

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



SENATE
Office of the Secretary

'22 AUG -8 A10 :28

SENATE
S. No. 1070

RECEIVED BY:

Introduced by Senator Grace Poe

AN ACT
ERADICATING ABUSIVE CONTRACTUALIZATION PRACTICES AND
PENALIZING EMPLOYERS AND CONTRACTORS WHO COMMIT SUCH
ABUSES, AMENDING FOR THIS PURPOSE BOOK THREE, TITLE TWO AND
BOOK SIX, TITLE I OF PRESIDENTIAL DECREE NO. 442, OTHERWISE
KNOWN AS THE LABOR CODE OF THE PHILIPPINES, AS AMENDED

EXPLANATORY NOTE

Several provisions of the 1987 Philippine Constitution safeguard the rights of laborers. The most unequivocal of these provisions is Article XIII, Section 3, which states:

"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.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. **They shall be entitled to security of tenure**, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law..." (emphasis supplied)

Security of tenure is included among the rights of laborers and is operationalized in Article 294 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines.

Contractualization is a perceived threat to a worker's right to security of tenure. Contractualization in the Philippine context has many meanings. On one hand, it can refer to the act of "contracting" under Articles 106 to 109 of the Labor

Code.¹ Under these provisions, "there exists a trilateral relationship under which there is a contract for a specific job, work or service between the principal and the contractor or subcontractor, and a contract of employment between the contractor or subcontractor and its workers."² This form of contractualization emerged in the 1980s as a response of firms to globalization.³ It "allows establishments to reduce costs by concentrating on their core business and outsourcing non-core activities."⁴

On the other hand, contractualization may also commonly refer to a wide spectrum of non-regular or illegitimate arrangements, which include "cabo" "job orders", "consultancies" and other forms of contractual arrangements that are purposefully designed to avoid or preempt the full application of security of tenure laws and the attendant benefits that flow from regular employment.

Part of the latter category of contractualization is the term known in our *lingua franca* as "Endo" or "5-5-5". It involves an arrangement wherein workers are made to work within a five-month timeframe so that they will not qualify as regular employees under the Labor Code.⁶

Endo is a highly abusive practice. First, the practice of repeated hiring for 5 months at a time reduces their value as laborers, as substantial experience cannot be gained in a five-month period. Second, such practice removes any possibility for career advancement. Third, it destroys any semblance of stability and security on the part of workers, many of whom are forced to hunt for jobs several times a year just to provide food for their families. Hence, this proposed Bill.

This measure seeks to amend the Labor Code in order to address, if not wholly eradicate, *Endo*. This Bill provides as follows:

1. Stricter measures against labor-only contracting, including a fine of P5,000,000.00 for those found to be labor-only contractors;
2. Any repeated hiring by an employer or contractor under an employment contract of short duration shall be prohibited. Additionally, those whose contracts have expired and have been re-hired under any arrangement, with or without written contract, shall be considered as regular if the initial contract was for a period of at least six (6) months, or when the worker has accumulated an aggregate period of at least six (6) months from prior contracts or arrangements of shorter

¹ Resurreccion, Pamela & Rosario, Ramon. (2012). Less-than-six-months contract periods: IS THE RETAIL INDUSTRY CIRCUMVENTING THE LAW? THE PHILIPPINE CASE. *International Journal of Information Technology and Business Management*. 7, 25-32. Accessed from: https://www.researchgate.net/publication/304169743_Less-than-six-months_contract_periods_IS_THE_RETAIL_INDUSTRY_CIRCUMVENTING_THE_LAW_THE_PHILIPPINE_CASE

² Section 3, Department of Labor and Employment Department Order No. 18-02, series of 2002.

³ *Ibid.*

⁴ *Ibid.*

⁶ Bernabe, Kirstin, Endonzo, Penelope P., & Pacia, Sara Isabelle. (01 May 2014). "Worker Hired, Fired Every 5 Months". *Philippine Daily Inquirer*. Accessed from: <https://newsinfo.inquirer.net/598582/worker-hired-fired-every-5-months>

duration. Engagements with new employers shall also be covered by this provision under certain conditions, including if the previous and subsequent employer belong to one conglomerate.

