

SENATE

S. No. 127

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

Article XIII, Section 3 of the Philippine Constitution provides as follows:

"SEC. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment and opportunities for all."

This constitutional mandate is echoed and amplified in the Labor code as follows:


"SEC. 3. Declaration of Basic Policy. - The State shall afford protection of labor, promote full employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers."

This bill seeks to address the absence of laws implementing this constitutional mandate, and ensuring legal protection against discrimination as far as pre-employment screening, apprenticeship and training, labor relations, and promotions to supervisory and managerial positions are concerned.

Equal access to employment is the backbone of a vigorous economy that maximizes the productive potential of its foremost source of wealth - its human resources.

Equal opportunities is the cornerstone of a truly democratic society that respects the value of every individual, his right to promote his own individual welfare, and to contribute to the common good.

In view of the foregoing, early passage of this bill is earnestly requested.


SERGIO OSMEÑA III
Senator

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AN ACT
PROVIDING FOR EQUAL EMPLOYMENT OPPORTUNITIES, AND FOR OTHER
PURPOSES

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

1 **SECTION 1. Short Title.** – This Act shall be known as the “**Equal**
2 **Opportunity Act of 2010.**”

3 **Sec. 2. Declaration of Policy.** - It is hereby declared the policy of
4 the State to protect and enhance the right of all people to human dignity and to
5 reduce economic inequity by promoting equality of employment opportunities for
6 all regardless of sex, race, creed, age, appearance, sexual orientation, regional
7 or ethnic origin, disability, weight or height.

8 **Sec. 3. Definition of Terms.** - For purposes of this Act:

9 a) “Employer” shall mean a person, natural or juridical, domestic or foreign,
10 who carried on in the Philippines any trade, business, industry,
11 undertaking, or activity of any kind and uses the services of fifteen (15) or
12 more employees who are under the employer’s control as regards
13 employment for each working day in each of twenty (20) or more calendar
14 weeks, except the Government of the Republic of the Philippines, and any
15 of its political subdivisions, branches, and instrumentalities, including
16 government-owned and controlled corporations with original charters.

- 1 b) "Employment agency" shall mean any person or entity engaged in the act of
2 recruitment and placement which consists of canvassing, enlisting,
3 contracting, transporting, utilizing, hiring or procuring workers, and
4 includes referrals, contract services, promising or advertising for
5 employment, locally or abroad, whether for profit or not: Provided, That
6 any person or entity which, in any manner, offers or promises employment
7 for a fee shall be deemed engaged in recruitment and placement:
8 Provided further, That the term shall include both "private fee-charging
9 employment agencies and private recruitment entities within the
10 contemplation of Book I of PD 442, otherwise known as the Labor Code,
11 as amended.
- 12 c) "labor organization" shall have the same meaning as defined in Article 212
13 (g) of the Labor Code.
- 14 d) "Employee" shall mean an individual employed by an employer.
- 15 e) "Creed" shall include all aspects of religious observance and practice, as
16 well as belief, unless an employer demonstrates that he is unable to
17 reasonably accommodate to an employee's or prospective employee's
18 religious observance or practice without undue hardship on the conduct of
19 the employer's business.
- 20 f) "Age" shall refer to individuals of age forty (40) or older.
- 21 g) "Because of sex" or "on the basis of sex" shall include, but not be limited
22 to, because of or on the basis of pregnancy, childbirth, or related medical
23 conditions, and women affected by pregnancy, childbirth, or related
24 medical conditions shall be treated the same for all employment-related
25 purposes, including receipt of benefits under fringe benefit programs as
26 other persons not so affected but similar in their ability or inability to work,
27 and nothing in this Act shall be interpreted to permit otherwise.
- 28 h) "Disability" shall have the same meaning as in Section 4(c) of RA 7277,
29 otherwise known as the Magna Carta for Disabled Persons.

1 i) "Secretary" shall refer to the Secretary of Labor and Employment or his
2 duly authorized representative from the Bureau.

3 j) "Bureau" shall refer to the Bureau of Local Employment.

4 k) "Labor Code" shall refer to PD 442, otherwise known as the Labor Code of
5 the Philippines, as amended.

6 **Sec. 4. Employer Practices.** - It shall be unlawful practice for an
7 employer:

8 a) To fail or refuse to hire or to discharge any individual, or otherwise to
9 discriminate against any individual with respect to the latter's
10 compensation, terms, conditions or privileges of employment, including but
11 not limited to promotion to supervisory or managerial positions because of
12 such individual's sex, race, creed, age, appearance, sexual orientation,
13 regional or ethnic origin, disability, weight or height; or

14 b) To limit, segregate, or classify his employees in any way which would
15 deprive or tend to deprive any employee of employment opportunities or
16 otherwise adversely affect the latter's status as an employee because of
17 sex, race, creed, age, appearance, sexual orientation, regional or ethnic
18 origin, disability, weight or height.

