

Good News
Department of Labor and Employment
Bureau of Working Conditions
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Community quarantine, excluded in 6 months probationary period

On 30 March 2020, the Department of Labor and Employment (DOLE) released Labor Advisory No. 14, Series of 2020. This is in light of the COVID-19 pandemic and imposition of enhanced community quarantine (ECQ) in some areas nationwide. The purpose of the issuance is to clarify the exclusion of the one (1) month ECQ period in the six (6) months probationary period of employees under assessment. However, the issuance became insufficient because of the subsequent extensions on some areas under ECQ.

Commonly asked questions sent to Ask BWC relating to the matter are (1) whether employment of probationary employees is automatically extended alongside the extensions on community quarantine period and (2) whether employers may terminate probationary employees despite the pandemic and imposition of community quarantine.

Article 281 of the Labor Code of the Philippines (LCP) provides that “probationary employment shall not exceed six (6) months from the date the employee started working.” It also states that “services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement.”

To clarify the matter, the DOLE issued a supplemental guideline to address the dilemma of probationary employees. The DOLE issued Labor Advisory No. 14-A, Series of 2020 (LA 14-A) on 09 May 2020 to further the duration of the excluded period in computing the six (6) months probationary period of employees under assessment. Under LA 14-A, three (3) conditions were set, namely, (a) enforcement of enhanced or general community quarantine, (b) temporary cessation of operation or closure, and (c) temporary non-reporting to work of probationary employees as they are not required to do so due to the prior conditions.

If all three (3) conditions are present, the unworked period which falls within the community quarantine period shall be excluded in computing the six (6) months employment of probationary employees. Hence, if the worker was employed in mid-January and there was a total of three (3) months unworked period due to the conditions set in LA 14-A, the six (6)-month probationary period will end in mid-October.

Others may posit that the exclusion is unfair or unjust. In such case, we must determine the primary objective of probationary employment and that is to provide employers ample period to assess the skills and abilities of employees in keeping up with the work standards and rigors of the company. By not excluding the community quarantine period from the employees' probationary period this will deprive the employer the opportunity to thoroughly assess their probationary employees and the latter the opportunity to exhibit her full capabilities.

As provided under Article 281 of the LCP, an employer may terminate the service of a probationary employee based on two (2) grounds – termination due to just cause or termination due to failure in satisfying the reasonable standards of the employer. Hence, despite the ongoing pandemic and uncertain duration of community quarantine in the country, employers may terminate the service of a probationary employees provided that substantive and procedural due process are observed.

With the issuance of LA 14-A, the DOLE is confident that this will address queries relating to the effect of the COVID-19 pandemic and imposition of community quarantine on the employment of probationary employees.

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