

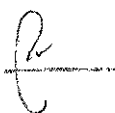
FIFTEENTH CONGRESS OF THE PHILIPPINES)
OF THE PHILIPPINES)
First Regular Session)

SENATE
OFFICE OF THE SECRETARY

10 JUL 27 AM 38

SENATE

S. No. 2138

RECEIVED BY: 

Introduced by Senator Manuel "Lito" M. Lapid

EXPLANATORY NOTE

This proposed measure seeks to amend the provisions of P.D. 442, otherwise known as the "Labor Code of the Philippines", by providing for additional benefits and privileges to our domestic househelpers, otherwise termed as "Kasambahays".

Data from the US Department of State, Country Reports on Human Rights Practices as of February 2001 indicate that in the Philippines, over 300,000 children 17 years of age or younger work as family domestic workers. Moreover, a UNICEF Study of Child Domestic Workers in Metro Manila indicate that around 70% of child domestic workers are girls. A study conducted by Child Workers Asia (CWA) in 1996 reveal that in Metro Manila alone about 25% of domestic workers are below the age of 18, and the proportion of child workers is higher in the provinces. Similarly, a 1998 study from the US Department of State reveal that piggeries in Bulacan province near Manila employ under-age domestic workers and restrict them from leaving the breeding farms. In Cebu City, the regional Social Welfare Department reveals that 80% of reported victims of rape, attempted rape and other acts of sexual abuse are child domestic workers. Furthermore, child domestic workers generally have to work for 15 hours a day, seven days a week.

Because the issue of domestic work is not reflected in the data collection framework of the government, their issues, concerns and problems remain hidden. As such, there is a urgent need to provide quantitative and qualitative database that would picture accurately the domestic worker situation in the Philippines. As a response, this proposed measure mandates that all research agencies of the government are to incorporate the variable of domestic work, decent work agenda and worst forms of child domestic labor into their annual routine research/survey activities in order to highlight and bring to the open what is presently not incorporated in the data collection system of the government. It is hope that this approach will provide an impact and influence in bringing to the open what is unknown and hidden. This will be a cost effective approach in mainstreaming the issue of domestic work because it is now the research institutions of the government who will impose upon themselves the research advocacy on the issue of and child domestic labor. Furthermore, this proposed measure mandates that the issues of domestic work, child domestic labor and decent work be incorporated in the Medium Term Philippine Development Plan in order to ensure the future availability of programs on this particular issue.

In order to promote information, education, communication (IEC) campaigns and research and development (R&D) on the issue of child domestic work (CDW), this proposed measure mandates that employers should allow their domestic workers to have access to interviews from researchers of the NSO, social workers of the DSWD,

health workers of the DOH, and labor inspectors of the DOLE and various research institutions of the government.

Because of the steady increase in the number of reported cases of worst forms of domestic worker abuse in the country, this measure proposes that the DSWD be given the power to deputize various non-governmental organizations (NGOs) to help the government provide custody, rehabilitation, psycho-social counseling, reintegration programs and paralegal assistance to the domestic workers who are victims of abuse. Given that these NGOs are the frontliners in the delivery of critical services to these domestic workers, this proposed measure seeks to provide enabling support mechanism to encourage these frontliners to engage in this line of vocation.

With the decentralization and devolution of powers, functions and basic services to the local government units, the LGUs are now given the mandate to implement the basic services to their respective localities, consistent with their respective Provincial/City/Municipal Development Plans. To mandate therefore that the LGUs should incorporate in their respective local development plans the issues concerning domestic worker's rights, decent work agenda and worst forms of child domestic labor would ensure the mainstreaming of the issue of domestic workers rights down to the grassroots level in the local government units.

Moreover, this proposed measure seeks for the creation of a "Kasambahay Fund" in the initial amount of Fifty Million Pesos (Php 50,000,000.00) to be taken from the President's Social Fund (PSF). Said fund shall be administered and managed by the Department of Labor and Employment (DOLE). The "Kasambahay Fund" shall be used to provide scholarship and continuing training programs for the continued education of domestic workers, specially women and children; to sponsor gender-sensitive national research programs on domestic labor, including child domestic workers (CDWs); to promote information, education and communication (IEC) campaign against hazardous and worst forms of child domestic labor; and to adopt appropriate measures to improve the educational infrastructure and the training of teachers to meet the needs of child domestic workers. This is being proposed to comply with the provisions of International Labor organization (ILO) Recommendation 190.

Under this proposed measure, the drafting of the implementing rules and regulations (IRR) would require the active participation of various stakeholders in the filed of domestic work. It has been proven through long years of experience in legislation that if you leave the drafting of the IRR in the hands of a particular government agency alone, they will have the tendency to be parochial to the concerns of their Department, thereby producing an ineffective, piecemeal, and narrow focused implementing guidelines. Furthermore, it is always helpful if you mandate that the NGOs should be included in the drafting of the IRR because the NGOs provide a rich input in terms of in-depth grassroots experience and practical applications in the implementation of gender-sensitive programs and projects for domestic workers.

In view of the foregoing, the passage of this measure is earnestly sought.


MANUEL "LITO" M. LAPID
Senator

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AN ACT

AMENDING FOR THIS PURPOSE BOOK III, ARTICLES 141, 142, 143, 148 AND 151 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE "LABOR CODE OF THE PHILIPPINES" BY PROVIDING FOR ADDITIONAL BENEFITS AND PROTECTION TO THE DOMESTIC HOUSEHELPERS AND FOR OTHER PURPOSES

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

SECTION 1. Article 141 of Presidential Decree No. 442, as amended, otherwise known as the "Labor Code of the Philippines" is hereby amended to read as follows:

"Art. 141. Coverage. – This chapter shall apply to all persons rendering services in household for compensation.

"Domestic [or household service] HELPER", "HOUSEHOLD HELPER" OR "KASAMBAHAY" [shall mean services in the employer's home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer's household, including services of family drivers.] REFERS TO ANY PERSON, WHO RENDERS DOMESTIC OR HOUSEHOLD SERVICES, UNDER A FULL-TIME BASIS FOR COMPENSATION, TO A HOMEOWNER / EMPLOYER UNDERTAKING TASKS ASCRIBED AS NORMAL HOUSEHOLD CHORES WITHIN A SPECIFIC HOUSEHOLD. THE TERM INCLUDES MAIDS, COOKS, HOUSEBOYS, FAMILY DRIVERS AND "YAYAS" WHO PROVIDE DAILY SERVICE TO A SPECIFIC HOUSEHOLD, EITHER ON A LIVE-IN OR LIVE-OUT BASIS."

SEC. 2. Article 142 of Presidential Decree No. 442, as amended, is hereby amended and renumbered to read as follows:

“Art. 142 (A). *Contract of domestic service.* – [The original contract of domestic service shall not last for more than two (2) years but it may be renewed for such periods as may be agreed upon by the parties.] ALL HOUSEHOLD WORKING ARRANGEMENTS OR AGREEMENTS SHALL BE COVERED BY A WRITTEN EMPLOYMENT CONTRACT, IN A LANGUAGE OR DIALECT UNDERSTOOD BY BOTH EMPLOYER AND HOUSEHOLD HELPER, DULY SIGNED BY BOTH CONTRACTING PARTIES. EACH CONTRACTING PARTY SHALL BE PROVIDED WITH A COMPLETE SET OF THE DULY SIGNED CONTRACT OF SERVICE, WHICH SHALL INCLUDE THE FOLLOWING:

- (A) PERIOD OF EMPLOYMENT, WHICH SHALL NOT EXCEED TWO (2) YEARS;**
- (B) MONTHLY COMPENSATION AND MODE OF PAYMENT;**
- (C) ANNUAL SALARY INCREASE;**
- (D) DUTIES AND RESPONSIBILITIES;**
- (E) WORKING HOURS AND DAY-OFF SCHEDULE; AND**
- (F) LIVING QUARTERS OR SLEEPING ARRANGEMENT.”**

“ART. 142 (B). *MEDICAL CERTIFICATE, POLICE CLEARANCE, NBI CLEARANCE, BARANGAY CLEARANCE AND BIRTH CERTIFICATE AS PRE-REQUISITES FOR EMPLOYMENT.* – AS PREREQUISITES FOR EMPLOYMENT IN DOMESTIC WORK, ALL PROSPECTIVE APPLICANTS SHOULD SECURE THE FOLLOWING DOCUMENTS:

- (a) MEDICAL CERTIFICATE ATTESTING TO THE PHYSICAL AND MENTAL FITNESS OF THE DOMESTIC WORKER TO BE SECURED FROM A LICENSED PHYSICIAN;**
- (b) NATIONAL BUREAU OF INVESTIGATION (NBI) CLEARANCE;**
- (c) BARANGAY CLEARANCE; AND**
- (d) DULY AUTHENTICATED BIRTH CERTIFICATE FROM THE NATIONAL STATISTICS OFFICE (NSO).”**

