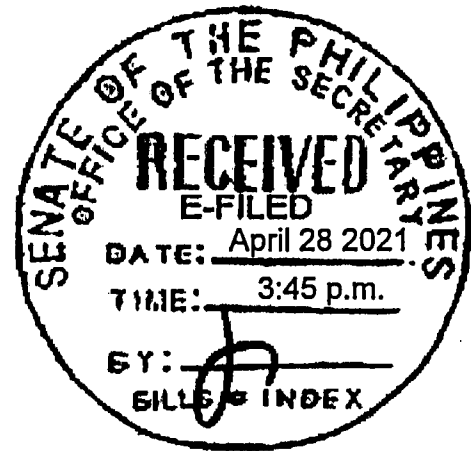


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

SENATE
S. No. 2149



Introduced by **SENATOR LEILA M. DE LIMA**

AN ACT
ENSURING THE WELFARE AND PROTECTION OF BUSINESS PROCESS
OUTSOURCING (BPO) WORKERS IN THE PHILIPPINES

EXPLANATORY NOTE

The Business Process Outsourcing (BPO) is one of the fastest growing industries in the Philippines. In fact, the Philippines has been dubbed as the BPO capital of the world with over 850 registered BPO companies. Almost two (2) decades of growing and flourishing, it is now a multi-billion industry that has contributed immensely to the nation's economy and to the livelihood of many Filipinos who are employed by these companies. It has turned into a vital industry giving employment to over 1.2 million workers. It is truly one of the country's main economic growth drivers.

Over the years, the needs of this industry have dramatically grown and became more complex as the labor landscape evolved. Some transgressions have been made possible by the loopholes in the laws which, at the time of enactment, did not contemplate the growing demands of this dynamic industry. As the nature of this industry becomes clearer, employees have started to call for improved work conditions.

The reality on the ground, however, would reveal that despite such pleas, BPO workers continue to face overly stressful workload due to impossibly high performance standards, inadequate restroom breaks and sudden changes in shift schedules that take a serious toll on their health. All of these can be attributed to the constant need to increase the company's competitiveness and the distinct industrial relation where the BPO company and their clients have power over the BPO workers. All these challenges,

the members of the BPO workforce lamented, are not fully addressed by existing laws, leaving the workers unprotected.

These struggles have been further exacerbated when the COVID-19 pandemic hit the country. It resulted in temporary closures of businesses, and have pushed even the BPO industry to recalibrate in order to adapt to the changes that the “new normal” entailed. While the BPO industry has been largely insulated from closures, the workers were not spared from distress. Many of them still had to come to work, but the stringent protocols have made even the task of getting to work even more burdensome. When the Enhanced Community Quarantine (ECQ) was first implemented in 2020, many of those employed by the BPO industry which remained operational had to endure long walks under the scorching heat of the summer sun due to the failure of the government to provide for adequate transportation.

The pandemic has pushed the BPO industry to innovate their work arrangements to be able to continue operation even amidst the pandemic. Some companies have adopted work-from-home schemes to minimize the danger to their employees, as well as protect the industry from shutdowns caused by outbreaks. However, many companies are still either unable or unwilling to adopt such measures, forcing employees to work on-site despite its possible consequences to their health.

Obliging employees to continue to work on-site in areas with high COVID-19 incidence has resulted in a pandemic within a pandemic. According to BPO Industry Employees Network (BIEN) Philippines, at least 16 BPO companies in the country were reported to have had outbreaks in their workplace during August 2020. One BPO company in Iloilo was put on lockdown after 99 call center agents were found to have contracted the virus¹. This was just one of the BPO companies that were put in lockdown during the strict implementation of quarantine.

