

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

5 AUG -2 P6:39

SENATE

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S. No. 2071

INTRODUCED BY THE HONORABLE MAR ROXAS

EXPLANATORY NOTE

This bill seeks to amend three provisions of the Labor Code: a) **hours of work**- providing an alternative arrangement in the hours of work of an employee by allowing the adoption of a compressed workweek or other flexible time arrangement for businesses where such is necessary, with corresponding safeguards to ensure the protection of workers; b) **night work prohibition** - recognizing and regulating the right of women to work in 24-hour business establishments; and c) **fixed or term employment** - incorporate jurisprudence in the relevant labor provisions on regular employment in view of the decisions of the Supreme Court on fixed or term employment.

The Philippines is fast becoming the country-of-choice for outsourced call center services, prompting the government to name it as one of our sunshine industries. These call centers provide support services to international clients whose business hours happen to be during the evenings in the Philippines. With the advances in information and communication technology and the competitive advantage of Filipinos over other Asian countries in this field, the government has identified six (6) niches for promotion in the over-all development framework for information and communication technology and the ICT-enabled services sector: contact center, business processing outsourcing (BPO), software development, animation/computer graphics, medical or legal transcriptionist, and engineering design. Major global call centers have been established in the Philippines. Starting from 1,000 seats and 1,600 employees and US\$ 24 million in the year 2000, the call center industry has grown to 60,000 seats, employing 96,000 people, and with projected revenue of US\$ 1 billion in the year 2005. At the present rate, the call center industry is hiring 3,000 customer service representatives and 300 supervisors monthly. The BPOs are likewise projected to expand their presence in the country.

According to the Department of Labor and Employment, 70% of the employees of these call centers are women. Given the nature of the call center business where work patterns and schedules are directed by technology concerns, caller behavior, regulations in other countries, and other concerns, there is a need to adapt to the changing requirements of businesses while ensuring that the rights of workers to humane working conditions are protected.

The International Labor Organization (ILO) Convention No. 89 is an international standard pertaining to night work for women. This was ratified by the Philippine government on December 29, 1953. It prohibits employment of night work for women in any private or public industrial undertaking or in any branch thereof, except those in which only members of the same family is employed. The clear intention of the Convention was to prevent night work for women. Exceptions to this prohibition are those who hold positions of a managerial or technical nature, and

women engaged in health and welfare services. This Convention was incorporated in our Labor Code through Articles 130-131.

Over the years, however, most nations who previously ratified this Convention have moved to repeal their laws on night work prohibition for women, rejecting said Convention. This Convention harbors the greatest number of denunciations. With many nations now viewing the Convention as discriminatory to women and an impediment to economic and social progress. The Convention was finally revised in June 26, 1990 by the General Conference of the International Labor Organization (ILO) when it adopted the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948.

Due to the necessity of night work in certain industries, this bill seeks to expand the exemptions on night work prohibition to allow night work for women. Women should also be allowed to benefit from the security of tenure, monetary compensation, and provision of fringe benefits that is offered by these industries to night workers. But to alleviate the rigors of night work, and in view of its negative effects on the health, social and family life of workers, this bill aims to protect the welfare of both men and women whose hours of work are between 10 o'clock in the evening to 6 o'clock in the morning.

In view of the foregoing, approval of this bill is earnestly sought.



MAR Roxas
Senator

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AN ACT

AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, AND FOR OTHER PURPOSES

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

Section 1. Art. 83 of PD No. 442, as amended, is hereby amended to read as follows:

"Art. 83. NORMAL HOURS OF WORK-

The normal hours of work of any employee shall not exceed eight (8) hours a day, EXCEPT WHEN IN THE SOUND EXERCISE OF ITS DISCRETION, WITH DUE REGARD TO THE RIGHTS OF LABOR AND TO ADDRESS ITS BUSINESS REQUIREMENTS, THE EMPLOYER MAY ADOPT ALTERNATIVE ARRANGEMENTS; PROVIDED, THAT IN NO CASE SHALL THE NORMAL HOURS OF WORK IN A WEEK EXCEED FORTY-EIGHT (48) HOURS; AND PROVIDED FURTHER, THAT SUCH EMPLOYER MUST FIRST SEEK APPROVAL TO ADOPT SUCH ALTERNATIVE ARRANGEMENT FROM THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) TO ENSURE THAT THE EXERCISE OF SUCH DISCRETION IS WARRANTED.

Section 2. Art. 87 of PD No. 442, as amended, is hereby amended to read as follows:

"Art. 87. Overtime work-

Work may be performed beyond [eight hours a day] THE NORMAL HOURS OF WORK provided that the employee is paid for the overtime work on additional compensation equivalent to his regular wage plus at least twenty-five percent (25%) thereof. Work performed beyond [eight hours a day] THE NORMAL HOURS OF WORK on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the [first eight hours] NORMAL HOURS OF WORK OF AN EMPLOYEE on a holiday or rest day plus at least thirty percent (30%) thereof."

