

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

04 JUN 30 P4 57

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S E N A T E

S. No. 379

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Introduced by Senator S. R. Osmeña III

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#### EXPLANATORY NOTE

The Constitution provides that the State should affirm "labor as a primary social economic force," and that "it shall protect the rights of workers and promote their welfare." The Bill of Rights further assures workers, whether in the private or public sector, the right to form lawful unions and associations. However, despite these provisions safeguarding workers' security of tenure, cases that violate it are rife. Current laws such as the Labor Code allow for significant loopholes that permit employers to commit anti-labor practices that infringe on this basic civil right, creating a non-humane and unjust working environment for thousands of Filipino workers.

The usual violations include employers forestalling their employees' regularization status, through practices such as classifying the latter as "casual" or "renewal," firing and hiring of personnel every six months, assessing employment contracts on a semi-annual basis, and hiring the services of employment agencies for labor-only contracting. When employees are not made regular or permanent, they are denied all the benefits that were supposed to have been granted them in the first place, such as the right to self-organization, forming and joining unions, and involvement in collective bargaining. The already-regular employees are likewise adversely affected, as they are not able to recruit potential members that could contribute to their bargaining position.

This Bill therefore intends to amend important aspects and correct omissions or oversights in several portions of the Labor Code. It particularly cites the practice of employee misclassification as illegal and provides penalties for it, as well as rationalizes the laws on subcontracting and regular employment, with the end view of strengthening the basic right of workers to security of tenure.

In view of the foregoing, early passage of this bill is earnestly requested.

*S. Osmeña III*  
SERGIO OSMEÑA III  
Senator

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AN ACT  
STRENGTHENING THE CONSTITUTIONAL RIGHT TO SECURITY OF  
TENURE

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

1           **SECTION 1. Short Title.** -- This Act shall be known as the "Security of  
2   **Tenure Act of 2004.**"

3           **SECTION 2. Labor-only contracting.** -- Art. 106 shall be amended to  
4   read as follows:

5                   "Art. 106. Contractor or sub-contractor.— Whenever an  
6           employer enters into a contract with another person for the  
7           performance of the former's work, the employees of the contractor  
8           and of the latter's subcontractor, if any, shall be paid in accordance  
9           with the provisions of this Code.

10                   In the event that the contractor or sub-contractor fails to pay  
11           the wages of his employees in accordance with this Code, the  
12           employer shall be jointly and severally liable with his contractor or  
13           sub-contractor to such employees to the extent of the work  
14           performed under the contract, in the same manner and extent that  
15           he is liable to employees directly employed by him.

1           The Secretary of Labor and Employment may, by  
2           appropriate regulations, restrict or prohibit the contracting out of  
3           labor to protect the rights of workers established under this Code.  
4           In so prohibiting or restricting, he may make appropriate  
5           distinctions between labor-only contracting as well as differentiation  
6           within these types of contracting, and determine who among the  
7           parties involved shall be considered the employer for purposes of  
8           this Code, to prevent any violation or circumvention of any  
9           provision of this Code.

10           There is "labor-only" contracting where the person supplying  
11           workers to an employer does not have substantial capital [or] AND  
12           investment in the form of tools, equipment, machinery, work  
13           practices, among others, and the workers recruited and placed by  
14           such person are performing activities which are directly related to  
15           the principal business of such employer or WHERE THE  
16           PRINCIPAL EMPLOYER HAS THE RIGHT OF CONTROL OVER  
17           MEANS BY WHICH THE PURPORTED AGENCY OR  
18           CONTRACTUAL EMPLOYEE PERFORMS THE ACTIVITIES,  
19           NOTWITHSTANDING THE FACT THAT THE AGENCY OR  
20           CONTRACTOR HAS SUBSTANTIAL CAPITAL AND/OR  
21           INVESTMENT IN THE FORM OF TOOLS, EQUIPMENT,  
22           MACHINERY, WORK PREMISES, AMONG OTHERS. In such  
23           cases, the person or intermediary shall be considered merely as an  
24           agent of the employer who shall be responsible to the workers in  
25           the same manner and extent as if the latter were directly employed  
26           by SUCH PRINCIPAL EMPLOYER.

27           IN THE PERFORMANCE OF ITS JOB, THE LEGITIMATE  
28           SUBCONTRACTOR MUST USE ITS EQUIPMENT, FACILITIES,

1 MACHINERY, AND TOOLS AND CANNOT RELY ON THE  
2 PRINCIPAL CONTRACTOR. THE USE OF THE  
3 SUBCONTRACTOR OF THE EQUIPMENT, FACILITIES,  
4 MACHINERY AND TOOLS OF THE PRINCIPAL IS AN  
5 INDICATION THAT THE SUBCONTRACTOR HAS NO  
6 SUBSTANTIAL CAPITAL AND INVESTMENT.

