

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS

First Regular Session

House Bill No. **3338**

*Introduced by Akbayan Representatives Mario "Mayong" Joyo Aguja,
Loretta Ann P. Rosales and Ana Theresia Hontiveros-Baraquel*

**An Act Promoting Regular Employment and for this Purpose,
Amending Presidential Decree 442**

EXPLANATORY NOTE

Since its adoption, the current provisions on security of tenure and regular employment has been the subject of numerous interpretations through implementing rules by the Executive and jurisprudence by the Judiciary. As such, there is a need to revise the provisions of Presidential Decree No. 442 otherwise known as the Labor Code so as to incorporate these interpretations and, more importantly, create a coherent and consistent framework of employment classification.

As such, the present proposal draws from executive and judicial pronouncements on security of tenure in order to create a holistic and harmonious set of rules regarding classes and rights of employees. In particular, the salient points of the proposed bill include:

1. The incorporation of the executive and judicial recognition that all classes of employees are entitled to security of tenure.
2. The incorporation of the workers' right to notice and hearing.
3. The clarification of what constitutes regular, casual, and project employment.

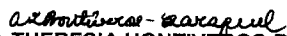
Building on these concepts, the proposal seeks to introduce the following innovations:

1. Employment may be fixed by the term of the project, task or work to be performed but may not be bound to a mere reference to a time.
2. The period of probationary employment is fixed at six months when all employers shall have enough time to ascertain whether a worker is fit for retention or not.

3. Deliberate misclassification of employees for the purpose of misleading them as to their rights is deemed an unfair labor practice.

With these amendments to the Labor Code, the proposal seeks to balance the legitimate business interests of the employer with the need for protection of workers from the prejudice of non-regularization. After all, for as long as the employer profits through and by the labor of its employees, it is but fair to recognize the workers' right to remain employed absent any legal cause for his dismissal.

Hence, the support of this bill is earnestly sought.


MARIO "MAYONG" JOYO AGUJA
LORETTA ANN P. ROSALES
ANA THERESIA HONTIVEROS-BARAQUEL

Republic of the Philippines
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THIRTEENTH CONGRESS
First Regular Session

House Bill No. 3338

*Introduced by Akbayan Representatives Mario "Mayong" Joyo Aguja,
Loretta Ann P. Rosales and Ana Theresia Hontiveros-Baraquel*

**An Act Promoting Regular Employment and for this Purpose,
Amending Presidential Decree 442**

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

Article 1. Unfair Labor Practice of Employers. Article 248 of Presidential Decree No. 442 is hereby amended to read as follows:

ART. 248. Unfair labor practices of employers. - It shall be unlawful for an employer to commit any of the following unfair labor practice:

- (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
- (b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;
- (c) TO ENGAGE A LABOR ONLY CONTRACTOR OR To contract out services or functions being performed by MEMBERS OF THE BARGAINING UNIT when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;
- (d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;
- (e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in

any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: Provided, that the individual authorization required under Article 242, paragraph (c) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

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

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

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

(i) To violate a collective bargaining agreement.

(J) TO CLASSIFY AS CASUAL, CONTRACTUAL, SUBCONTRACTED EMPLOYEES, AGENCY EMPLOYEES, OR OTHER NON-REGULAR CLASSIFICATION THOSE EMPLOYEES WHO ARE REGULAR EMPLOYEES BY VIRTUE OF ARTICLE 280 OF THIS CODE.

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

Article 2. Security of Tenure. Article 279 of Presidential Decree No. 442 is hereby repealed and amended to read as follows:

ART. 279. Security of tenure. All employees shall enjoy security of tenure and shall not be terminated from employment except for a just cause or when authorized by this Title. Also, due process in employment relations requires any employer who seeks to dismiss a worker to furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the written notice shall be served at the worker's last known address. Due process entitles the worker an opportunity to answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice and with the assistance of a representative if he so desires. Due process requires the employer to afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.

The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

An employee who is dismissed from work in violation of any of his rights under this article shall be entitled to immediate reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Article 3. Regular and Casual Employment. Article 280 of Presidential Decree No. 442 is hereby repealed and 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. No employer shall hire or otherwise maintain regular employees comprising less than 80% of its total workforce, including workers under subcontracting arrangements. In no case shall subcontractors be engaged to provide workers to perform jobs usually necessary and desirable to the usual business or trade of the employer or which is performed by regular employees.