SEC. 3. Subparagraphs (1), (2) and (3), Article 143 of Presidential Decree No. 442, as amended, are hereby amended and renumbered to read as follows:

“Art. 143 (A). Minimum wage. – (a) Househelpers OR DOMESTIC HELPERS, AS DEFINED UNDER THIS ACT, shall be paid the following *minimum wage rates*:

(1) [Eight Hundred Pesos (P800.00)] **TWO THOUSAND PESOS (P2,000.00)** a month for househelpers [in Manila, Quezon, Pasay and Caloocan cities and the municipalities of Makati, San Juan, Mandaluyong, Muntinlupa, Navotas, Malabon, Paranaque, Las Pinas, Pasig, Marikina, Valezuela, Taguig and Pateros in Metro Manila and in highly urbanized cities] **EMPLOYED IN THE NATIONAL CAPITAL REGION;**

(2) [Six hundred fifty pesos (P650.00)] **ONE THOUSAND FIVE HUNDRED PESOS (P1,500.00)** a month for those **EMPLOYED** in other chartered cities and first class municipalities; and

(3) [Five hundred fifty pesos (P550.00)] **ONE THOUSAND PESOS (P1,000.00)** a month for those in other municipalities.

[*Provided,* That the employers shall review the employment contracts of their househelpers every three (3) years with the end in view of improving the terms and conditions thereof.]

Provided, [further,] That those househelpers who are receiving at least One thousand pesos (P1,000.00) shall be covered by the Social Security System (SSS) and be entitled to all the benefits provided thereunder.

THE REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARDS (RTWPBS) MAY DETERMINE AND ADJUST, FROM TIME TO TIME, THE APPROPRIATE MINIMUM WAGE RATES OF HOUSEHOLD OR DOMESTIC HELPERS.”

“ART. 143 (B). PAYMENT OF WAGES. – PAYMENT OF WAGES SHALL BE MADE DIRECTLY TO THE DOMESTIC WORKER TO WHOM THEY ARE DUE IN CASH, AT LEAST TWICE A MONTH. THE EMPLOYER, UNLESS ALLOWED BY THE DOMESTIC WORKER THROUGH A WRITTEN CONSENT, SHALL MAKE NO DEDUCTIONS FROM HIS/HER WAGES OTHER THAN THAT WHICH IS MANDATED BY LAW. NO EMPLOYER SHALL PAY THE WAGES OF A DOMESTIC WORKER BY MEANS OF PROMISSORY NOTES, VOUCHERS, COUPONS, TOKENS, TICKETS, CHITS OR ANY OBJECT OTHER THAN THE CASH WAGE AS PROVIDED FOR UNDER THIS ACT.”

“ART. 143 (C). PAY SLIP. - ALL EMPLOYERS ARE MANDATED AT ALL TIMES TO PROVIDE THEIR DOMESTIC WORKER WITH A COPY OF THEIR PAY SLIP WHICH SHALL CONTAIN THE AMOUNT PAID IN CASH BY THE EMPLOYER TO THE DOMESTIC WORKER EVERY PAY DAY, AS PRESCRIBED UNDER THIS ACT. THE COPIES OF THE PAY SLIP MUST BE KEPT BY THE EMPLOYER FOR A PERIOD OF THREE (3) YEARS.”

“ART. 143 (D). PLACE OF PAYMENT. – PAYMENT OF WAGES SHALL BE MADE AT OR NEAR THE PLACE OF UNDERTAKING, EXCEPT AS OTHERWISE PROVIDED BY SUCH REGULATIONS AS THE SECRETARY OF LABOR MAY PRESCRIBE UNDER CONDITIONS TO ENSURE PROTECTION OF WAGES.”

“ART. 143 (E). PROHIBITION ON INTERFERENCE IN DISPOSAL OF WAGES. – NO EMPLOYER SHALL LIMIT OR OTHERWISE INTERFERE WITH THE FREEDOM OF ANY DOMESTIC WORKER TO DISPOSE OF HIS/HER WAGES. THE EMPLOYER SHALL NOT IN ANY MANNER FORCE, COMPEL, OR OBLIGE THE DOMESTIC WORKER TO PURCHASE MERCHANDISE, COMMODITIES OR OTHER PROPERTIES FROM THE EMPLOYER OR FROM ANY OTHER PERSON, OR OTHERWISE MAKE USE OF ANY STORE OR SERVICES OF SUCH EMPLOYER OR ANY OTHER PERSON.”