7 THE EMPLOYER AND THE LABOR-ONLY CONTRACTOR  
8 OR SUBCONTRACTOR WHO VIOLATE THE FOREGOING  
9 PROVISION SHALL BE SOLIDARY LIABLE TO PAY INDEMNITY  
10 OF NO LESS THAN P50,000.00 TO EACH EMPLOYEE UNDER  
11 THE LABOR-ONLY CONTRACTOR OR SUBCONTRACTOR,  
12 WITHOUT PREJUDICE TO THE OTHER MONETARY AWARDS  
13 SUCH AS BACK WAGES, MONETARY CLAIMS, AND CBA  
14 BENEFITS.

15 **SECTION 3. Lawful classification of regular employment.** -- Art. 280  
16 of the Labor Code shall be amended as follows:

17 "Art. 280. Regular and Casual Employment; Penalty  
18 in Case of Violation—The provisions of written contract to the  
19 contrary notwithstanding and regardless of the oral agreement of  
20 the parties, an employee shall be deemed to be regular where the  
21 employee has been engaged to perform activities which are usually  
22 necessary and desirable in the usual trade or business of the  
23 employer, except where the employment has been fixed for a  
24 specific project or undertaking the completion or termination of  
25 which has been determined at the time of engagement of the  
26 employee, or where the work or services to be performed is  
27 seasonal in nature and the employment is for the duration of the  
28 season.

1 SEASONAL AND PROJECT EMPLOYEES SHALL HAVE  
2 THE RIGHT TO SECURITY OF TENURE, SUBJECT TO THE  
3 PROVISIONS ON PROBATIONARY EMPLOYMENT, AND ARE  
4 ENTITLED TO RESUME THEIR EMPLOYMENT IN THE SAME  
5 OR SIMILAR POSITION UPON THE START OF THE NEXT  
6 SEASON OR PROJECT, AS THE CASE MAY BE; PROVIDED  
7 THAT, DURING THE TIME THAT THEIR SERVICES ARE NOT  
8 ACTUALLY AVAILED OF BY THE ESTABLISHMENT, THEY  
9 SHALL BE CONSIDERED TO BE AUTHORIZED LEAVE  
10 WITHOUT PAY.

11 An employment shall be deemed to be casual if it is not  
12 covered by the preceding paragraph. [Provided, That any  
13 employee who has rendered at least one year of service, whether  
14 such service is continuous or broken, shall be considered a regular  
15 employee with respect to the activity in which he is employed and  
16 his employment and his employment shall continue while such  
17 activity exists.] CASUAL EMPLOYMENT SHALL HAVE THE  
18 RIGHT TO SECURITY OF TENURE AND MAY BE TERMINATED  
19 ONLY FOR JUST OR AUTHORIZED CAUSES. HOWEVER,  
20 THEIR POSITION, NOT BEING NECESSARY OR DESIRABLE TO  
21 THE USUAL TRADE OR BUSINESS OF THE EMPLOYER, MAY  
22 BE ELIMINATED IF THE SERVICES ATTACHED THERETO ARE  
23 NO LONGER AVAILED OF BY THE EMPLOYER. PROVIDED  
24 THAT IF THE POSITION HAS BEEN IN EXISTENCE FOR MORE  
25 THAN ONE YEAR, IT SHALL BE CONSIDERED AS REGULAR IN  
26 NATURE, SUBJECT TO THE PROVISIONS ON PROBATIONARY  
27 EMPLOYMENT. TERMINATION WILL THEN BE ALLOWED  
28 ONLY IF THERE IS JUST OR AUTHORIZED CAUSE.

1           THE PRINCIPAL EMPLOYER MUST DIRECTLY HIRE  
2           WORKERS WHO ARE PERFORMING ACTIVITIES WHICH ARE  
3           USUALLY NECESSARY OR DESIRABLE TO THE USUAL TRADE  
4           OR BUSINESS OF THE EMPLOYER, WITHOUT PREJUDICE TO  
5           THEIR PROPER CLASSIFICATION AS REGULAR, SEASONAL,  
6           PROJECT, OR EMPLOYEES HIRED FOR A SPECIFIC  
7           UNDERTAKING, AS PROVIDED FOR IN THE FIRST  
8           PARAGRAPH. THE PRINCIPAL EMPLOYER CANNOT HIRE  
9           THROUGH SUBCONTRACTORS, LABOR CONTRACTORS, OR  
10          OTHER SIMILAR AGENCIES AND "MANPOWER" SERVICE  
11          PROVIDERS, WORKERS PERFORMING ACTIVITIES WHICH  
12          ARE USUALLY NECESSARY OR DESIRABLE TO THE USUAL  
13          TRADE OR BUSINESS OF THE EMPLOYER, REGARDLESS OF  
14          THE AMOUNT OF INVESTMENT AND CAPITAL OF THE  
15          SUBCONTRACTOR OR LABOR CONTRACTOR.

