

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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SENATE

S. NO. 29

RECEIVED BY: 

Introduced by Senator Flavio

EXPLANATORY NOTE

The basic constitutional prohibition against undue discrimination is found in Article III, Section I of the Constitution which states:

“SECTION 1. No person shall be deprived of life, liberty and property without due process of law, or shall any person be denied the equal protection of laws.”

In the employment context, the right to equal protection is amplified in the first paragraph of Article XIII, Section 3:

“SEC. 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.*”

To carry out the constitutional mandate, the Labor Code declares as basic policy:

“SEC. 3. Declaration of basic policy. – The State shall afford protection to labor, promote full employment, *ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers.*”

A survey of existing laws, however, reveals the lack of comprehensive legislation which touch on undue discrimination against women, members of certain religious, regional or ethnic groups, the elderly, homosexuals, and disabled. Sometimes, even Filipino workers are discriminated in their own country on account of their race.

Congress has improved the plight of workingwomen by enacting RA 6725 which strengthens the prohibition on discrimination against them with respect to the terms and conditions of a woman's employment. There appears, however, no provision of law which protects women regarding the other aspects of an employer-employee relationship, such as during pre-employment or with respect to labor relations or as regards promotion to supervisory or managerial positions.

The same may be said of disabled persons whose rights are protected by the Magna Carta for Disabled Persons (RA 7277), insofar as access to opportunities for suitable employment. Again, the law is silent as regards the other aspects of employer-employee relations.

Aside from the broad pronouncement in the Labor Code, no further protection is provided against discrimination on the basis of race or creed. There

appears to be an absence of laws which afford protection for the other marginalized groups.

In an effort to fill this lack, this bill therefore seeks to expand the coverage of legal protection against discrimination on the basis of the above attributes from the time of pre-employment and labor relations and promotions to supervisory and managerial positions. It also provides the mechanisms for the implementation of the same.

Ultimately, the elimination of all forms of discrimination against all workers will result in the enhancement of their economic viability and will make them realize their full potential in the service of the nation.


JUAN M. FLAVIER
Senator

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUN 30 P12:18

SENATE

S. NO. 29

RECEIVED BY: 

Introduced by Senator Flavier

THE EQUAL EMPLOYMENT OPPORTUNITY ACT

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Declaration of Policy. – It is the policy of the State to protect and enhance the right of all people to human dignity and reduce economic inequalities by promoting equality of employment opportunities for all regardless of sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height.

SEC. 2. Definition of Terms – For the purposes of this Act:

- 2.1. The term ‘employer’ means a person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking, or activity of any kind and uses the services of fifteen (15) or more employees who are under the employer’s control as regards employment for each working day in each of twenty (20) or more calendar weeks, except the Government of the Republic of the Philippines, and any of its political subdivisions, branches, and instrumentalities, including government-owned and controlled corporations with original charters.
- 2.2. The term “employment agency” means any person or entity engaged in the act of recruitment and placement which consists of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals,

utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not. Provided, That any person or entity which in any manner, offers or promises for a fee employment shall be deemed engaged in recruitment and placement. Provided, further, That the term shall include both "private fee-charging employment agency" and "private recruitment entity" within the contemplation of Book 1 of Labor Code, PD 442, as amended.

- 2.3. The term "labor organization" shall have the same meaning as defined in Article 212 (g) of the Labor Code.
- 2.4. The term "employee" means an individual employed by an employer.
- 2.5. The term "creed" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- 2.6. The term "age" shall refer to individuals forty (40) of age or older
- 2.7. The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions, and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs as other persons not so affected but similar

in their ability or inability to work, and nothing in this Act shall be interpreted to permit otherwise.

- 2.8. The term "disability" shall have the same meaning as defined in Section 4 © of the Magna Carta for Disabled Persons, RA 7227.
- 2.9. The term "Secretary" shall refer to the Secretary of labor and Employment or his duly authorized representative from the Bureau.
- 2.10. The term "Bureau" shall refer to the Bureau of Local Employment.
- 2.11. The term "Labor Code" shall refer to the Labor Code of the Philippines, P.D. 442, as amended.

SEC. 3. Employer Practices. – It shall be an unlawful practice for an employer:

- 3.1. To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the latter's compensation, terms, conditions, or privileges of employment, including but not limited to promotion to supervisory or managerial positions because of such individual's sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height; or
- 3.2. To limit, segregate, or classify his employees in any way which would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the latter's status as an employee, because of sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height.

SEC. 4. Employment Agency Practices. – It shall be an unlawful employment practices for the employment agency to fail or refuse to refer for employment any individual on the basis of the latter's sex, race, creed, age,

appearance, sexual-orientation, regional or ethnic origin, disability, weight or height.

SEC. 5. Labor Organization Practices. – It shall be an unlawful employment practice for a labor organization:

5.1. To exclude or to expel from its membership, or otherwise to discriminate against, any member because of the latter's sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height; or

5.2. To limit, segregate, or classify or fail or refuse to refer for employment any member, in any way which would deprive or tend to deprive that member of employment opportunities or otherwise affect the latter's status as an employee or applicant for employment because of sex, race, creed, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height.

SEC. 6. Apprenticeship and Leadership Programs. – It shall be an unlawful employment practice for an employer or a firm by a group or association thereof, or by a civic organization undertaking or sponsoring an apprenticeship or leadership program within the contemplation of Book II of the Labor Code. Or other training or retraining, including on-the-job training programs to discriminate against any individual because of the latter's sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height in admission to, or employment in, any program established to provide apprenticeship, learnership or other retraining.

SEC. 7. Discrimination for Making Charges, Testifying, Assisting or Participating in Enforcement Proceedings. – It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency or an employer or firm or groups or associations thereof or a civic organization

undertaking or sponsoring an apprenticeship, learnership or other training programs, to discriminate against any individual; or for any labor organization to discriminate against any member thereof or applicant for membership, because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 8. Printing or Publication of Notices and Advertisements Indicating Prohibited Preferences, Limitation, Specification or Discrimination; Occupational Qualification Exempted. – It shall be an unlawful practice for an employer, labor organization, employment agency, firm or group or association thereof or a civic organization undertaking or sponsoring an apprenticeship, learnership or other training, retraining, including on-the-job training programs, to print, publish, broadcast or cause to be printed, published or broadcast any notice or advertisement relating to employment by such an employer or membership in any labor union or classification or referral to employment by such an employer or membership in any labor union or classification or referral for employment by such a labor organization, or relating to admission to, or employment in, any program establish to provide apprenticeship, learnership or other training by an employer, firm or group or association thereof, or a civic organization, indicating any preference, limitation, specification, or discrimination based on sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height except when such notice or advertisement may indicate a preference. Limitation, specification, or discrimination based on sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height when any of these attributes is a *bona fide* occupational qualification for employment.

SEC. 9. Business or Enterprises with Personnel Qualified n Basis of Sex, Race, Creed, Age, Appearance, Sexual orientation, Regional or Ethnic Origin, Weight or Height. – Notwithstanding any provision of this Act, it shall not bean unlawful employment practice for an employment agency to classify, or

refer for employment any individual, for labor organization to classify its membership or to classify or refer for employment any individual, or a civic organization undertaking or sponsoring an apprenticeship, learnership or other training or retraining programs to admit or employ any individual in any such program on the basis of the latter's sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height in those certain instances where any of these attributes is a bona fide occupational qualification reasonably necessary to the normal operation of that business.

SEC. 10. Seniority and Merit System; Quantity or Quality of Production; Ability Test. – Notwithstanding any provision of this Act, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or privileges of employment pursuant to a bonafide seniority or merit system, or a system which measures wages by quantity or quality of production or to employees who work in different locations: Provided, That such differences are not a result of an intention to discriminate because of sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height. Nor shall it be an unlawful employment practice for an employer to give and act upon the results of any professionally developed ability test: Provided, further, That such test, its administration or action upon the results is not designed, intended or used to discriminate because of sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height.

SEC. 11. Preferential Treatment Not To Be Granted by Reason of Existing Number or Percentage Imbalance. – Nothing contained in this Act shall be interpreted to require any employer, employment agency, labor organization, firm or association or group therefore or civic organization subject to this Act to grant preferential treatment to any individual because of sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height employed by any employer, referred or classified for

employment by any employment agency or labor organization, or admitted to, or employed in, any apprenticeship, learnership or other training program, in comparison to the total number of percentage of individuals of such sex, race, creed, age, appearance, sexual-orientation, regional or ethnic origin, disability, weight or height in any municipality, city, province, or other area, or in the available work force in any municipality, city, province, or other area.

SEC. 12. Additional Powers Granted to the Bureau. – In addition to the powers already vested thereto by the law, for the effective implementation of this Act, the Bureau is hereby vested with the following powers:

- 12.1. To cooperate with and, with their consent, utilize national and local agencies, both public and private, including non-governmental organizations, and individuals;
- 12.2. To furnish persons subject to this Act such technical assistance as they may request to further their compliance to this Act or a rule, regulation, or order issued hereunder;
- 12.3. Upon the request of (1) any employer, whose employees or some of them, or (2) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this Act, to assist in such effectuation by such other remedial action as it is provided by this Act;
- 12.4. To make such technical studies as are appropriate to effectuate the purposes and policies of this Act;
- 12.5. Subject to the exercise by the Secretary or any law enforcement agent of the powers vested in them by Section 14 of this Act, the Bureau is hereby authorized to initiate administrative actions with the labor arbiters with respect to claims for actual, moral exemplary and other forms of damages arising from violations of this Act.

SEC. 13. Cooperation with Other Departments and Agencies in Performance of Educational or Promotional Activities. – The Bureau shall, in any, of its educational or promotional activities cooperate with other departments and agencies of the Government.

SEC. 14. Visitorial and Enforcement Power. – To the extent applicable, the Secretary shall exercise the same visitorial and enforcement power provided under Article 128 of the Labor Code for the effective implementation of this Act. In addition, the Secretary, or any law enforcement officer may initiate criminal complaints under this Act if the gravity of the violation of this Act so warrants. Recovery of civil liability in the administrative proceeding provided by this Act shall bar recovery under the Civil Code or in the criminal proceedings.

SEC. 15. Penal Clause. – Any violation of this Act or any rule or regulation promulgated by the Secretary pursuant thereto shall be punished with a fine of not less than One thousand pesos (P1, 000.00) nor more than Ten thousand pesos (P10, 000.00), or imprisonment of not less than three (3) months nor more than three (3) years, or both such fine and imprisonment at the discretion of the court.

If the offense was committed by a juridical person, the president or manager or any officer thereof who knows or should have known the commission of the offense shall be liable.

In addition to such penalty, any alien found guilty shall be summarily deported upon completion of the service of the sentence.

SEC. 16. Reporting Requirement. – The Secretary shall submit a report to the Congress on the implementation of this Act within thirty (30) days before the opening of each regular session of Congress.

SEC. 17. Suppletory Application of the Labor Code. – The provisions of the Labor Code shall apply suppletorily insofar as they are not inconsistent with the provisions of this Act.

SEC. 18. Separability Clause. – If any provision or part of this Act held invalid, the remainder of this Act shall not be affected thereby.

SEC. 19. Repealing Clause. – All laws, decrees, executive order or rules and regulations inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 20. Effectivity Clause. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or two (2) newspapers of general circulation.

Approved,