Perhaps the heaviest burden that has hounded the BPO workers is the lack of protection and support coming from the government. When the pandemic hit, this lack of government support was magnified when news reports circulated of employees who were still required to report on-site had to walk to and from their workplace due

¹ GMA News Network. *99 call center agents test positive for COVID-19 in Iloilo City*. 11 August 2020. Retrieved from <https://www.gmanetwork.com/news/news/regions/750728/99-call-center-agents-test-positive-for-covid-19-in-iloilo-city/story/>

to the failure of the government to provide shuttles despite the ECQ imposed in Metro Manila causing a lack of access to public transportation.

Testing and vaccination, which are both essential in retaining their employment and protecting their health and that of their families' and co-employees, are gray areas which both the government's insouciance and the gaps in the law aggravate and worse, fail to address. The question of who bears the cost of continuous testing has left employees having to pay from their own pockets if only to secure their continued employment.

There are also reports of employees being put on a "floating status", where there is a temporary suspension of work of employees leaving them to still be considered as "hired" without the benefit of compensation until said suspension is lifted, has been legitimized by the Department of Labor and Employment (DOLE) pursuant to Department Order No. 215-2020.² It is another problematic practice which, while already present prior to the pandemic, worsened when the quarantines were imposed.

With all these challenges, it now rests on the legislature to finally hear their pleas for help. The significance and power of legislation allows us to craft meaningful measures to cure the gaps in the law that permit its circumvention to the detriment of the very people it ought to protect. This decades-old industry, though still fairly new, demands a proactive action on the part of the State to understand that its setup and needs unique to it require the enactment of a law that will cover all bases in order to prevent the exploitation of the void in existing laws against the members of the industry. The State, after all, is mandated under Article II, Section 18 of the Constitution to protect the rights of the workers and promote their welfare; and under Article XII, Section 3, to afford full protection to labor.

Coming to the aid of this industry which remains as a key driver of economic growth and a pillar of economic stability for our country as already evidenced by a 2015 report by the World Trade Organization (WTO) which determined that the sector generated \$22 billion in revenue, equivalent to 7.44% of our GDP,³ it now is incumbent upon Congress to swiftly legislate the measure which will address the most pressing

² CNN Philippines. *DOLE allows workers on 'floating status' for a year*. 28 October 2020. Retrieved from <https://www.cnn.ph/news/2020/10/28/DOLE-extend-workers-on-floating-status-amid-pandemic.html>

³ Rosales, E.F. (28 November 2019). *PHL's BPO a good model for service trade - WTO*. 21 April 2020 Retrieved from <https://businessmirror.com.ph/2019/11/28/phls-bpo-a-good-model-for-services-trade-wto>

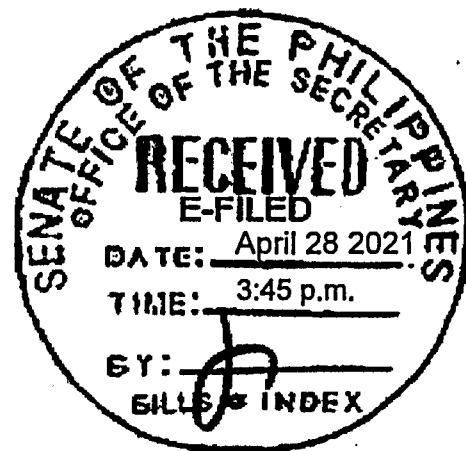
issues that surround this industry. This bill thus seeks to protect the welfare of BPO workers of our country by addressing the legislative gaps in existing labor laws such as access to relevant information, protection from understaffing or overloading, additional benefits to promote safety, health and overall wellbeing of employees, protection of BPO workers' security of tenure and prohibition of floating while hiring and pro-worker safety policy during natural disasters or dangers, among others.

This bill aims to institutionalize more equitable arrangements in order to provide protection to both labor and capital, so that this industry will continue to thrive – this time in a robust environment that balances both the interests and welfare of employers and employees.

Early passage of this measure is earnestly sought.