Non-compliance thereto or any act to circumvent the provision shall be meted out with a fine of Five million pesos (P5,000,000.00).

For the future of our workers and employees who keep the economy afloat amidst these trying times, immediate approval of this measure is sought.



GRACE POE

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

1 Section 1. Book III, Title II, Chapter III, Article 106 of the Labor Code, as
2 amended, is hereby further amended as follows:

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

8 In the event that the contractor or subcontractor fails to pay the wages
9 of his employees in accordance with this Code, the employer shall be jointly
10 and severally liable with his contractor or subcontractor to such employees to
11 the extent that he is liable to employees directly employed by him.

12 The Secretary of Labor and Employment may, by appropriate
13 regulations, restrict or prohibit the contracting-out of labor to protect the
14 rights of workers established under this Code. In so prohibiting or restricting,
15 he may make appropriate distinctions between labor-only contracting and job
16 contracting as well as differentiations with these types of contracting and
17 determine who among the parties involved shall be considered the employer

1 for purposes of this Code, to prevent any violation of circumvention of any
2 provision of this Code.

3 There is "labor-only" contracting where the person supplying workers
4 to an employer does not have substantial capital or investment in the form of
5 tools, equipment, machineries, work premises, among others, **OR IF SUCH**
6 **CAPITAL OR INVESTMENT BEARS NO DIRECT RELATION TO THE**
7 **PERFORMANCE OF THE DESIRED ACTIVITIES BY THE EMPLOYEES**
8 **SUPPLIED TO THE EMPLOYER** and the workers recruited and placed by
9 such person are performing activities which are directly related to the
10 [~~principal~~] business of such employer. In such cases, the person or
11 intermediary shall be considered merely as an agent of the employer who
12 shall be responsible to the workers in the same manner and extent as if the
13 latter were directly employed by him.

14 **IN ALL CASES WHERE LABOR-ONLY CONTRACTING IS**
15 **PRESENT, THE WORKERS SHALL BE DEEMED REGULAR EMPLOYEES**
16 **OF THE EMPLOYER IN ACCORDANCE WITH LAW, RETROACTIVE TO**
17 **THE DATE THEY WERE FIRST DEPLOYED TO SAID EMPLOYER,**
18 **WITHOUT PREJUDICE TO ANY CRIMINAL, CIVIL, OR**
19 **ADMINISTRATIVE CASE AGAINST THE LABOR-ONLY CONTRACTOR**
20 **AND THE EMPLOYER.**

21 **THE SECRETARY OF LABOR AND EMPLOYMENT SHALL IMPOSE**
22 **A FINE OF UP TO FIVE MILLION PESOS (P5,000,000.00) AGAINST**
23 **ANY LABOR-ONLY CONTRACTOR. THE SECRETARY OF LABOR AND**
24 **EMPLOYMENT SHALL ALSO HAVE THE POWER TO PREVENTIVELY OR**
25 **PERMANENTLY CLOSE THE OPERATIONS OF ANY LABOR-ONLY**
26 **CONTRACTOR."**

27 Sec. 2. Book VI, Title I, Chapter III, of the Labor Code, as amended, is
28 hereby amended by adding a new article as follows:

29 **"ARTICLE 295-A. INITIAL AND SUBSEQUENT**
30 **ENGAGEMENTS. – ANY REPEATED HIRING BY AN EMPLOYER OR**
31 **CONTRACTOR UNDER AN EMPLOYMENT CONTRACT OF SHORT**
32 **DURATION SHALL BE PROHIBITED.**

1 **"AN EMPLOYEE WHOSE INITIAL ENGAGEMENT HAS EXPIRED**
2 **AND HAS A SUBSEQUENT ENGAGEMENT UNDER ANY**
3 **ARRANGEMENT, WITH OR WITHOUT A WRITTEN CONTRACT,**
4 **WOULD AUTOMATICALLY RENDER THE EMPLOYMENT REGULAR: (1)**
5 **WHEN THE INITIAL CONTRACT THAT EXPIRED WAS FOR A PERIOD**
6 **OF AT LEAST SIX (6) MONTHS, OR (2) WHEN THE WORKER HAS**
7 **ACCUMULATED AN AGGREGATE PERIOD OF AT LEAST SIX (6)**
8 **MONTHS FROM PRIOR CONTRACTS OR ARRANGEMENTS OF**
9 **SHORTER DURATION.**

10 **"SUBSEQUENT ENGAGEMENT OF THE EMPLOYEE WITH A NEW**
11 **EMPLOYER SHALL BE DEEMED COVERED BY THE PRECEDING**
12 **PARAGRAPH AND THE EMPLOYEE IS DEEMED TO HAVE ATTAINED**
13 **REGULAR EMPLOYMENT IN THE PROPER CASES WHEN: (1) THE**
14 **OWNERSHIP OF AT LEAST FIFTY PERCENT (50%) OF THE TOTAL**
15 **STOCKHOLDING OR OTHER PROPRIETARY INTEREST OF THE PRIOR**
16 **AND THE SUBSEQUENT EMPLOYERS BELONG TO ONE PERSON OR**
17 **ENTITY, NATURAL OR JURIDICAL, OR ANY OF THE LATTER'S**
18 **SUBSIDIARIES, IF ANY, OR (2) ONE EMPLOYER EXERCISES**
19 **CONTROL OR DOMINATION OF FINANCES, POLICIES AND BUSINESS**
20 **PRACTICES OVER THE OTHER EMPLOYER, OR (3) THE PRIOR AND**
21 **SUBSEQUENT EMPLOYERS ARE CONTROLLED BY ONE PERSON OR**
22 **ENTITY, NATURAL OR JURIDICAL, OR ANY OF THE LATTER'S**
23 **SUBSIDIARIES, IF ANY. FOR PURPOSES OF THIS LAW, PRIOR AND**
24 **SUBSEQUENT EMPLOYERS BELONGING TO A SINGLE**
25 **CONGLOMERATE SHALL BE DEEMED AS COVERED BY THIS**
26 **PROVISION.**

27 ***"ARTICLE 280-B. PENALTIES FOR NON-COMPLIANCE. – AN***
28 **EMPLOYER WHO FAILS TO IMPLEMENT THE PRECEDING**
29 **PROVISION, OR WHO INTENDS TO CIRCUMVENT THE PRECEDING**
30 **PARAGRAPH BY INDICATING OTHERWISE IN THEIR CONTRACT**
31 **WITH THEIR EMPLOYEE OR BY ANY OTHER METHOD SHALL BE**
32 **PENALIZED BY UP TO FIVE MILLION PESOS (P5,000,000.00). IN**

1 **ADDITION, THE EMPLOYEE SHALL BE CONSIDERED AS A REGULAR**
2 **EMPLOYEE RETROACTIVE TO THE DATE WHEN THEY ARE DEEMED**
3 **TO HAVE ATTAINED REGULAR EMPLOYMENT AS PER THE**
4 **IMMEDIATELY PRECEDING PROVISION.”**

5 *Sec. 3. Rules and Regulations.* – The Secretary of Labor and Employment
6 shall promulgate the necessary implementing rules and regulations within one
7 hundred and twenty (120) days from the effectivity of this Act.

8 *Sec. 4. Repealing Clause.* – All laws, decrees, rules, and regulations, or parts
9 thereof, which are contrary to, or inconsistent with, this Act are hereby repealed or
10 modified accordingly.

11 *Sec. 5. Separability Clause.* – If any clause, sentence, section or part of this
12 Act shall be adjudged by a court of competent jurisdiction to be invalid, such
13 judgment shall not affect, impair or invalidate the remainder of this Act, but shall be
14 confined in its operation to the clause, sentence, paragraph, section, or part thereof
15 directly involved in the controversy.

16 *Sec. 6. Effectivity.* – This Act shall take effect fifteen (15) days after its
17 publication in the Official Gazette or in at least two (2) national newspapers of
18 general circulation.

Approved,