“ART. 143 (F). PROHIBITION AGAINST WITHHOLDING OF WAGES. – IT SHALL BE UNLAWFUL FOR AN EMPLOYER, DIRECTLY OR INDIRECTLY, TO WITHHOLD ANY AMOUNT FROM THE WAGES OF THE DOMESTIC WORKER OR INDUCE HIM/HER TO GIVE UP ANY PART OF HIS/HER WAGES BY FORCE, STEALTH, INTIMIDATION, THREAT OR BY ANY OTHER MEANS WHATSOEVER.”

“ART. 143 (G). PROHIBITION ON DEPOSITS FOR LOSS OR DAMAGE. – NO EMPLOYER SHALL REQUIRE HIS/HER DOMESTIC WORKER TO MAKE DEPOSITS FROM WHICH DEDUCTIONS SHALL BE MADE FOR THE REIMBURSEMENT OF LOSS OR DAMAGE TO TOOLS, MATERIALS, FURNITURE AND EQUIPMENT IN THE HOUSEHOLD.”

SEC. 4. Article 148 of Presidential Decree No. 442, as amended, is hereby amended to read as follows:

“Art. 148. Board, Lodging and Medical Attendance. – The employer shall furnish the househelper free of charge suitable and sanitary living quarters as well as adequate food and medical attendance.

EVERY EMPLOYER SHALL KEEP IN HIS/HER HOUSEHOLD SUCH FIRST-AID MEDICINES AND EQUIPMENT AS THE NATURE AND CONDITIONS OF DOMESTIC WORK MAY REQUIRE, IN ACCORDANCE WITH THE RULES AND REGULATIONS THAT WILL BE PRESCRIBED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE), IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT.”

SEC. 5. Article 151 of Presidential Decree No. 442, as amended, is hereby amended to read as follows:

“Art. 151 (A). Employment Certification. - Upon the severance of the household service relation, the employer shall give the househelper/**DOMESTIC WORKER** a written **EMPLOYMENT CERTIFICATION INDICATING** [statement of] the nature, [and] duration of the service, **WORK PERFORMANCE**, [and his or her] efficiency and conduct as househelper/**DOMESTIC WORKER.**”

“ART. 151 (A). EMPLOYER'S REPORTORIAL DUTIES. – **EVERY EMPLOYER OF DOMESTIC WORKER IS MANDATED TO KEEP THE FOLLOWING RECORDS TO REFLECT THE ACTUAL TERMS AND CONDITIONS OF EMPLOYMENT HIS/HER DOMESTIC WORKER FOR A PERIOD OF THREE (3) YEARS AFTER THE DOMESTIC WORKER HAS LEFT THE SERVICES OF THE EMPLOYER FOR PURPOSES OF DOCUMENTATION:**

- (a) A REGISTER OF ALL DOMESTIC WORKER EMPLOYED BY HIM/HER, INDICATING THE DATES OF THEIR BIRTH;**
- (b) A SEPARATE FILE FOR THEIR EMPLOYMENT CONTRACT AND EMPLOYMENT CERTIFICATE;**
- (c) A SEPARATE FILE FOR THEIR POLICE CLEARANCE, NBI CLEARANCE AND BARANGAY CLEARANCE; AND**

(d) A SEPARATE FILE FOR THEIR MEDICAL CERTIFICATES.

IT SHALL BE UNLAWFUL FOR ANY EMPLOYER TO MAKE ANY REPORT, OR RECORD FILED OR KEPT PURSUANT TO THE PROVISIONS OF THIS ACT KNOWING SUCH STATEMENT, REPORT OR RECORD TO BE FALSE IN ANY MATERIAL RESPECT.”

SEC. 6. *Domestic Workers Fund.* – There is hereby created a “Kasambahay Fund” to be administered and managed by the Department of Labor and Employment (DOLE) in the initial amount of Fifty Million Pesos (Php 50,000,000.00) to be taken from the President’s Social Fund (PSF). Thereafter, such funds shall be provided for in the General Appropriations Act annually.

The Kasambahay Fund shall be used for the following purposes:

(a) To provide scholarship and continuing training programs for the continued education of domestic workers, specially women and children;

(b) To sponsor gender-sensitive national research programs on domestic labor, including child domestic workers (CDWs);

(c) To sponsor conferences, seminars, forums and dialogues to provide venue for consensus building and knowledge sharing amongst the public, academe, government, employers, domestic workers organization, NGOs, and international organizations;

(d) To promote information, education and communication (IEC) campaign against hazardous and worst forms of child domestic labor;

(e) To adopt appropriate measures to improve the educational infrastructure and the training of teachers to meet the needs of child domestic workers;

(f) To mobilize resources for national and international programs on domestic workers rights; and

(g) To provide publicity to best practices on the elimination of worst forms of child domestic labor.

SEC. 7. *Emergency Service.* – The Department of Social Welfare and Development (DSWD) shall, within six (6) months from the date of effectivity of this Act, institute and establish a program designed specifically to provide emergency services to all domestic workers who are in need of custody, shelter, healing, or medical, psychological, legal and rehabilitative services.

The DSWD shall deputize and utilize the services and expertise of non-government organizations (NGOs) in the conduct of custody, care, psycho-social

counseling, healing, and medical, psychological, legal and rehabilitative services for domestic workers who are victims of exploitation and abuse from their employers.

For purposes of this Section, the DSWD, in consultation with the DOLE, National Commission on the Role of Filipino Women (NCRW), Council for the Welfare of Children (CWC), Department of Justice (DOJ) and Department of Health (DOH), shall promulgate the necessary implementing guidelines in the accreditation of NGOs and child caring institutions in the custody, rehabilitation, medical care, training and education, emergency repatriation and legal services for domestic workers.

SEC. 8. LGU Participation in the Promotion of Domestic Workers Rights. – Consistent with the provisions of this Act, the local government units from the provincial, municipal, city and barangay level are hereby mandated to include in their respective local development plans a time-bound program for the protection of the rights of domestic workers and the gradual elimination of child domestic work, particularly its worst forms of child labor.

The local government units (LGUs) may seek the technical assistance of the DSWD and DOLE to comply with the provisions of this Act.

SEC. 9. Reportorial Requirements. – The Department of Labor and Employment shall submit to the President of the Philippines and to both Houses of Congress an annual report of the policies, programs, projects and activities relative to the implementation of this Act.

SEC. 10. Promotion of Data Gathering and Research Development (R&D). – In order to promote information, education, communication (IEC) campaigns and research and development (R&D) on the issue of domestic work, employers are mandated to allow their domestic workers to have access to interviews from researchers of the National Statistics Office (NSO), social workers of the DSWD, health workers of the DOH, and labor inspectors of the DOLE and various research institutions of the government.

Consistent with the provisions of this Act, the NSO, National Statistics and Coordination Board (NSCB), Commission on Population, Statistical Research and Training Center, Institute for Labor Studies (ILS) of DOLE, TESDA Women's Center (TWC) and other relevant social science research agencies of the government are hereby mandated and required to incorporate and include the data and information concerning domestic work, decent work agenda and child domestic labor modules in the routine data collection operations conducted by these agencies in labor force surveys, household budget and expenditure surveys, demographic and health surveys,

population studies, censuses, baseline surveys and other relevant qualitative and quantitative studies in order to mainstream the issue of domestic work, and child domestic labor into the Medium Term Philippine Development Plan (MTPDP), Medium Term Public Investment Program (MTPIP), Regional / Provincial / City and Municipal Development Plans and pertinent development framework plans of the government.

SEC. 11. *Implementing Rules and Regulations (IRR).* – Within six (6) months from the effectivity of this Act, the Department of Labor and Employment (DOLE), in coordination with the Department of Social Welfare and Development (DSWD), Department of Interior and Local Government (DILG), Department of Health (DOH), Department of Justice (DOJ), Department of Education (DepEd), Council for the Welfare of Children (CWC), National Commission on the Role of Filipino Women (NCRW), in close coordination and cooperation with the Committee on Labor and Employment of both Houses of Congress, and in consultation with the NGOs sector, private sector, employer sector, research institutions, academe and other agencies of the government, shall promulgate necessary implementing rules and regulations to implement the provisions of this Act.

SEC. 12. *Transitory Provisions.* – No provisions in this Act shall be interpreted to cause the diminution or substitution of benefits and privileges presently enjoyed by domestic workers.

All existing arrangements between the employer and domestic worker shall conform to the minimum standards set by this Act within a period of sixty (60) days upon effectivity of this Act.

SEC. 13. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations or parts thereof not consistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 14. *Separability Clause.* – If any provision or part of this Act, or the application thereof to any person or circumstance, is held unconstitutional or invalid, the remainder of this Act shall not be affected thereby.

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

Approved,