disabled at the time of his termination, because despite the improvement of his symptoms and being allowed to leave quarantine, the employee continued to be treated by his doctor for his symptoms up to time he was dismissed.[200]

However, courts in the United States had also denied disability discrimination claims due to the lack of evidence showing how the persistence of post-COVID-19 conditions had impaired major life activities of claimants. In one case, the court dismissed the discrimination suit filed by the plaintiff nurse, who had been suffering from chronic kidney disease since infancy, after he was refused access to a respirator when handling a suspected COVID-19 patient and eventually contracted COVID-19 himself.[201] The district court ruled that plaintiff failed to allege that his chronic kidney disease was aggravated by his COVID-19 infection and that long COVID constitutes a disability.[202] Similarly, another court had ruled that a mere allegation by the plaintiff that an employee failed to go to work due to COVID-19 infection, without more specific descriptions of their symptoms, does not suffice to comply with the requirement under the ADA that a person be substantially limited in their ability to work.[203] According to the court, if the plaintiff is correct, "employers across the nation will be shocked to learn that if any of their employees are sick for just a few days, then those employees are 'disabled' and now protected by the ADA."[204]

In the Philippines, long COVID may not be classified as a disease in the contemplation of Labor Code. To reiterate, for a valid termination due to disease under Article 299 of the Labor Code, the employer must show that an employee is suffering from a disease and their continued employment is prohibited by law or prejudicial to the health of the employee or their co-employees, which can only be proven though a certification by a competent medical professional. However, due to the difficulty of diagnosing the condition thus far, employers will find it hard to obtain the needed medical certification in order to dismiss their employees due to post-COVID-19 symptoms.

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[199] *Id.*

[200] *Id.*

[201] Eari v. Good Samaritan Hosp. of Suffern, 20 CV 3119 (NSR) (S.D.N.Y. Sept. 28, 2021).

[202] *Id.*

[203] Champion v. Mannington Mills, Inc., 538 F. Supp. 3d 1344 (M.D. Ga. 2021).

[204] *Id.*

Additionally, using American law and jurisprudence as guidance, this Note posits that long COVID may be considered as a disability under Philippine law to afford more protection to employees. R.A. No. 7277 defines persons with disabilities ("PWDs") as "those suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being."[205] Among the disabilities recognized by law are orthopedic or moving disabilities, communication deficits, visual or seeing disabilities, learning disabilities, chronic illnesses with disability, mental disabilities, and psychosocial disabilities.[206] The DOH defines "chronic illnesses" as: "a group of health conditions that last a long time. It may get slowly worse over time or may become permanent or it may lead to death. It may cause permanent change to the body and it will certainly affect the person's quality of life."[207] In this regard, long COVID may be considered as a disability because of the persistence of its numerous symptoms, which continuously endanger the health of persons suffering therefrom and affect their quality of life.

Hence, pursuant to the Magna Carta for Persons with Disability, in which persons with disability shall not be discriminated on the basis of disability with regard to all matters of employment, including the continuance of their employment,[208] persons suffering from long COVID should also be considered as PWDs protected by the law. They cannot be denied employment on the sole ground of their condition, unless the employer proves that the employees' disability impairs their performance of work to the prejudice of the employer and unless the employer first extends reasonable accommodations to the disabled employees.[209]

VI. CONCLUSION

The Philippines has indeed come a long way when it comes to workers' rights. The right of employees to security of tenure has achieved constitutional imprimatur and has been greatly protected by statutes and jurisprudence. However, this is not to say that the law is fully clear in this

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[205] Rep. Act No. 7277 (1992), § 4(a). Magna Carta for Disabled Persons.

[206] Rep. Act No. 7277 Rules & Regs. (1995), Rule IV, § 4.

[207] DOH Adm. Order No. 2009-11 (2009). Guidelines to Implement the Provisions of Republic Act 9442, Otherwise Known as "An Act Amending Republic Act No. 7277, Otherwise Known as the "Magna Carta for Disabled Persons, and for Other Purposes," for the Provision of Medical and Related Discounts and Special Privileges.

[208] Magna Carta for Disabled Persons (1992), § 5, *amended by* Rep. Act No. 10524 (2013), § 1; Rep. Act No. 10524 Rules & Regs. (2016), Rule IV, § 6.

[209] Rep. Act No. 7277 Rules & Regs. (1995), Rule II, § 1.2.

regard. There are still gray areas in the law which might invite conflicts between the interests of labor and management. Among these gray areas are the gaps with respect to the due process requirements in terminations of employment on the ground of disease. These are the gaps which this Note seeks to fill.