19 **Sec. 5. Employment Agency Practices.** - It shall be unlawful
20 employment practice for an agency to fail or refuse to refer for employment any
21 individual on the basis of the latter's sex, race, creed, age, appearance, sexual
22 orientation, regional or ethnic origin, disability, weight or height.

23 **Sec. 6. Labor Organization Practices.** - It shall be unlawful practice
24 for a labor organization:

25 a) To exclude or to expel from its membership, or otherwise to
26 discriminate against any member because of the latter's sex, race,
27 creed, age, appearance, sexual orientation, regional or ethnic origin,
28 disability, weight or height or

1 b) To limit, segregate or classify or fail or refuse to refer for employment
2 any member, in any way which would deprive or tend to deprive that
3 member of employment opportunities or otherwise affect the latter's
4 status as an employee or applicant for employment because of sex,
5 race, creed, age, appearance, sexual orientation, regional or ethnic
6 origin, disability, weight or height.

7 **Sec. 7. *Apprenticeship and Learnership Programs.*** - It shall be
8 unlawful employment practice for an employer or a firm by a group or association
9 thereof, or by a civic organization undertaking or sponsoring an apprenticeship or
10 learnership program within the contemplation of Book II of the Labor Code, or
11 other training or retraining, including on-the-job training programs to discriminate
12 against any individual because of the latter's sex, race, creed, age,
13 appearance, sexual orientation, regional or ethnic origin, disability, weight or
14 height in admission to, or employment in, any program established to provide
15 apprenticeship, learnership or other retraining.

16 **Sec. 8. *Discrimination for Making Charges, Testifying, Assisting,***
17 ***or Participating in Enforcement Proceedings.*** - It shall be an unlawful
18 employment practice for an employer to discriminate against any of his employees
19 or applicants for employment; for an employment agency or an employer or firm
20 or groups or associations thereof or a civic organization undertaking or sponsoring
21 an apprenticeship, learnership or other training programs, to discriminate against
22 any individual; or of any labor organization to discriminate against any member
23 thereof or applicant for membership, because he has made a charge, testified,
24 assisted, or participated in any manner in an investigation, proceeding, or
25 hearing under this Act.

26 **Sec. 9. *Printing or Publication of Notices and Advertisements***
27 ***Indicating Prohibited Preferences, Limitation, Specification or***
28 ***Discrimination; Occupational Qualification Exempted.*** - It shall be unlawful
29 practice for an employer, labor organization, employment agency, firm or group or

1 association thereof or a civic organization undertaking or sponsoring an
2 apprenticeship, learnership or other training, retraining, including on the job
3 training programs, to print, publish, broadcast or cause to be printed, published or
4 broadcast any notice or advertisement relating to employment by such an
5 employer or membership in any labor union or classification or referral to
6 employment by such an employer or membership in any labor union or
7 classification or referral for employment by such a labor organization, or relating
8 to classification or referral for employment by such an employment agency; or
9 relating to admission to, or employment in, any program established to provide
10 apprenticeship, learnership or other training by an employer, firm or group or
11 association thereof, or a civic organization, indicating any preference, limitation,
12 specification, or discrimination based on sex, race, creed, age, appearance,
13 sexual orientation, regional or ethnic origin, disability, weight or height except
14 when such notice or advertisement may indicate a preference, limitation,
15 specification, or discrimination based on sex, race, creed, age, appearance,
16 sexual orientation, regional or ethnic origin, disability, weight or height when any
17 of these attributes is a bona fide occupations qualification for employment.

18 **Sec. 10. Business or Enterprises with Personnel Qualified on**
19 **Basis of Sex, Race, Creed, Age, Appearance, Sexual Orientation,**
20 **Regional or Ethnic Origin, Weight or Height.** - Notwithstanding any provision
21 of this Act, it shall not be an unlawful practice for an employment agency to
22 classify, or refer for employment any individual; for labor organization to classify
23 its membership or to classify or refer for employment any individual; or a civic
24 organization undertaking a sponsorship an apprenticeship, learnership or other
25 training or retraining programs to admit or employ any individual in any such
26 program on the basis of the latter's sex, race, creed, age, appearance, sexual
27 orientation, regional or ethnic origin, disability, weight or height in those certain
28 instances where any of these attributes is a *bona fide* occupational qualification
29 reasonably necessary to the normal operation of that business.