16            LIKEWISE, IN NO CASE SHALL REGULAR EMPLOYMENT  
17            BE SUBJECT TO A TERM, EXCEPT WHERE THE  
18            EMPLOYMENT HAS BEEN FIXED FOR A SPECIFIC PROJECT  
19            OR UNDERTAKING, THE COMPLETION OR TERMINATION OF  
20            WHICH HAS BEEN DETERMINED AT THE TIME OF  
21            ENGAGEMENT OF THE EMPLOYEE, OR WHERE THE WORK  
22            OR SERVICE TO BE PERFORMED IS SEASONAL IN NATURE  
23            AND THE EMPLOYMENT IS FOR THE DURATION OF THE  
24            SEASON SUBJECT TO PARAGRAPH 2 HEREOF.

25            HOWEVER, TERM EMPLOYMENT SHALL BE ALLOWED  
26            FOR OVERSEAS FILIPINO WORKERS, SHOULD THE VALID  
27            CONTRACT OF EMPLOYMENT SO PROVIDED FOR A TERM.

1           EMPLOYEES WHO ARE REGULAR, REGARDLESS OF  
2           THE ORAL OR WRITTEN AGREEMENTS TO THE CONTRARY,  
3           SHALL BE CONSIDERED PART OF THE APPROPRIATE  
4           COLLECTIVE BARGAINING UNIT AND MAY EXERCISE THE  
5           RIGHT TO SELF-ORGANIZATION AND COLLECTIVE  
6           BARGAINING.

7           AN EMPLOYER WHO VIOLATES THE FOREGOING  
8           SHALL BE LIABLE TO PAY AN INDEMNITY OF P50,000.00 TO  
9           EACH EMPLOYEE, WITHOUT PREJUDICE TO THE OTHER  
10          MONETARY CLAIMS, AND CBA BENEFITS.

11          **SECTION 4. Non-recognition of regular status as unfair labor**  
12 **practice.** -- Art. 248 (Unfair practices of employers) shall be amended as  
13 follows:

14                   "Art. 248. Unfair labor practices of employers.— It shall be  
15                   unlawful for an employer to commit any of the following unfair labor  
16                   practices:

17                   (a) To interfere with, restrain or coerce employees in the  
18                   exercise of their right to self-organization;

19                   (b) To require as a condition for employment that a  
20                   person or an employee shall not join a labor organization or shall  
21                   withdraw from one to which he belongs;

22                   (c) To contract out services or functions being performed  
23                   by union when such will interfere with, restrain or coerce  
24                   employees in the exercise of their right to self-organization;

25                   (d) To initiate, dominate, assist or otherwise interfere with  
26                   the formation or administration of any labor organization, including  
27                   the giving of financial or other support to it or its organizers or  
28                   officers;

1           (e) To discriminate in regard to hire or tenure of  
2 employment or any term or condition of employment in order to  
3 encourage or discourage membership in any labor organization.  
4 Nothing in this Code or in any other law shall prevent the parties  
5 from requiring membership in a recognized collective bargaining  
6 agent as a condition for employment, except of those employees  
7 who are already members of another union at the time of the  
8 bargaining unit who are not members of the recognized collective  
9 bargaining agent may be assessed a reasonable fee equivalent to  
10 the dues and other fees paid by members of the recognized  
11 bargaining agent, if such non-union members accept the benefits  
12 under the collective bargaining agreement. Provided, That the  
13 individual authorization required under Article 242, paragraph (o),  
14 of this Code shall not apply to non-members of the recognized  
15 collective bargaining agent;

16           (f) To dismiss, discharge or otherwise prejudice or  
17 discriminate against an employee for having given or being about  
18 to give testimony under this Code;

19           (g) To violate the duty to bargain collectively as  
20 prescribed by this Code;

21           (h) To pay negotiation or attorney's fees to the union or  
22 its officers or agents as part of the settlement of any issue in  
23 collective bargaining or any other dispute; or

24           (i) To violate a collective bargaining agreement.

25           The provisions of the preceding paragraph notwithstanding,  
26 only the officers and agents of corporations, associations, or  
27 partnerships who have actually participated in, authorized or  
28 ratified unfair labor practices shall be held criminally liable.



1           (j) TO CLASSIFY AS CASUAL, CONTRACTUAL,  
2           SUBCONTRACTOR'S OR LABOR-ONLY CONTRACTOR'S  
3           EMPLOYEES, AGENCY EMPLOYEES, AND OTHER NON-  
4           REGULAR WORKERS THOSE EMPLOYEES WHO ARE  
5           REGULAR EMPLOYEES BY VIRTUE OF THE ACTIVITIES THEY  
6           PERFORM AND OTHER CIRCUMSTANCES WHICH MAKE  
7           THEIR EMPLOYMENT REGULAR.

8           **SECTION 5. Repealing Clause.** —Art. PD 442, as amended, otherwise  
9           known as the Labor Code of the Philippines, and all other acts, laws, rules and  
10          regulations are hereby repealed, modified, or amended accordingly.

11          **SECTION 6. Separability Clause.** —If any part, section or provision of  
12          this Act shall be held invalid or unconstitutional, the other provisions shall not be  
13          affected thereby.

14          **SECTION 7. Effectivity Clause.** —This Act shall take effect fifteen (15)  
15          days after its publication in the Official Gazette or in at least two (2) newspapers  
16          of general circulation.

17          Approved,