First, the term "competent public health authority" should be given a clear meaning. Despite it being one of the substantive requisites for a valid dismissal due to disease, there is no express definition for this term in the Labor Code nor in its Implementing Rules. The number of cases decided by the Court, in which medical certifications were found insufficient due to them not being issued by a competent public health authority, highlight the lack of understanding on the part of employers as to its meaning, precisely because not much guidance has been given in this regard. Hence, this Note posits that for the purpose of obtaining the certification required by the Labor Code, "competent public health authority" must be defined as a competent medical practitioner—whether employed by the government or engaged in private practice—who has satisfactorily passed the mandatory medical licensure examination, is duly registered with the medical board, and is certified as a Diplomate or Fellow by the relevant specialty society related to the disease for which the dismissal of an employee is sought.

This proposal will be mutually beneficial to workers and employers. On one hand, employers will not be restricted to consultations with government doctors and will avoid unnecessary litigation brought about by improper certifications. On the other hand, employees may be given more access to health checks through private doctors and those who are suffering from illnesses will be more secure in their employment, because the certification ensures that only the most qualified physicians will diagnose the incurability of their condition. There is no reason to restrict "competent public health authority" to government doctors and exclude those practicing in private, especially those hired by employers, when such doctors are fully competent and able to ascertain the health of an employee. At the end of the day, every licensed doctor swears by the Hippocratic Oath and it is only proper to ascribe good faith in their practice.

Second, Section 5.3 of D.O. No. 147-15, insofar as it dispenses with the twin notice requirement in terminations of employment due to disease, is unconstitutional and hence null and void for being contrary to the right of workers to security of tenure. While jurisprudence has constantly treated terminations due to disease similarly as just cause dismissals in terms of the application of the twin notice rule, D.O. No. 147-15 provides otherwise and lowers the standard to a single notice upon the employee and the DOLE at

least 30 days prior to the termination. Thus, consistent with the decisions of the Court, employers must still furnish employees with two written notices before terminating them on account of their illness: one informing them of the cause for which their dismissal is sought, and another advising them of their dismissal, to be issued only after employees have been given reasonable opportunity to answer and to be heard on their defense.

Extending the twin notice requirement to terminations under Article 299 of the Labor Code will advance the State policy of protecting labor and will simultaneously recognize the interests of management by preventing illegal dismissal litigations due to incompatible legal rules. While dismissals with cause but attended by a violation of procedural due process requirements are still valid, employers will still be held liable for nominal damages, following *Agabon*.[210] PHP 30,000 for nominal damages is no meager sum, and this can always be increased by the Court depending on the circumstances, as explained in *Deoferio*.[211] Finally, applying the twin notice to rule in such cases will also be more attuned to the reality in the Philippines. The country remains in a public health crisis due to the COVID-19 pandemic, and employees are more prone to dismissal not only due to closure of establishments but also because of health concerns.

Third, Congress and the DOH are implored to recognize long COVID as a disability under the law and to treat persons suffering from long COVID as PWDs. Persons afflicted with long COVID who experience substantial impairment in their activities may be regarded as PWDs, specifically for chronic illnesses with disability under the Implementing Rules of the Magna Carta for Disabled Persons.[212] As such, they cannot be discriminated at work and may seek reasonable accommodations from their employers. This recommendation will be more consistent with the policy of the State to support the improvement and integration of PWDs into the mainstream of society by ensuring their rehabilitation, self-development, and self-reliance.[213] This is also consistent with the growing recognition of long COVID as a disability in other jurisdictions.

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[210] *Agabon*, 442 SCRA 573, 617.

[211] *Deoferio*, 726 SCRA 676, 692.

[212] Rep. Act No. 7277 Rules & Regs. (1995), Rule IV, § 4.

[213] Rep. Act No. 7277 (1992), § 2(a). Disabled persons are part of Philippine society, thus the State shall give full support to the improvement of the total well-being of disabled persons and their integration into the mainstream of society. Toward this end, the State shall adopt policies ensuring the rehabilitation, self-development and self-reliance of disabled persons. It shall develop their skills and potentials to enable them to compete favorably for available opportunities.

It is important to recognize that steps are continuously being taken to strengthen workers' rights in the Philippines. There are two pending bills in Congress, one in the House of Representatives[214] and another in Senate,[215] for proposed revisions on the Labor Code. It is worthy to note that under both of these bills, the proposed provision for disease as a ground to termination already incorporates the requirement for certification by a competent public health authority that the disease is incurable within six months even with proper medical treatment. Thus, if these bills are enacted, the certification requirement would not just be found in the Implementing Rules but in the Labor Code itself.

While these pending bills are laudable in seeking to revise the Labor Code and integrate into it existing laws and international labor conventions, they still do not take into account the existing gaps regarding due process requirements in terminations due to disease. Verily, there is still a need to address these issues. Doing so will only be to the best interests of both labor and management in the event of severance of the employment relationship. After all, the State itself has the mandate to regulate the relations between workers and employers[216]—in sickness and in health.

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[214] H. No. 5151, 19th Cong., 1st Sess., art. 300 (2022). Revised Labor Code of the Philippines.

[215] S. No. 1311, 19th Cong., 1st Sess., art. 300 (2022). Revised Labor Code of the Philippines.

[216] CONST. art. XIII, § 3.