Section 3. Title III Working Conditions for Special Groups of Employees, Chapter I, Employment of Women, Art. 131 of PD No. 442, as amended, is hereby amended to read as follows:

"Art. 131. Exceptions -

(a) In cases of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disasters or calamity, to prevent loss of life or property, or in cases of force majeure or imminent danger to public safety;

(b) In case of urgent work to be performed on machineries, equipment or installation, to avoid serious loss which the employer would otherwise suffer;

(c) Where the work is necessary to prevent serious loss of perishable goods;

(d) Where the woman employee holds a responsible position of managerial or technical nature, or where the woman employee has been engaged to provide health and welfare service;

(e) Where the nature of the work requires the manual skill and dexterity of women workers and the same cannot be performed with equal efficiency by male workers;

(f) Where the women employees are immediate members of the family operating the establishment or undertaking;

(G) WHERE THE ESTABLISHMENT WHICH EMPLOYS THE WOMEN WORKERS IS ENGAGED IN PROVIDING INFORMATION, OUTSOURCE, OR AUXILIARY SERVICES TO INTERNATIONAL CLIENTS WHOSE BUSINESS HOURS HAPPEN TO INCLUDE THE HOURS OF 10 O'CLOCK IN THE EVENING TO 6 O'CLOCK IN THE MORNING IN THE PHILIPPINES; PROVIDED, THAT THE ESTABLISHMENT SHALL STRICTLY COMPLY WITH THE REQUIREMENTS PROVIDED IN SECTION 132-A OF THIS CODE; PROVIDED FURTHER, THAT PREGNANT AND LACTATING WOMEN, THOSE BELOW 18 YEARS OF AGE, AND THOSE WHO ARE PHYSICALLY UNFIT FOR NIGHTSHIFT WORK SHALL BE PROHIBITED TO UNDERTAKE NIGHTSHIFT WORK; AND PROVIDED FINALLY THAT A FEMALE NIGHT WORKER SHALL NOT BE DISMISSED OR GIVEN NOTICE OF DISMISSAL EXCEPT FOR JUSTIFIABLE REASONS NOT CONNECTED WITH HER PREGNANCY OR CHILDBIRTH.

AS USED IN THIS SECTION, A NIGHT WORKER SHALL MEAN A WORKER WHOSE REGULAR HOURS OF WORK INCLUDE THE HOURS FROM 10 O'CLOCK IN THE EVENING TO 6 O'CLOCK IN THE MORNING.

(H) Under other analogous cases exempted by the Secretary of Labor in appropriate regulation.

Section 4. Facilities for Nightshift Workers. A new article to be known as ARTICLE 132-A is hereby inserted after Article 132 of, PD No. 442, as amended, which shall read as follows:

ARTICLE 132-A. FACILITIES FOR NIGHT WORKERS. THE SECRETARY OF LABOR AND EMPLOYMENT SHALL ESTABLISH STANDARDS THAT WILL ENSURE THE SAFETY AND HEALTH OF NIGHT WORKERS. IN APPROPRIATE CASES, HE SHALL, BY REGULATIONS, REQUIRE ANY EMPLOYER TO:

(A) LIMIT THE WORK HOURS OF NIGHT WORKERS TO EIGHT (8) HOURS FOR EVERY TWENTY-FOUR (24) HOUR PERIOD AND FORTY (40) HOURS WITHIN A SEVEN (7)- DAY PERIOD;

(B) CHANGE THE SHIFTS OF NIGHT WORKERS FOR EVERY THIRTY- (30) DAY PERIOD;

(C) ACCORD EQUAL TREATMENT TO BOTH MALE AND FEMALE WORKERS IN THE ASSIGNMENT OF NIGHT SHIFTS;

(D) PROVIDE SEPARATE SLEEPING QUARTERS AND LAVATORIES FOR MALE AND FEMALE NIGHT WORKERS;

(E) PROVIDE FREE TRANSPORTATION SERVICES FOR NIGHT WORKERS FROM THEIR WORK SITE TO AREAS WHERE PUBLIC TRANSPORTATION IS READILY AVAILABLE;

(F) PROVIDE SECURE, WELL-LIT AND WELL-VENTILATED WORK PREMISES; AND

(G) PROVIDE FREE PERIODIC MEDICAL CHECK-UPS FOR NIGHT WORKERS TO DETERMINE FITNESS FOR NIGHT WORK;

(H) STRICTLY COMPLY WITH ARTICLE 86 OF THE LABOR CODE.

Section 5. Article 280 of PD No. 442, as amended, 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: 1) 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 2) where the work or service to be performed is seasonal in nature and the employment is for the duration of the season, OR 3) WHERE THE EMPLOYMENT IS FOR A FIXED OR DEFINITE PERIOD ON WHICH BOTH THE EMPLOYER AND THE EMPLOYEE AGREE UPON KNOWINGLY AND VOLUNTARILY IN VIEW OF THE TEMPORARY NATURE OF THE TASK OR JOB."

Section 6. Separability Clause - If any part or provision of this Act shall be held unconstitutional or invalid, other provisions hereof that are not affected thereby shall continue to be in full force and effect.

Section 7. Repealing Clause - All laws, presidential decrees, executive orders, rules and regulations, or parts thereof which are not consistent with this Act are hereby repealed, amended or modified accordingly.

Section 8. Effectivity Clause - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved.