

# LAST-MINUTE TIPS

ni Atty. G



# LABOR LAW

# 1

## RECRUITMENT AND PLACEMENT

Seafarers

### ❑ **Governing framework**

- 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers
- POEA Standard Employment Contract (SEC)

### ❑ **Sec. 20 POEA-SEC**

- A seafarer may claim disability benefits for work-related injury or illness
- Post-employment medical examination by a company-designated physician within 3 days of return, unless physically incapacitated
- Failure to comply = forfeiture

# 1

## RECRUITMENT AND PLACEMENT

Seafarers

### ☐ **Disability benefits**

- Total or partial
- Permanent or temporary

### ☐ **Referral to a third doctor**

- Bunayog vs. Foscon Shipmanagement, Inc. (G.R. No. 253480, 2023) - set the guidelines in cases where the seafarer requests referral to a third doctor

# 1

## RECRUITMENT AND PLACEMENT

Seafarers

### GUIDELINES

- ❑ Seafarer must send a written request to the employer
- ❑ No valid written request = findings of company doctor becomes final
- ❑ With valid written request:
  - Seafarer and employer agree = findings of third doctor is final
  - Seafarer and employer failed to agree = seafarer may file a complaint; LA will assess
  - Employer ignores or refuses referral = seafarer may file a complaint
    - Parties agreed = findings of third doctor is final
    - No agreement; employer's fault = findings of seafarer's doctor is final
    - No agreement; seafarer's fault = findings of employer's doctor is final



# 2

## TERMINATION BY EMPLOYER

Just Causes

### WAG BOS

- Willful disobedience
- Analogous causes
- Gross and habitual neglect
- Breach of trust or fraud
- Offense against employer, its family, or representative
- Serious misconduct

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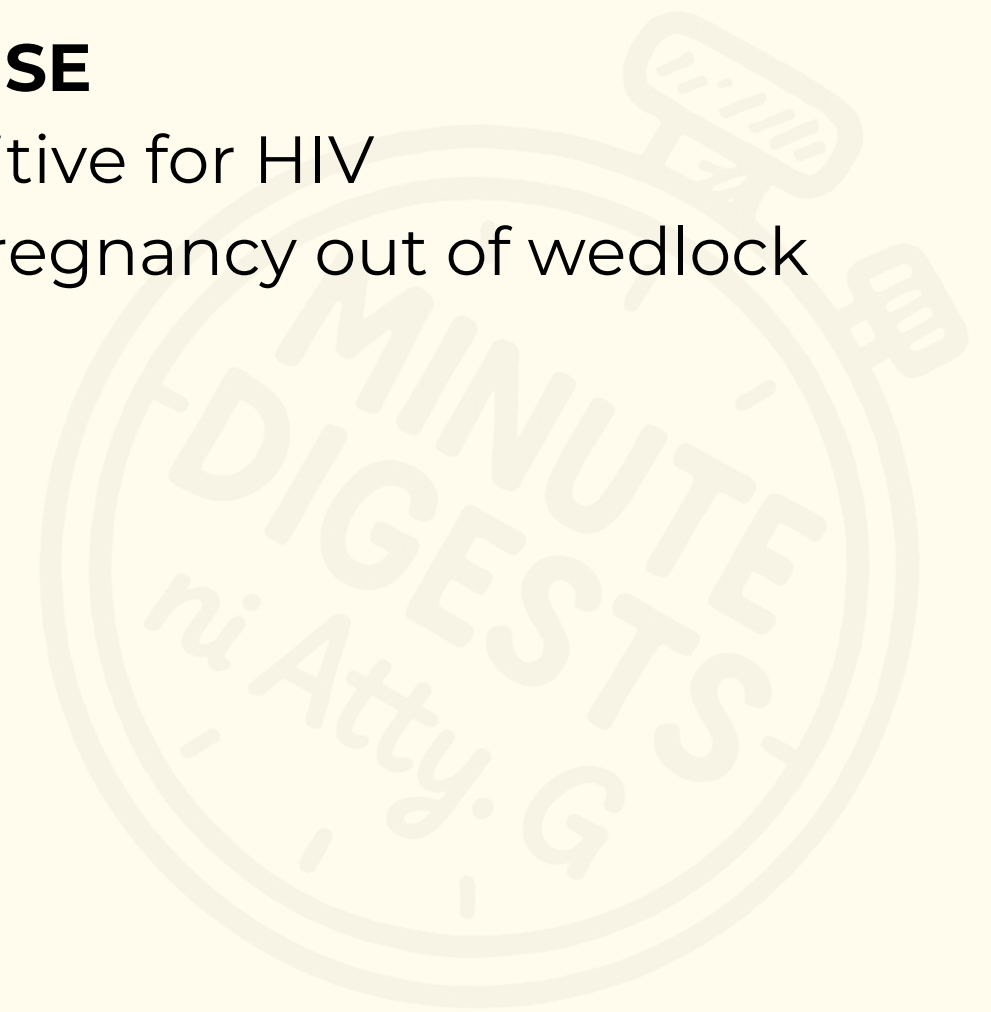
# 2