1 **Sec. 11. Seniority and Merit System; Quantity or Quality of**
2 **Production; Ability Test.** - Notwithstanding any provision of this Act, it shall
3 not be an unlawful practice for an employer to apply different standards of
4 compensation, or privileges of employment pursuant to a *bona fide* seniority or
5 merit system, or a system which measures wages by quantity or quality of
6 production or to employees who work in different locations: *Provided*, That such
7 differences are not a result of an intention to discriminate because of sex, creed,
8 age, appearance, sexual orientation, regional or ethnic origin, disability, weight
9 or height. Nor shall it be an unlawful employment practice for an employer to give
10 and act upon the results of any professionally developed ability test: *Provided*,
11 *further*, That such test, its administration or action upon the results, is not
12 designed, intended or used to discriminate because of sex, race, creed, age,
13 appearance, sexual orientation, regional or ethnic origin, disability, weight or
14 height.

15 **Sec. 12. Preferential Treatment Not To be Granted by Reason of**
16 **Existing Number or Percentage Imbalance.** - Nothing contained in this Act
17 shall be interpreted to require any employer, employment agency, labor
18 organization, firm or association or group therefor or civic organization subject to
19 this Act to grant preferential treatment to any individual because of sex, race,
20 creed, age, appearance, sexual orientation, regional or ethnic origin, disability,
21 weight or height employed by any employed, referred or classified for employment
22 by any employment agency or labor organization; or admitted to, or employed in,
23 any apprenticeship, learnership or other training program, in comparison to the
24 total number of percentage of individuals of such sex, race, creed, age,
25 appearance, sexual orientation, regional or ethnic origin, disability, weight or
26 height in any municipality, city, province, or other area, or in the available work
27 force in any municipality, city, province or other area.

1 **Sec. 13. *Additional Powers Granted to the Bureau.*** - In addition to
2 the powers already vested thereto by the law, for the effective implementation of
3 this Act, the Bureau is hereby vested with the following powers:

4 a) To cooperate with and with their consent, utilize national and local
5 agencies, both public and private, including non-governmental
6 organizations and individuals.

7 b) To furnish persons subject to this Act such technical assistance as they
8 may request to further their compliance with this Act or a rule, regulation or
9 order issued hereunder.

10 c) Upon the request of (1) any employer, whose employees or some of them,
11 or (2) any labor organization, whose members or some of them, refuse or
12 threaten to refuse to cooperate in effectuating the provisions of this Act, to
13 assist in such effectuation by such other remedial action as is provided by
14 this Act;

15 d) Subject to the exercise by the Secretary or any law enforcement agent of
16 the powers vested in them by Section 14 of this Act, the Bureau is hereby
17 authorized to initiate administrative actions with the labor arbiters with
18 respect to claims for actual, moral, exemplary and other forms of damages
19 arising from violations of this Act.

20 **Sec. 14. *Cooperation with Other Departments and Agencies in the***
21 ***Performance of Educational or Promotional Activities.*** - The Bureau shall, in
22 any of its educational or promotional activities cooperate with other departments
23 and agencies of the Government.

24 **Sec. 15. *Visitorial and Enforcement Power.*** - To the extent
25 applicable, the Secretary shall exercise the same visitorial and enforcement
26 power provided under Article 128 of the Labor Code for the effective
27 implementation of this Act. In addition, the Secretary or any law enforcement
28 officer may initiate criminal complaints under this Act if the gravity of the violation
29 of this Act so warrants. Recovery of civil liability in the administrative proceeding

1 provided by this Act shall bar recovery under the Civil Code or in the criminal
2 proceedings.

3 **Sec. 16. Penal Clause.** - Any violation of this Act or any rule or
4 regulation promulgated by the Secretary pursuant thereto shall be punished with a
5 fine of not less than One thousand pesos (P1,000) nor more than Ten thousand
6 Pésos (P10,000) or imprisonment of not less than three (3) months nor more than
7 three (3) years, or both, such fine and imprisonment at the discretion of the
8 Court.

9 If the offense was committed by a juridical person, the president or
10 manager or any officer thereof who knows or should have known the commission
11 of the offense shall be liable.

12 In addition to such penalty any alien found guilty shall be summarily
13 deported upon completion of the service of the sentence.

14 **Sec. 17. Reporting Requirement.** - The Secretary shall submit a
15 report to the Congress on the implementation of this Act within thirty (30) days
16 before the opening of each regular session of Congress.

17 **Sec. 18. Suppletory Application of the Labor Code.** - The
18 provisions of the Labor Code shall apply suppletorily insofar as they are not
19 inconsistent with the provisions of this Act

20 **Sec. 19. Separability Clause.** - If any section or provision of this Act
21 shall be declared unconstitutional or invalid, the other sections or provisions not
22 affected thereby shall remain in full force and effect

23 **SEC. 20. SEC. 3. Repealing Clause.** - All laws, decrees, orders, rules
24 and regulations and other issuances inconsistent with the provisions of this Act
25 are deemed modified, revoked or repealed accordingly.

26 **SEC. 21. Effectivity.** This Act shall take effect fifteen (15) days after its
27 publication in two (2) leading newspapers of national circulation.

Approved,