



# Due Process Termination: How to Legally Dismiss an Employee

*Jericho Del Puerto*

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## **Due Process Termination: How to Legally Dismiss an Employee** Jericho Del Puerto

A labor complaint for illegal dismissal creates a lot of problems for a business.

With a finding of illegal dismissal, an employee may be awarded reinstatement, full back wages, moral damages, exemplary damages, nominal damages, and attorney's fees. These could be a huge monetary liability against the company.

Worse, the professional manager may be solidarily liable with the employer for these amounts. Illegal dismissal is, thus, not just a concern of the employer but of the human resource practitioner.

This book on Due Process Termination: How to Legally Dismiss an Employee with Best Legal Practices aims to provide a quick easy reference and guide on the proper way to imposing disciplinary actions, including termination.

## DUE PROCESS TERMINATION

How to Legally Dismiss an Employee with Best Legal Practices

Part 1: Why is due process termination important?

Chapter 1: Concept of due process termination

Two kinds of due process: substantive and procedural

Social justice

Employment as a property right

Security of tenure

Management prerogative limited

Chapter 2: Illegal Dismissal, Result of No Due Process

Reinstatement

Full back wages

Moral damages

Exemplary damages

Nominal damages

Attorney's fees

Solidary liability of professional managers with employers

Part 2: Substantive Due Process

Chapter 3: Just Causes

Serious misconduct or willful disobedience

Gross and habitual neglect

Fraud or breach of trust

Commission of a crime

Other analogous causes

#### Chapter 4: Authorized Causes

Installation of labor saving devices

Redundancy

Retrenchment

Closure of establishment

Disease of an employee

#### Chapter 5: Other Legal Causes

Failure of probationary employee to qualify

Termination of project/undertaking for a project employee

End of season for a seasonal employee

Lapse of period for a fixed-term employee

#### Part 3: Procedural Due Process

##### Chapter 6: The 1st Written Notice

Requirements of a 1st Written Notice

Notice to explain not sufficient

Proof of service required

##### Chapter 7: The Opportunity to be Heard

Written reply sufficient, administrative hearing optional

5-day rule for opportunity to be heard

Documentation for administrative hearing

##### Chapter 8: The 2nd Written Notice

Requirements of 2nd written notice

Proof of service required

Clearance process

Release, Waiver, and Quitclaim

FAQs

References

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