## TERMINATION BY EMPLOYER

Just Causes

### NOT JUST CAUSE

- Testing positive for HIV
- Teacher's pregnancy out of wedlock



# 2

## TERMINATION BY EMPLOYER

Just Causes

### DUE PROCESS REQUIREMENT

#### ☐ TWIN NOTICE (written)

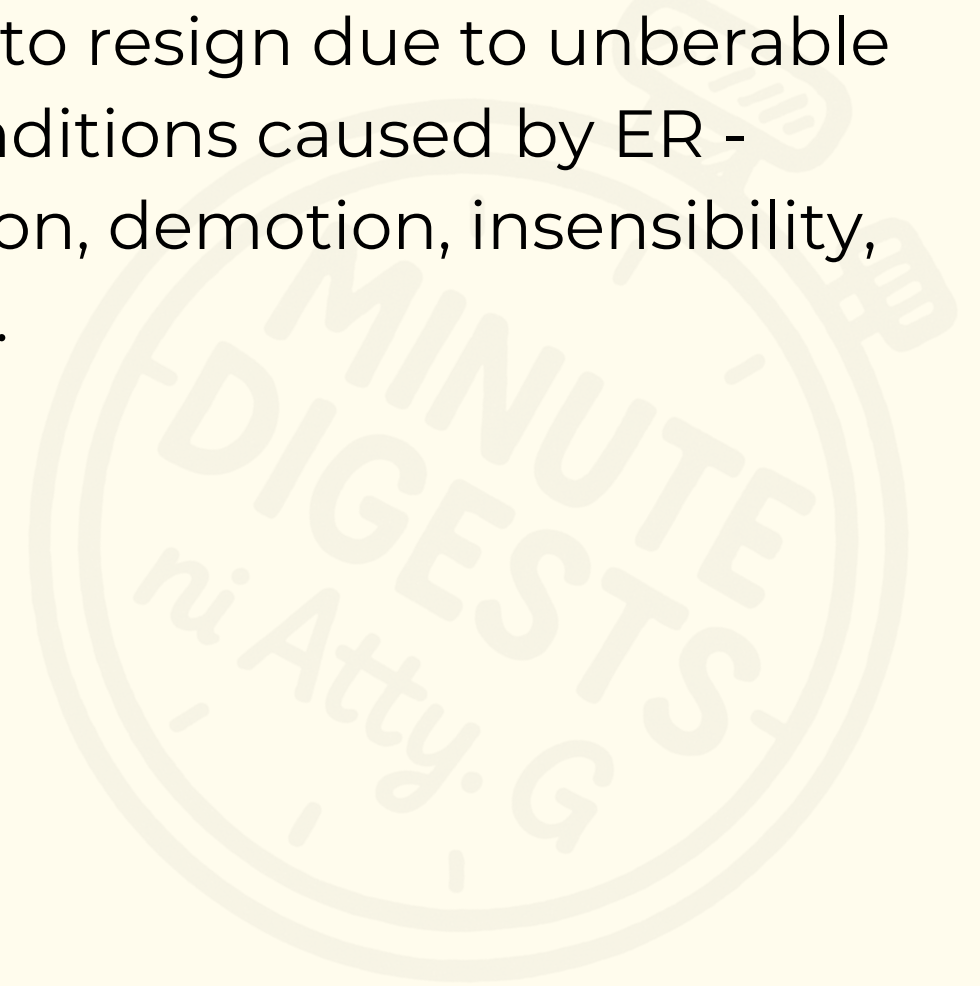
- Notice 1
  - Informs the EE of the acts/omissions constituting the ground for dismissal
  - Requires the EE to submit a written explanation within a reasonable time from receipt (not less than 5 calendar days)
- Notice 2
  - Informs the EE of ER's decision to terminate employment

☐ Failure to observe the due process requirements do not invalidate the dismissal for just cause, but render the ER liable for nominal damages

# 3

## CONSTRUCTIVE DISMISSAL

- Constructive dismissal is illegal dismissal.
- EE is forced to resign due to unberable working conditions caused by ER - discrimination, demotion, insensibility, indifference.



# 4

## LABOR RELATIONS

Peaceful Concerted Activities

### CONSTITUTIONAL BASES

- Art. XIII(3)
- Art. III(4)

### PEACEFUL CONCERTED ACTIVITIES

- Strike - temporary work stoppage due to a labor dispute
- Picketing - marching at or near company premises with placards or banners to make a labor dispute known

# 4

## LABOR RELATIONS

Peaceful Concerted Activities

❑ **Government EEs cannot strike.**

### ❑ **REQUISITES OF A VALID STRIKE**

- Staged for a valid ground
  - Bargaining deadlock
  - ULP
  - Union busting
- Complied with procedural requirements
- Conducted through lawful means
- Not in violation of arbitration agreements



# 5

## WORK RELATIONSHIPS

Employer-Employee Relations

### ❑ Existence of ER-EE relationship

#### ❑ Tests

- Four-fold Test (CHiPS)
  - Control
  - Hiring
  - Power to dismiss
  - Salary payment
- Economic Dependency Test
- Two-tiered Test

# 6

## JURISDICTION

Labor Arbiters (in general)

**General Rule:** ER-EE relationship is condition precedent for the LA to exercise jurisdiction

**Exception:** In OFW money claims, LA has exclusive original jurisdiction over claims

- arising out of ER-EE relationship, or
- by virtue of any law or contract involving OFWs, including damages (actual, moral, exemplary, etc.)

# 6

## JURISDICTION

Labor Arbiters (in general)

### TESTS

- Reasonable causal connection rule;
- Sole reference to labor law rule;
- Dispute intrinsically civil - regular courts have jurisdiction;
- ER-EE relationship is merely incidental to the main cause of action - the main cause of action determines jurisdiction.

Good!  
Luck!