DEILA M. DE LIMA

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

1 SECTION 1. *Short Title.* – This Act shall be known as the “BPO Workers’
2 Welfare and Protection Act of 2021.”

3 Sec. 2. *Declaration of Policy.* – The State affirms labor as a primary social
4 economic force. It shall protect the rights of workers and promote their welfare. It is
5 hereby declared the policy of the State to protect the rights and promote the welfare of
6 workers in the Business Process Outsourcing (BPO) industry and to take appropriate
7 steps to recognize such rights and welfare. The State recognizes the role of BPO
8 workers in nation-building and that protecting and promoting their rights and welfare
9 form an integral part of national development. The State shall strive to improve and
10 promote their social and economic status, living and working conditions, terms of
11 employment, professional growth and career development.

12 Sec. 3. *Coverage.* – This Act shall cover all employees and workers engaged in
13 the BPO industry.

14 Sec. 4. *Definition of Terms.* – For purposes of this Act, the following terms shall
15 be understood as follows:

16 a) Business Process Outsourcing (BPO) – is defined as the delegation of
17 service-type business processes to a third-party service provider. It is
18 generally divided into the following sectors: call centers, back-office
19 services, data transcription, animation, software development, engineering

- 1 development and game development. Most BPO companies engage in shift
2 work to complete their 24-hour work cycle;
- 3 b) Call center – also known as contact center, refers to a central customer
4 service operation where agents – whatever their designation – handle
5 business-related telephone calls, and other IT-related non-voice activities,
6 on behalf of a client;
- 7 c) Health – shall connote a sound state of the body and mind of the workers,
8 which enables him or her to perform his job normally, in a state of well-
9 being;
- 10 d) Safe or safety – shall refer to the physical or environmental conditions of
11 work or employment, which substantially comply with the prescribed
12 Standards, as defined below;
- 13 e) Work accident – shall mean an unplanned or unexpected occurrence that
14 may or may not result in personal injury, property damage, work stoppage
15 or interference, or any combination thereof, which arises out of and in the
16 course of employment;
- 17 f) Work injury – shall mean any injury or occupational illness suffered by a
18 person, which arises out of or in the course of employment;
- 19 g) Occupational illness – shall mean any illness caused by environmental
20 factors, the exposure to which is characterized or peculiar to a particular
21 process, trade or occupation, and to which an employee or worker is not
22 ordinarily subjected to, or exposed to, outside of or away from such
23 employment;
- 24 h) Workplace – means the office, premises or work site, where the workers are
25 habitually employed and shall include the office or place where the workers,
26 who have no fixed or definite work site, regularly report for assignment in
27 the course of their employment;
- 28 i) Standards – shall mean the Occupational Safety and Health Standards and
29 Regulations, as described in Section 29 hereof;
- 30 j) Authorized Representative – shall mean and include any employee or
31 official of other government agencies empowered by the Secretary of Labor
32 and Employment to enforce the provisions of the Standards;
- 33 k) Shift work – shall mean the employment practice designed to make use of
34 the 24 hours of the day. Employees are given schedules which correspond to

1 **Sec. 9. Regularization.** – All BPO workers allowed to work after the completion
2 of the sixth (6th) month period of employment as trainee or apprentice, or upon the
3 completion of a maximum probationary training period of six months, shall be
4 considered as regular employees.

5 **Sec. 10. Right to self-organization and the Right to Participate in Democratic**
6 **Exercises.** – All BPO workers shall have the right to self-organization and to form, join,
7 or assist labor organizations of their own choosing for purposes of collective
8 bargaining. In addition, BPO companies should exercise due diligence and actively
9 provide venues for workers to participate in the deliberation of issues and in the
10 formulation of policies that affect them.

11 **Sec. 11. Non-abridgment of the right to self-organization.** – It shall be unlawful
12 for any person or company to restrain, coerce, discriminate against or unduly interfere
13 with employees and workers in their exercise of the right to self-organization. Such
14 right shall include the right to form, join, or assist labor organizations for the purpose
15 of collective bargaining through representatives of their own choosing and to engage
16 in lawful concerted activities for the same purpose for their mutual aid and protection,
17 subject to the provisions of the Labor Code of the Philippines.

