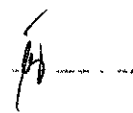


FOURTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

7 SEP 11 2015

RECEIVED BY: 

SENATE

S. No. 1550

Introduced by Senator JUAN MIGUEL F. ZUBIRI

EXPLANATORY NOTE

Even as the Constitution provides in no unclear terms the right of workers to security of tenure, employment practices that abrogate this right persist. Preventing workers from becoming regular employees and the denial by employers of the existence of employee-employer relationship are but two of the grave employment practices inconsistent with the workers' right to security of tenure. Such practices are usually effected through the classification of regular employees as "casual", "renewal" of employment contract every six months; firing of employees and hiring of new ones every five or six months; labor-only contracting; and hiring of "agency workers".

In general, these unfair labor practices violate the right of workers to just and humane employment terms and conditions, to self-organization and collective bargaining. The non-recognition of workers as regular employees, for instance, is tantamount to withholding from them benefits accorded to regular employees, including the right to join unions and engage in collective bargaining. Similarly, these labor practices violate the right of regular members in the sense that they weaken the latter's bargaining unit because they cannot recruit workers who should have been regular employees.

Unfortunately, the legal provisions at present do not deter unscrupulous employers from committing anti-labor practices. Furthermore, the law on subcontracting is even vague and admits interpretation inconsistent with the provision of the law on regular employment.

This legislation therefore intends to correct the significant omissions and loopholes in our laws by amending relevant sections in our Labor Code. Specifically, it seeks to: (1) render the misclassification of regular employees into other kinds of employees as an unfair labor practice and provide penalties thereof; and (2) harmonize the laws on subcontracting and regular employment. Through these, we hope to secure and strengthen the constitutionally guaranteed right of our workers to security of tenure.


Hence, support of this bill is earnestly sought.


JUAN MIGUEL F. ZUBIRI

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

7 SEP 11 2009

SENATE

RECEIVED BY: 

S. No. 1550

Introduced by Senator JUAN MIGUEL F. ZUBIRI

AN ACT
STRENGTHENING THE CONSTITUTIONAL RIGHT TO SECURITY OF TENURE,
AMENDING FOR THE PURPOSE THE LABOR CODE OF THE PHILIPPINES, AND
FOR OTHER PURPOSES

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

1 **SECTION 1.** *Short Title.* This Act shall be known as the "SECURITY OF
2 TENURE ACT OF 2007."

3 **SECTION 2.** *Labor-only contracting.* Art 106 of the Labor Code shall be
4 amended to read as follows:

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

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

14 The Secretary of Labor and Employment may, by appropriate
15 regulations, restrict or prohibit the contracting out of labor to protect the rights
16 of workers established under this Code. In so prohibiting or restricting, he may
17 make appropriate distinctions between labor-only contracting as well as
18 differentiation within these types of contracting, and determine who among the
19 parties involved shall be considered the employer for purposes of this Code, to
20 prevent any violation or circumvention of any provision of this Code.

1 There is "labor-only" contracting where the person supplying workers to
2 an employer does not have substantial capital [or] AND investment in the form
3 of tools, equipment, machinery, work premises, among others, and the
4 workers recruited and placed by such person are performing activities which
5 are directly related to the principal business of such employer or WHERE THE
6 PRINCIPAL EMPLOYER HAS THE RIGHT OF CONTROL OVER MEANS BY
7 WHICH THE PURPORTED AGENCY OR CONTRACTUAL EMPLOYEE
8 PERFORMS THE ACTIVITIES, NOTWITHSTANDING THE FACT THAT THE
9 AGENCY OR CONTRACTOR HAS SUBSTANTIAL CAPITAL AND/OR
10 INVESTMENT IN THE FORM OF TOOLS, EQUIPMENT, MACHINERIES,
11 WORK PREMISES, AMONG OTHERS. In such cases, the person or
12 intermediary shall be considered merely as an agent of the employer who shall
13 be responsible to the workers in the same manner and extent as if the latter
14 were directly employed by SUCH PRINCIPAL EMPLOYER.

15 IN THE PERFORMANCE OF ITS JOB, THE LEGITIMATE
16 SUBCONTRACTOR MUST USE ITS OWN EQUIPMENT, FACILITIES,
17 MACHINERIES AND TOOLS AND CANNOT RELY ON THE PRINCIPAL
18 CONTRACTO. THE USE OF THE SUBCONTRACTOR OF THE
19 EQUIPMENT, FACILITIES, MACHINERIES AND TOOLS OF THE
20 PRINCIPAL IS AN INDICATION THAT THE SUBCONTRACTOR HAS NO
21 SUBSTANTIAL CAPITAL AND INVESTMENT.

