

SEVENTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES

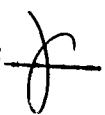
First Regular Session



Senate
Office of the Secretary

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SENATE
S.B. No. 1061

RECEIVED BY: 

Introduced by Senator Poe

AN ACT
ERADICATING ABUSIVE CONTRACTUALIZATION PRACTICES AND
PENALIZING EMPLOYERS AND CONTRACTORS WHO COMMIT SUCH
ABUSES, BY 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 explicit 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 . . . ”

Security of tenure is included among the rights of laborers and is operationalized in Article 279 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 “subcontracting” under Articles 106 to 109 of the Labor Code.¹ Under a

¹ Del Rosario, R. and Resureccion, P.F. “Less than six months contract periods: is the retail industry circumventing the law? The Philippine case.” *International Journal of Information Technology and Business*

subcontracting arrangement, “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.” This form of contractualization emerged in the 1980’s as a response of firms to globalization.² It “allows establishments to reduce costs by concentrating on their core business and outsourcing non-core activities.”³

On the other hand, contractualization can also refer to the wide spectrum of non-regular or irregular “precarious work”, which can include “project-based”, “seasonal”, and “casual” employees. Other variants of non-regular work arrangements pertain to “job orders”, “consultancies” and other forms of contractual arrangements which are purposefully designed to avoid or preempt the full application of security of tenure laws and the attendant benefits that flow from regular employment.

It is this latter category of contractualization which has been subject to manipulation and abuse, and which has manifested in our *lingua franca* as “Endo” or “5-5-5”.⁴ “Endo” is the shortened version of “end of contract.” It refers to the practice of ending contractual employments before the worker can be deemed a regular employee. In addition, “5-5-5,” workers are made to work for only five months at a time.⁵

Endo is a highly abusive practice. First, the practice of repeated hiring for five 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.

This measure seeks to amend the Labor Code in order to address, if not wholly eradicate, *Endo*, an abusive and detrimental form of contractualization. This bill provides as follows:

1. Any employee engaged for a definite period of time, under a written contract specifying the rights, terms, and conditions of employment not lower than the minimum standard set by laws or regulations, shall not be deemed a regular employee upon the expiration of said contract;
2. Subsequent engagement under any arrangement, with or without a written contract, regardless of whether the employee was directly hired or through a contractor or third party, would automatically render the employment regular: (i) when the initial contract that expired was for a period of at least six (6) months and the work is desirable to the business of the employer, or (ii) when the worker

Management 2012: Vol 7, No. 1. Retrieved from <http://www.jitbm.com/7th%20volume%20JITBM/pamela.pdf> accessed 07/26/16.

² *Id.*

³ *Id.*

⁴ Cristobal, M.A. and Resurreccion, E. “De-Confusing Contractualization: Defining Employees Engaged in Precarious Work in the Philippines” Retrieved from <http://plj.upd.edu.ph/wp-content/uploads/2015/03/88-02-J-88B14-De-Confusing-Contractualization-v1.pdf> Accessed 07/26/16.

⁵ *Id.*

has accumulated an aggregate period of at least six (6) months for successive prior contracts or arrangements of shorter duration and the work is desirable to the business of the employer;

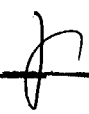
3. Subsequent engagement of the same employee shall deem the employee to have attained regular employment in the proper cases when the new employer is a different entity; provided, that the ownership of at least fifty percent (50%) of the total stockholding or other proprietary interest of the first and the subsequent entity belongs to one and the same juridical person or individual; or one employer exercises over the other employer complete control or domination of finances, policies, and business practices.

Timely approval of this measure is sought.


GRACE POE


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KNOWN AS THE LABOR CODE OF THE PHILIPPINES, AS AMENDED

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 107 of the Labor Code, as
2 amended, is hereby further amended as follows:

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

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

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

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

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

12
13 **SECTION 2.** Book VI, Title I, of the Labor Code, as amended, is hereby amended
14 by adding a new article as follows:

15
16 **"ARTICLE 280-A. *Initial and subsequent engagements.*** – Any employee engaged
17 for a definite period of time, provided that such engagement is covered by a written
18 contract of employment specifying the rights, terms, and conditions of employment
19 not lower than the minimum standard set by laws or regulations, shall not be deemed
20 a regular employee upon the expiration of said contract.

21
22 "Subsequent engagement under any arrangement, with or without a written contract,
23 regardless of whether the employee was directly hired or through a contractor or third
24 party, would automatically render the employment regular: (i) when the initial
25 contract that expired was for a period of at least six (6) months and the work is
26 desirable to the business of the employer, or (ii) when the worker has accumulated an
27 aggregate period of at least six (6) months for successive prior contracts or
28 arrangements of shorter duration and the work is desirable to the business of the
29 employer.

30
31 "Subsequent engagement of the same employee shall be deemed covered by the
32 preceding paragraph and the employee deemed to have attained regular employment
33 in the proper cases even when the new employer is a different entity; provided, that

1 the ownership of at least fifty percent (50%) of the total stockholding or other
2 proprietary interest of the first and the subsequent entity belongs to one and the same
3 juridical person or individual; or one employer exercises over the other employer
4 complete control or domination of finances, policies, and business practices.
5

6 **“ARTICLE 280-B. Penalties for non-compliance.** – An employer who fails to
7 implement the preceding provision, or who intends to circumvent the preceding
8 paragraph by indicating otherwise in their contract with their employee shall be
9 penalized by a fine of FIFTY THOUSAND PESOS (P50,000) for the first offense;
10 ONE HUNDRED THOUSAND PESOS (P100,000) for the second offense, and FIVE
11 HUNDRED THOUSAND PESOS (P500,000) for the third offense. In addition, the
12 employer shall immediately regularize the employee, or if regularization is no longer
13 feasible, pay a separation fee to the employee equivalent to the latter’s three month’s
14 salary.”
15

16 **SECTION 3. Rules and Regulations.** – The Secretary of Labor and Employment shall
17 promulgate the necessary implementing rules and regulations within one hundred and twenty
18 (120) days from the effectivity of this Act.
19

20 **SECTION 4. Repealing Clause.** – All laws, decrees, rules, and regulations, or parts
21 thereof, which are contrary to or inconsistent with this Act are hereby repealed or modified
22 accordingly.
23

24 **SECTION 5. Separability Clause.** – If any clause, sentence, section or part of this
25 Act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall
26 not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation
27 to the clause, sentence, paragraph, section, or part thereof directly involved in the
28 controversy.
29

30 **SECTION 6. Effectivity.** – This Act shall take effect fifteen (15) days after its
31 publication in the Official Gazette or in at least two (2) newspapers of general circulation.
32

33 *Approved,*