18 **Sec. 12. Freedom from Interference or Coercion.** - It shall be unlawful for any
19 person or company to commit any of the following acts of interference or coercion:

- 20 (a) to interfere with, restrain or coerce employees in the exercise of their right to
21 self-organization;
- 22 (b) to require as condition of employment that BPO employees shall not join, form
23 or assist in the formation of an organization, or to withdraw from one to which
24 he belongs;
- 25 (c) to contract out services or functions being performed by BPO employees who
26 are union members when such will interfere with, restrain or coerce employees
27 in the exercise of their rights to self-organization;
- 28 (d) to discriminate in order to encourage or discourage membership in an
29 organization;
- 30 (e) to initiate, dominate, assist or otherwise interfere with the formation or
31 administration of any labor organization, including the giving of financial or
32 other support to it or its organizers or supporters;

1 (f) to discriminate in regard to wages, hours of work and other terms and
2 conditions of employment in order to encourage or discourage membership in
3 any labor organization;

4 (g) to prevent a BPO employee from carrying out his duties and functions in his
5 organization to penalize the employee for any unlawful action performed in that
6 capacity; and

7 (h) to perform acts calculated to diminish the independence and freedom of the
8 union or organization to direct its own affairs.

9 **Sec. 13. *Freedom from Excessive Company Bond.*** – It shall be unlawful for any
10 person or company to compel a BPO worker to commit to a company bond, imposing
11 an unreasonable or exorbitant fee to be paid by the employee upon leaving the
12 company before a specified length of time.

13 **Sec. 14. *Right to Money Claims.*** - The company may not, in any case, prevent a
14 BPO worker from receiving his/her rightful money claims arising from labor disputes.

15 **Sec. 15. *Protection from Discrimination.*** – BPO workers shall be protected from
16 discrimination by reason of ethnicity, gender, sexual orientation, age, race, color,
17 religion, political, or other opinion, national, social or geographical origin, disability,
18 property, birth, civil status, pregnancy, physical characteristics or disability, or other
19 status as established by human rights standards.

20 **Sec. 16. *Safeguards in Administrative Proceedings.*** - In any administrative
21 proceeding, a BPO worker shall have the -

22 (a) right to notice and hearing which includes the right of the party interested or
23 affected to present his own case and submit evidence in support thereof;

24 (b) right to be informed of the nature and accusation against him/her;

25 (c) right to full access to evidence presented against him/her;

26 (d) right to cross-examine the witnesses against him/her;

27 (e) right to defend himself/herself or by a counsel of his/her choice;

28 (f) right to be given adequate time to prepare his/her case which shall, in no case,
29 be less than one week;

30 (g) right to an independent and impartial tribunal;

31 (h) right to a decision rendered in such a manner that both parties can know the
32 various issues involved and the reasons for such decision;

1 (i) right to appeal to designated authorities; and

2 (j) such other rights as will ensure fairness and impartiality during proceedings.

3 **Sec. 17. Regular Hours of Work.** – Normal hours of work for BPO workers shall
4 not exceed eight (8) hours a day. Any work done by BPO beyond the regular hours
5 shall be duly compensated by the employer.

6 **Sec. 18. Hours worked.** – Hours worked shall include (a) all time during which
7 an employee is required to be on duty or to be at a prescribed workplace; and (b) all
8 time during which an employee is suffered or permitted to work.

9 Rest periods of short duration during working hours shall be counted as hours
10 worked.

11 **Sec. 19. Overtime Work.** - Work may be performed beyond any BPO worker's
12 required working hours provided that the employee is paid for the overtime work, an
13 additional compensation equivalent to his regular wage plus at least twenty-five
14 percent (25%) thereof. Work performed beyond eight (8) hours on a holiday or rest
15 day shall be paid an additional compensation equivalent to the rate of the first eight
16 hours on a holiday or rest day plus at least thirty percent (30%) thereof.

17 **Sec. 20. Night Shift Differential.** - BPO workers shall be paid a night shift
18 differential of not less than ten percent (10%) of his regular wage for each hour of work
19 performed between ten o'clock in the evening and six o'clock in the morning.

20 **Sec. 21. Rest & Meal Periods.** - BPO workers shall be entitled to compensable
21 rest periods and meal periods not less than what is provided for in the Labor Code and
22 other existing laws. Employees shall have the right to brief restroom breaks, which
23 shall not be shorter than five minutes for each two hour interval or a cumulative of at
24 least 15-minute restroom break throughout the work shift. These restroom breaks shall
25 be added on top of the two 15-minute breaks and lunch breaks. To comply with such,
26 the BPO company shall devise a mechanism in order to ensure the implementation of
27 regular restroom breaks among its workers without sacrificing the continuous flow or
28 work among its employees.

29 **Sec. 22. Regular Working Days.** - All BPO workers shall render work for not
30 more than six (6) consecutive days per week. The employer shall determine and
31 schedule the weekly rest day of the BPO workers subject to collective bargaining
32 agreement and to such rules and regulations as the Secretary of Labor and

1 Employment may provide. However, the employer shall respect the preference of
2 employees as to their weekly rest day when such preference is based on religious
3 grounds.

4 *Sec. 23. Work on Holidays.* – BPO workers may be required to work on days
5 designated as non-working holidays in the Philippines given the nature of their
6 profession; *Provided*, That the employer shall duly compensate the employee's work
7 on such days in accordance with existing laws with regard to holiday pay.

8 *Sec. 24. Leave benefits.* – BPO workers shall be entitled to all leave benefits and
9 privileges under existing laws, such as but not limited to maternity, paternity, vacation
10 and sick leaves, *Provided*, That upon separation of the employee from service, they
11 shall be entitled to all accumulated leave credits with pay. No employee may be
12 terminated based solely on unapproved leaves without affording the employee due
13 process in an administrative proceeding.

14 *Sec. 25. Transportation benefits.* – In the absence of or lack of safe and
15 adequate public transportation services in BPO workers' places of work, they shall, at
16 least between 9:00 p.m. and 6:00 a.m., be entitled to safe transportation service, which
17 may include, but are not limited to shuttle services, to and from the place of work to
18 designated drop-off points, or to travel allowance which shall be provided by the
19 company in order to facilitate the safe commute of employees at vulnerable times at
20 night or early in the morning.

21 *Sec. 26. Health Program.* – The company physician shall, in addition to his
22 duties stated in the Labor Code, develop and implement a comprehensive occupational
23 health program for the benefit of all employees.

24 *Sec. 27. Health Insurance.* – All employees are entitled to free full medical
25 examination upon commencement of employment, and annually during the tenure of
26 employment. The establishment is encouraged to provide full health insurance to the
27 employees, the coverage of which shall be agreed upon by the company and its
28 employees.

29 *Sec. 28. Work-related injuries, sickness and death compensation.* – All
30 employees shall be compensated for injuries, medical complications, illness, disability
31 and death arising from, and related to their work, in accordance with existing laws,
32 labor policies, guidelines or circulars, as the case may be. The Employees

1 Compensation Commission shall promptly process any claims for/by injured,
2 disabled, deceased employees or their dependents.

3 **Sec. 29. Occupational Health and Safety Standards and Regulations for BPO**
4 **Workers.** – Pursuant to its mandate, the Department of Labor and Employment
5 (DOLE) is tasked to establish Occupational Health and Safety Standards for BPO work
6 and other similar employment. It is imperative that the minimum provisions in the
7 Standards meet the International Labor Organizations (ILO) recommendations. The
8 Standards should be reviewed annually by the agencies, Workplace Occupational
9 Health and Safety Officer (WOHSO), and registered interested parties, and must
10 include provisions related to the Enforcement Officers and Authorized
11 Representatives, as well as the WOHSO as defined below.