22 THE EMPLOYER AND THE LABOR-ONLY CONTRACTOR OR
23 SUBCONTRACTOR WHO VIOLATE THE FOREGOING PROVISION SHALL
24 BE SOLIDARY LIABLE TO PAY INDEMNITY OF NO LESS THAN P50,000.00
25 TO EACH EMPLOYEE UNDER THE LABOR-ONLY CONTRACTOR OR
26 SUBCONTRACTO, WITHOUT PREJUDICE TO THE OTHER MONETARY
27 AWARDS SUCH AS BACKWAGES, MONETARY CLAIMS, AND CBA
28 BENEFITS.

29 **SECTION 3.** *Lawful classification of regular employment.* Art. 280 of the
30 Labor Code shall be amended as follows:

31 "ART. 280. Regular and Casual Employment; Penalty in Case of
32 Violation - The provisions of written contract to the contrary notwithstanding
33 and regardless of the oral agreement of the parties, an employee shall be
34 deemed to be regular where the employee has been engaged to perform
35 activities which are usually necessary and desirable in the usual trade or
36 business of the employer, except where the employment has been fixed for a
37 specific project or undertaking the completion or termination of which has been

1 determined at the time of engagement of the employee, or where the work or
2 services to be performed is seasonal in nature and the employment is for the
3 duration of the season.

4 SEASONAL AND PROJECT EMPLOYEES SHALL HAVE THE RIGHT
5 TO SECURITY OF TENURE, SUBJECT TO THE PROVISIONS ON
6 PROBATIONARY EMPLOYMENT, AND ARE ENTITLED TO RESUME
7 THEIR EMPLOYMENT IN THE SAME OR SIMILAR POSITION UPON THE
8 START OF THE NEXT SEASON OR PROJECT, AS THE CASE MAY BE;
9 PROVIDED THAT, DURING THE TIME THAT THEIR SERVICES ARE NOT
10 ACTUALLY AVAILED OF BY THE ESTABLISHMENT, THEY SHALL BE
11 CONSIDERED TO BE ON AUTHORIZED LEAVE WITHOUT PAY.

12 An employment shall be deemed to be casual if it is not covered by the
13 preceding paragraph. [Provided, That any employee who has rendered at
14 least one year of service, whether such service is continuous or broken, shall
15 be considered a regular employee with respect to the activity in which he is
16 employed and his employment shall continue while such activity exists.]
17 CASUAL EMPLOYMENT SHALL HAVE THE RIGHT TO SECURITY OF
18 TENURE AND MAY BE TERMINATED ONLY FOR JUST OR AUTHORIZED
19 CAUSES. HOWEVER, THEIR POSITION, NOT BEING NECESSARY OR
20 DESIRABLE TO THE USUAL TRADE OR BUSINESS OF THE EMPLOYER,
21 MAY BE ELIMINATED IF THE SERVICES ATTACHED THERETO ARE NO
22 LONGER AVAILED OF BY THE EMPLOYER. PROVIDED THAT IF THE
23 POSITION HAS BEEN IN EXISTENCE FOR MORE THAN ONE YEAR, IT
24 SHALL BE CONSIDERED AS REGULAR IN NATURE, SUBJECT TO THE
25 PROVISIONS ON PROBATIONARY EMPLOYMENT. TERMINATION WILL
26 THEN BE ALLOWED ONLY IF THERE IS JUST OR AUTHORIZED CAUSE.

27 THE PRINCIPAL EMPLOYER MUST DIRECTLY HIRE WORKERS
28 WHO ARE PERFORMING ACTIVITIES WHICH ARE USUALLY NECESSARY
29 OR DESIRABLE TO THE USUAL TRADE OR BUSINESS OF THE
30 EMPLOYER, WITHOUT PREJUDICE TO THEIR PROPER CLASSIFICATION
31 AS REGULAR, SEASOSNAL, PROJECT, OR EMPLOYEES HIRED FOR A
32 SPECIFIC UNDERTAKING, AS PROVIDED FOR IN THE FIRST
33 PARAGRAPH. THE PRINCIPAL EMPLOYER CANNOT HIRE THROUGH
34 SUBCONTRACTORS, LABOR CONTRACTORS, OR OTHER SIMILAR
35 AGENCIES AND "MANPOWER" SERVICE PROVIDERS, WORKERS
36 PERFORMING ACTIVITIES WHICH ARE USUALLY NECESSARY OR
37 DESIRABLE TO THE USUAL TRADE OR BUSINESS OF THE EMPLOYER,

1 REGARDSLESS OF THE AMOUNT OF INVESTMENT AND CAPITAL OF THE
2 SUBCONTRACTOR OR LABOR CONTRACTOR.

3 LIKEWISE, IN NO CASE SHALL REGULAR EMPLOYMENT BE
4 SUBJECT TO A TERM, EXCEPT WHERE THE EMPLOYMENT HAS BEEN
5 FIXED FOR A SPECIFIC PROJECT OR UNDERTAKING THE COMPLETION
6 OR TERMINATION OF WHICH HAS BEEN DETERMINED AT THE TIME OF
7 ENGAGEMENT OF THE EMPLOYEE, OR WHERE THE WORK OR
8 SERVICE TO BE PERFORMED IS SEASONAL IN NATURE AND THE
9 EMPLOYMENT IS FOR THE DURATION OF THE SEASON SUBJECT TO
10 PARAGRAPH 2 HEREOF.