An employment shall be deemed to be casual if it is not usually necessary or desirable in the usual business or trade of the employer, 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 unless he is terminated for a just cause or when authorized by this Title.

Article 4. Project and Extra Employment. Article 280-A is hereby inserted into Presidential Decree No. 442 as follows:

Article 280-A. Project and Extra employment. Project employment refers to that which has been fixed for a specific project or undertaking the completion or termination of which has been determined and made known to the employee at the time of his engagement.

Extra employment refers to additional work to be performed in restaurant and hotel establishments specifically for banquet functions, seminars and similar functions where the regular employees cannot reasonably cope with the increased demands of such events.

Project and Extra employees shall have the right to security of tenure and are entitled to resume their employment in the same or similar position upon the start of the next project or occasion for extra employment, as the case may

be; provided that, during the time that their services are not actually availed of, they shall be considered to be on authorized leave without pay.

Article 5. Prohibition against Fixed Term Employment. Article 280-B is hereby inserted into Presidential Decree No. 442 as follows:

Article 280-B. Prohibition against Fixed Term Employment. No employer shall hire any employee for a fixed period only except those hired as project and extras where appropriate. Any stipulation fixing a period of employment shall be void.

Article 6. Probationary Employment. Article 281 of Presidential Decree No. 442 is hereby repealed and amended to read as follows:

ART. 281. Probationary employment. - Probationary employment shall not exceed six (6) months from the date the employee started working. This shall apply to all kinds of employment, including teaching personnel in all educational institutions. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. In all cases, an employee who is allowed to work after a probationary period, even under the guise of an extension, shall be considered a regular employee.

Article 7. Penalties. Article 288 of Presidential Decree No. 442 is hereby repealed and amended to read as follows:

ART. 288. Penalties. - Except as otherwise provided in this Code, or unless the acts complained of hinge on a question of interpretation or implementation of ambiguous provisions of an existing collective bargaining agreement, any violation of the provisions of this Code declared to be unlawful or penal in nature shall be punished with a fine of not less than One Thousand Pesos (P1,000.00) nor more than Ten Thousand Pesos (P10,000.00) or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the court.

ANY PRINCIPAL OR SUB-CONTRACTOR WHO ENGAGES IN LABOR ONLY CONTRACTING SHALL BE SOLIDARILY LIABLE TO INDEMNIFY EACH SUBCONTRACTED EMPLOYEE NO LESS THAN P50,000.00 WITHOUT PREJUDICE TO OTHER MONETARY AWARDS TO WHICH SUCH SUBCONTRACTED EMPLOYEE MAY BE ENTITLED SUCH AS BACKWAGES, MONETARY CLAIMS AND BENEFITS UNDER AN APPLICABLE CERTIFIED BARGAINING AGREEMENT.

ANY EMPLOYER WHO DELIBERATELY CATEGORIZES OR OTHERWISE TREATS REGULAR EMPLOYEES TO BE ANY NON-REGULAR EMPLOYEE SHALL BE LIABLE TO INDEMNIFY EACH MISCLASSIFIED EMPLOYEE NO LESS THAN P50,000.00 WITHOUT PREJUDICE TO OTHER MONETARY AWARDS TO WHICH SUCH EMPLOYEE MAY BE ENTITLED SUCH AS

BACKWAGES, MONETARY CLAIMS AND BENEFITS UNDER AN APPLICABLE CERTIFIED BARGAINING AGREEMENT.

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

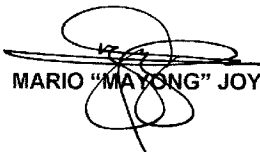
Any provision of law to the contrary notwithstanding, any criminal offense punished in this Code, shall be under the concurrent jurisdiction of the Municipal or City Courts and the Courts of First Instance.

Article 8. Separability provisions. If any provision of this law or the application thereof to any person or circumstance, is held invalid, the remainder of this law, or the application of such provision or part to other persons or circumstances, shall not be affected thereby.

Article 9. Repealing clause. All other provisions of existing laws, orders, decrees, rules and regulations inconsistent herewith are hereby repealed.

Article 10. Effectivity. This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved.



MARIO "MAYONG" JOYO AGUJA

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