12 **Sec. 30. Compliance with the Standards.** – The Standards shall be strictly
13 enforced in all establishments operating in the country. Compliance with the
14 provisions of the Standards shall be mandatory and subject to inspections by
15 Enforcement Officers and/or Authorized Representatives as shall be outlined in the
16 Standards.

17 **Sec. 31. Workplace Occupational Health and Safety.** – Each establishment
18 shall formulate their own Workplace Occupational Health and Safety (WOHS) policy,
19 which adheres at minimum to the Standards as defined in Section 29 of this Act. Any
20 additional safety measures deemed appropriate to the nature of the localized work
21 environment may also be included, pending approval by the Bureau. The policy must
22 be reviewed annually by the employers, by the WOHSO, and by an Enforcement
23 Officer or Authorized Representative.

24 All employees shall be informed of the WOHS policy. Informational materials
25 such as posters, brochures and similar devices shall be distributed to employees free
26 of charge.

27 **Sec. 32. Workplace Occupational Health and Safety Officer.** – From among the
28 employees, a Workplace Occupational Health and Safety Officer (WOHSO) shall be
29 elected for the purposes of consultation and in-house monitoring of the Standards.
30 The WOHSO shall review the measures taken to ensure the health, safety, and welfare
31 of the employees, investigate and attempt to resolve any matters that may constitute
32 as a risk to health and safety at the place of work.

1 **Sec. 33. Security of Tenure.** – No employee may be terminated except for just
2 and authorized causes as provided under the Labor Code. In order to further protect
3 BPO employees from being abused by legal provisions that allow floating status of
4 employees for not more than six months and other existing laws, “analogous causes”
5 for termination of employment under the Labor Code shall comply with DO 147-15,
6 series of 2015 issued by the DOLE, which provides that “[n]o act or omission shall be
7 considered as analogous cause unless expressly specified in the company rules and
8 regulations or policies.”

9 When putting workers in floating status, the company must not hire new
10 employees who are tasked to perform the duties and responsibilities of the workers
11 put in floating status, until all employees who shall be subject or are currently on
12 floating status have been absorbed in vacancies in other or new accounts, provided
13 that the workers are willing to be absorbed in other or new accounts available.

14 **Sec. 34. Prohibition Against Elimination or Diminution of Benefits.** – Nothing
15 in this Act shall be construed to eliminate or diminish in any way existing benefits
16 being enjoyed by BPO employees at the time of the effectivity of this Act, or benefits
17 beyond the minimum standards set forth by this Act.

18 All other rights of BPO employees provided under existing laws shall remain in
19 full force and effect, and they shall have the right to avail of greater rights offered by
20 existing laws, including those granted under this Act.

21 **Sec. 35. Penal provisions.** – Any person or company who violates the provisions
22 of this Act shall be punished with a fine in the amount of not less than One Hundred
23 Thousand Pesos (₱100,00.00) and/or imprisonment of not less than two (2) months
24 but not more than one (1) year, or both, at the discretion of the Court.

25 **Sec. 36. Separability Clause.** – If, for any reason, any section or provision of
26 this Act, or any portion thereof, or the application of such section, provision or portion,
27 is declared invalid or unconstitutional, the remainder of this Act or the application of
28 such section, provision, or portion thereof shall not be affected by such declaration.

29 **Sec. 37. Repealing Clause.** – All laws, decrees, letters of instructions,
30 resolutions, orders, rules and regulations or parts thereof which are inconsistent with
31 the provisions of this Act are hereby repealed, modified accordingly or amended
32 accordingly.

1 **Sec. 38. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days from its
2 publication in the Official Gazette or in at least two (2) national newspapers of general
3 circulation.

Approved,