

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

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SENATE

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S. No. 2003


Introduced by Senator Juan M. Flavier

EXPLANATORY NOTE

The competition necessitated by the integration of world markets has pushed domestic industries to devise various flexible work arrangements in order to survive. Unfortunately, the Labor Code provisions are not responsive to these changes. While two flexible forms of employment are recognized by the Labor Code, namely project and seasonal employment, the rights of workers under such arrangement required the intervention of the Supreme Court for their definition. In fact, a third form, fixed term employment, was derived by the Supreme Court from the legal precepts surrounding Articles 280 and 281.

It is therefore imperative to amend the Labor Code to institutionalize the parameters for these flexible forms of employment, thereby protecting these recognized forms of atypical employment in the Labor Code.

Hence, the approval of this bill is earnestly sought.


JUAN M. FLAVIER
Senator

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**AN ACT PRESCRIBING WORK ARRANGEMENTS
BASED ON SECURITY OF TENURE**

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

SECTION 1. Title. – This Act shall be called “The Security of Tenure Law of 2005.” Book III of Presidential Decree No. 442, as amended, otherwise known as The Labor Code of the Philippines, is hereby amended to include Title IV entitled “Security of Tenure”. The provisions of this Act shall comprise the new Articles 156-165 of the Labor Code.

SEC. 2. Classification of workers. – Article 156 shall read as follows:

“Article 156. Classification of workers. – Work arrangements based on security of tenure shall be as follows: (a) contracts with an indefinite period; and (b) contracts with a definite period. In general, an employment contract shall be for an indefinite period, unless otherwise stipulated and allowed by conditions stated in Article 158.”

SEC. 3. Security of tenure – Article 157 shall read as follows:

“Article 157. Security of tenure. – Contracts with an indefinite period shall not be terminated except for just or authorized cause under Book VI. Contracts with a definite period shall not be terminated except: (a) for just or authorized cause under Book VI; and (b) upon expiration of the stipulated period.”

SEC. 4. Contracts for definite period; when allowed – Article 158 shall read as follows:

“Article 158. Contracts for definite period; when allowed. – Contracts for a definite period shall be allowed only in the following situations:

- (a) Replacement of an employee who is temporarily absent;
- (b) Temporary increase in the volume of business, which in no case shall exceed six (6) months in a twelve (12) month period;
- (c) To meet expansion of a company’s activity, consisting of the launch of a new production line, product or service, which in no case shall be less than six (6) months nor more than three (3) years: provided that, employees still hired after the contract for definite period shall be under a new contract for an indefinite period;

- (d) Part-time contracts, where the employee undertakes to render services for a number of hours or days less than two thirds (2/3) of the usual number of working hours for the same position in the establishment;
- (e) Construction work, in which case the duration of the project or a specific phase thereof shall be indicated in the contract and made known to the employee at the commencement of the employment relationship: provided that, pertinent rules and regulations issued by the Department of Labor and Employment (DOLE) on employment in the construction industry shall continue to remain in full force and effect;
- (f) Professional sports;
- (g) Corporate officers, and those occupying managerial, confidential, or technical positions;
- (h) Overseas Filipino workers: provided that, such OFWs work under contracts of employment consistent with Philippine Overseas Employment Authority (POEA) rules and regulations;
- (i) Officials of private academic institutions;
- (j) Seasonal positions or jobs in the tourism, agriculture, and entertainment sectors: provided that, the duration of the season shall be specified in the contract of employment and made known to the employee at the commencement of the employment relationship; or
- (k) Other cases where, based on the nature of the work to be performed or on the circumstances under which it is to be performed, and with no fraud, duress or coercion practiced upon the worker, the employment relationship cannot be of indefinite duration.”

SEC. 5. Contracts for definite period; form and contents – Article 159 shall read as follows:

“Article 159. Contracts for definite period; form and contents. – The contract for a definite period shall be in writing and signed by the employer and employee, stating the following:

- a. Precise purpose of employment;
- b. Name and qualifications of the employee;
- c. Description of the job;
- d. Wages and other terms and conditions of employment;
- e. Date of expiry of the contract; and
- f. Stipulations for renewal: provided that, renewal must be once only, and the total duration of the contract, including renewal, may not exceed two (2) years: provided further, that an employee for an indefinite period allowed to work after the expiry of the stipulated period without the benefit of a renewed contract shall be deemed engaged for an indefinite period.

All of the foregoing contents of a contract for a definite period shall be made known to the employee at the commencement of the employment relationship.

Every contract of employment for a definite period shall be made available by the employer upon written demand by the Secretary of Labor and Employment or his/her authorized representative. Failure to produce such a written contract upon due demand by the Secretary of his/her authorized representative or upon issuance of a subpoena *duces tecum* by the National Labor Relations Commission (NLRC) shall give rise to the presumption that the arrangement is for an indefinite period.”

SEC. 6. Ratio between employees for an indefinite and a definite period – Article 160 shall read as follows:

“Article 160. Ratio between employees for an indefinite and a definite period – In no case shall the number of employees under contracts for definite period exceed thirty percent (30%) of the total number of rank-and-file employees. A violation of this provision shall result in the automatic conversion of all such arrangements into contracts for an indefinite period.”

SEC. 7. Rights and privileges of an employee for a definite or indefinite period – Article 161 shall read as follows:

“Article 161. Rights and privileges of an employee for a definite or indefinite period. – An employee for a definite or indefinite period shall have the following rights and privileges:

- (a) safe and healthful working conditions;
- (b) labor standards, such as service incentive leave, rest days, overtime pay, holiday pay, and 13th month pay;
- (c) social security and welfare benefits; and
- (d) self-organization, collective bargaining, and peaceful concerted action.

In addition, the Bureau of Internal Revenue (BIR) shall, in appropriate revenue regulations, grant employees for a definite period a privileged personal income tax exemption, which shall be higher than those provided in each income bracket based on existing schedules.”

SEC. 8. Probationary status; nature – Article 162 shall read as follows:

“Article 162. Probationary status; nature. – A contract of employment may stipulate a probationary period to test the skills or abilities of a prospective employee for a definite or indefinite period. A probationary employee may be terminated for the following reasons: (a) just or authorized cause under Book VI; or (b) when the probationary employee fails to qualify as an employee for a definite or indefinite period in accordance with reasonable standards made known by the employer at the time of engagement.”

SEC. 9. Probationary status; periods – Article 163 shall read as follows:

“Article 163. Probationary status; periods. – The duration of probationary employment varies according to the annual gross basic salary of the probationary employee.

For employees with an annual gross basic salary below one hundred twenty thousand pesos (P120,000.00), the probationary period shall not exceed three (3) months. Employees with an annual gross basic salary of one hundred twenty thousand pesos (P120,000.00) may exceed three (3) months, and in no case shall such a probationary period be more than one (1) year.

The probationary period of professors, instructors, and teachers shall be subject to law and standards established by the Department of Education (DepEd).

For purposes of this Act, “basic salary” shall refer to all remunerations or earnings paid by an employer for services rendered, but does not include allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick leave credits, overtime, premium, night differential and holiday pay, and cost-of-living allowances.”

SEC. 10. Non-diminution of status and benefits – Article 164 shall read as follows:

“Article 164. Non-diminution of status and benefits – There shall be no demotion in rank or diminution of pay nor illegal dismissal of any person already employed upon the effectivity of this Act. Henceforth, regular employees as defined under the former Article 280 of the Labor Code shall be deemed under contracts for an indefinite period.”

SEC. 11. Recruitment and placement – Article 165 shall read as follows:

“Article 165. Recruitment and placement – For purposes of hiring employees for definite or indefinite periods, the services of private recruitment and placement agencies (PRPAs) shall be made available in accordance with DOLE rules and regulations.”

SEC. 12. Effects of illegal dismissal - Article 288 (formerly Article 279) of the Labor Code is hereby amended to read as follows:

“Article 287. Effect of illegal dismissal – An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

If reinstatement is not possible, the unjustly dismissed employee engaged for an indefinite period shall be entitled to separation pay in the amount of one (1) month pay or at least one (1) month pay for every year of service, whichever is higher. For employees engaged for a definite period, the amount of separation pay shall be one (1) month pay or the remaining basic salary for the unexpired portion of the contract, whichever is higher”.

SEC. 13. Repealing clause – The provisions of Articles 289 and 290 (formerly Articles 280 and 281) of the Labor Code are hereby repealed accordingly. All laws, presidential decrees, executive orders, presidential proclamations, rules and regulations or parts thereof contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 14. Renumbering and rules and regulations – The Department of Labor and Employment (DOLE) shall cause the renumbering of affected provisions of the Labor Code, as amended. The DOLE shall also promulgate the necessary rules and regulations to implement the provisions of this Act.

SEC. 15. Separability clause. – If any part or provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remaining provisions, or the application of such remaining provisions or parts thereof to other persons or circumstances, shall not be affected thereby.

SEC. 16. Effectivity – This Act shall take effect after two (2) weeks of publication in two (2) newspapers of national general circulation.

Approved,