11 HOWEVER, TERM EMPLOYMENT SHALL BE ALLOWED FOR
12 OVERSEAS FILIPINO WORKERS, SHOULD THE VALID CONTRACT OF
13 EMPLOYMENT SO PROVIDED FOR A TERM.

14 EMPLOYEES WHO ARE REGULAR, REGARDLESS OF THE ORAL
15 OR WRITTEN AGREEMENTS TO THE CONTRARY, SHALL BE
16 CONSIDERED PART OF THE APPROPRIATE COLLECTIVE BARGAINING
17 UNIT AND MAY EXERCISE THE RIGHT TO SELF-ORGANIZATION AND
18 COLLECTIVE BARGAINING.

19 AN EMPLOYER WHO VIOLATES THE FOREGOING SHALL BE
20 LIABLE TO PAY AN INDEMNITY OF P50,000.00 TO EACH EMPLOYEE,
21 WITHOUT PREJUDICE TO THE OTHER MONETARY AWARDS SUCH AS
22 BACKWAGES, MONETARY CLAIMS, AND CBA BENEFITS.

23 **SECTION 4.** *Non-recognition of regular status as unfair labor practice.* Art.
24 248 (Unfair labor practices of employers) shall be amended as follows:

25 "ART. 248. *Unfair labor practices of employers.* – It shall be unlawful for an
26 employer to commit any of the following unfair labor practices:

27 (a) To interfere with, restrain or coerce employees in the exercise of their right
28 to self-organization;

29 (b) To require as a condition for employment that a person or an employee
30 shall not join a labor organization or shall withdraw from one to which he
31 belongs;

32 (c) To contract out services or functions being performed by union members
33 when such will interfere with, restrain or coerce employees in the exercise of
34 their right to self-organization;

1 (d) To initiate, dominate, assist or otherwise interfere with the formation or
2 administration of any labor organization, including the giving of financial or
3 other support to it or its organizers or officers;

4 (e) To discriminate in regard to hire or tenure of employment or any term or
5 condition of employment in order to encourage or discourage membership in
6 any labor organization. Nothing in this Code or in any other law shall prevent
7 the parties from requiring membership in a recognized collective bargaining
8 agent as a condition for employment, except of those employees who are
9 already members of another union at the time of the signing of the collective
10 bargaining agreement. Employees belonging to an appropriate bargaining unit
11 who are not members of the recognized collective bargaining agent may be
12 assessed a reasonable fee equivalent to the dues and other fees paid by
13 members of the recognized collective bargaining agent, if such non-union
14 members accept the benefits under the collective bargaining agreement.
15 Provided, That the individual authorization required under Article 242,
16 paragraph (o), of this Code shall not apply to non-members of the recognized
17 collective bargaining agent;

18 (f) To dismiss, discharge or otherwise prejudice or discriminate against an
19 employee for having given or being about to give testimony under this Code;

20 (g) To violate the duty to bargain collectively as prescribed by this Code;

21 (h) To pay negotiation or attorney's fees to the union or its officers or agents
22 as part of the settlement of any issue in collective bargaining or any other
23 dispute; or

24 (i) To violate a collective bargaining agreement.

25 The provisions of the preceding paragraph notwithstanding, only the officers
26 and agent of corporations, associations, or partnerships who have actually
27 participated in, authorized or ratified unfair labor practices shall be held
28 criminally liable.

29 (j) TO CLASSIFY AS CASUAL, CONTRACTUAL, SUBCONTRACTOR'S OR
30 LABOR-ONLY CONTRACTOR'S EMPLOYEES, AGENCY EMPLOYEES,
31 AND OTHER NON-REGULAR WORKERS THOSE EMPLOYEES WHO ARE
32 REGULAR EMPLOYEES BY VIRTUE OF THE ACTIVITIES THEY PERFORM
33 AND OTHER CIRCUMSTANCES WHICH MAKE THEIR EMPLOYMENT
34 REGULAR.

1 **SECTION 5. *Repealing Clause.*** – Art. PD 442, as amended, otherwise known
2 as the Labor Code of the Philippines, and all other acts, laws, rules and regulations
3 are hereby repealed, modified, or amended accordingly.

4 **SECTION 6. *Separability Clause.*** – If any part, section or provision of this Act
5 shall be held invalid or unconstitutional, the other provisions shall not be affected
6 thereby.

7 **SECTION 7. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days
8 after its publication in the *Official Gazette* or in at least two (2) newspapers of general
9 circulation.

10 Approved,