

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

'04 JUL 29 P 4:48

SENATE
S.B. No. **1560**

RECEIVED BY: _____

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

Project employees are frequent victims of unfair labor practices. Project employees are those employed in connection with a particular project or phase thereof and whose employment is coterminous with each project or phase of the project to which they are assigned. They are often associated with the construction industry, but other businesses also employ project employees.

Presidential Decree No. 442, known as the Labor Code, Article 280 defines project employment as an exception to the rule on regular employment, thus:

Art. 280. Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer **except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.**

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Emphasis supplied)

The problem arises when the project employee continues working for the same employer even after the completion of the project. The usual defense of the employer is that the employee cannot receive the benefits of a regular employee for the reason that the employee was hired only as a casual employee. Hence, the need to differentiate between regular, casual, and project employees.

To stabilize and promote harmonious employer-employee relations and in order to ensure the protection and welfare of project employees, Department Order No. 19 entitled "Guidelines Governing the Employment of Workers in the Construction Industry" was issued on 1 April 1993. If certain important provisions of these guidelines were incorporated into the Labor Code, Article 280, project employees in all kinds of businesses would be greatly benefited. This would also aid labor arbiters in deciding cases involving project employees, considering the difficulty of classifying them as either regular or casual when they are made to continue working beyond the completion of the undertaking for which they are hired. Inasmuch as the majority of the project employees are manual or skilled laborers, these amendments would improve the protection of their rights.

This bill seeks to amend the relevant portions of the Labor Code on project employees, and to clarify once and for all the indicia of project employment, requirements for rehiring of project employees, and conditions for their employment and termination.


MIRIAM DEFENSOR SANTIAGO

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AN ACT
AMENDING PRESIDENTIAL DECREE NO. 442, KNOWN AS THE LABOR CODE,
ARTICLE 280

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

SECTION 1. Presidential Decree No. 442, Article 280 is hereby amended to read as follows:

Art. 280. Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

UPON COMPLETION OF THE PROJECT OR PHASE FOR WHICH THE EMPLOYEE WAS EMPLOYED, THE PROJECT EMPLOYEE MAY BE REHIRED FOR ANOTHER UNDERTAKING: PROVIDED, HOWEVER, THAT SUCH REHIRING CONFORMS WITH THE PROVISIONS OF LAW AND REPORTORIAL REQUIREMENTS OF THE DEPARTMENT OF LABOR AND EMPLOYMENT WITHIN THIRTY (30) DAYS FROM THE DATE OF THE EMPLOYEE'S SEPARATION FROM WORK. IN SUCH CASE, THE LAST DAY OF SERVICE WITH THE EMPLOYER IN THE

PRECEDING PROJECT SHOULD BE INDICATED IN THE EMPLOYMENT AGREEMENT.

PROJECT EMPLOYEES WHOSE AGGREGATE PERIOD OF CONTINUOUS EMPLOYMENT IS AT LEAST ONE YEAR SHALL BE CONSIDERED REGULAR EMPLOYEES IN THE ABSENCE OF A "DAY CERTAIN" AGREED UPON BY THE PARTIES FOR THE TERMINATION OF THEIR RELATIONSHIP. PROJECT EMPLOYEES WHO HAVE BECOME REGULAR SHALL ENJOY SECURITY OF TENURE IN THEIR EMPLOYMENT AS PROVIDED HEREIN. ONLY PROJECT EMPLOYEES WHO HAVE BECOME REGULAR SHALL BE ENTITLED TO SEPARATION PAY, UNLESS TERMINATED FOR JUST CAUSE.

SECTION 2. *Repealing Clause.* - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with, the provisions of this Act is hereby repealed, modified or amended accordingly.

SECTION 3. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved.