

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

FIFTEENTH CONGRESS
First Regular Session

House Bill No. 3402

Introduced by **DIWA Party-list Representative Emmeline Y. Aglipay**

EXPLANATORY NOTE

The right of employees to security of tenure is enshrined in our Constitution, and yet increased competition in the globalized marketplace means that this right has frequently been subordinated to the needs of employers for a flexible labor force. This has given rise to the phenomenon of contractualization or casualization, to an increase in what some countries refer to as precarious employment. The difficulty lies in the fact that under such schemes, it is possible that persons who do the same kind and amount of work as regular employees, persons who are essential to the business of the employer, are nevertheless denied the status and attendant benefits of a regular employee, often through the imposition of fixed term contracts, or through the abuse of the probationary mechanism of employment.

While it is reasonable that industries under distressed conditions should be allowed to engage in flexible labor practices, it is important that, consistent with the mandate of the Constitution, these instances be the exceptions, and regular employment must be - in practice as well as on paper - the general rule. The necessity of regular employment - one that allows for upward mobility as a reward for excellence and diligence - to the Filipino family cannot be overemphasized, for it is almost impossible to have a stable family, or even to plan for the future, if one does not have a stable job.

The fact that contractualization has remained a concern for employees for more than a decade shows that the current legal framework is inadequate at dealing with the issue. Abuses occur in the current system because some unscrupulous employers can take advantage of grey areas in the law in order to circumvent the right of employees to security of tenure, for no other reason than to enhance the profits of an already profitable enterprise. This bill creates a new categorization of employment, one that returns regular employment to its primary position, while making allowances for distressed industries. It makes clear and precise distinctions and corrects legal loopholes, and ensures that the nation's legal framework will once again support the right to security of tenure, rather than undermine it. While labor legislation always involves a balance of interests and the sacrifices inherent thereto, to maintain the status quo is to ignore the plight of those most in need of the protection of the law.

I urge my fellow lawmakers to address the problem of contractualization and I earnestly seek the approval of this bill.


EMMELINE Y. AGLIPAY
Representative, DIWA Party-list

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HOUSE BILL NO. 3402

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AN ACT STRENGTHENING THE SECURITY OF TENURE OF EMPLOYEES, AMENDING FOR THIS PURPOSE ARTICLES 106, 109, 280, AND 281 OF PRESIDENTIAL DECREE NUMBER 442, OR THE LABOR CODE OF THE PHILIPPINES; AND ADDING ARTICLES ARTICLE 108-A ON THE DEFINITION OF CONTRACTING, ARTICLE 108-B ON THE PROHIBITION OF LABOR-ONLY CONTRACTING, ARTICLE 108-C ON THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE CONTRACTOR AND CONTRACTUAL EMPLOYEE, ARTICLE 108-D ON THE RIGHTS OF CONTRACTUAL EMPLOYEES, ARTICLE 108-E ON THE CONTRACT BETWEEN CONTRACTOR OR SUBCONTRACTOR AND CONTRACTUAL EMPLOYEE, ARTICLE 108-F ON THE EFFECT OF TERMINATION OF CONTRACTUAL EMPLOYMENT, ARTICLE 108-G ON LICENSING OF CONTRACTORS AND SUBCONTRACTORS, ARTICLE 108-H ON GOOD FAITH CONTRACTING, ARTICLE 280-A, DEFINING FIXED TERM EMPLOYMENT; AND ARTICLE 280-B, DEFINING PROJECT EMPLOYMENT TO PRESIDENTIAL DECREE NUMBER 442, OR THE LABOR CODE OF THE PHILIPPINES

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

SECTION 1. *Short Title.* – This Act shall be known as the “Security of Tenure Act of 2010”

SECTION 2. Article 106 of Presidential Decree Number 442, or the Labor Code of the Philippines, is hereby amended with the addition of the following Articles, to read as follows:

ART. 106. CONTRACTOR OR SUBCONTRACTOR. – Whenever an employer enters into a contract with another person for the performance of the former’s work, the employees of the contractor and of the latter’s subcontractor, if any, shall be paid in accordance with the provisions of this Code.

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

~~{ The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of~~

~~contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.]~~

~~[There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.]~~

SECTION 3. Presidential Decree Number 442, or the Labor Code of the Philippines, is hereby amended with the addition of the following Articles, to read as follows:

ARTICLE 108-A. DEFINITION OF CONTRACTING. – "CONTRACTING" OR "SUBCONTRACTING" REFERS TO AN ARRANGEMENT WHEREBY A PRINCIPAL AGREES TO ASSIGN OR DELEGATE TO A CONTRACTOR OR SUBCONTRACTOR THE PERFORMANCE OR COMPLETION OF A SPECIFIC JOB, WORK OR SERVICE WITHIN A DEFINITE OR PREDETERMINED PERIOD, REGARDLESS OF WHETHER SUCH JOB, WORK OR SERVICE IS TO BE PERFORMED OR COMPLETED WITHIN OR OUTSIDE THE PREMISES OF THE PRINCIPAL; PROVIDED THAT SUCH JOB, WORK, OR SERVICE MUST FALL UNDER FIXED TERM EMPLOYMENT UNDER ARTICLE 280-A.

ARTICLE 108-B. PROHIBITION OF LABOR-ONLY CONTRACTING. – LABOR-ONLY CONTRACTING IS HEREBY DECLARED PROHIBITED.

FOR THIS PURPOSE, LABOR-ONLY CONTRACTING SHALL REFER TO A CONTRACTING ARRANGEMENT WHERE:

(A) THE CONTRACTOR OR SUBCONTRACTOR IS NOT TO PERFORM OR COMPLETE AN IDENTIFIABLE JOB BUT MERELY RECRUITS, SUPPLIES OR PLACES WORKERS TO PERFORM A JOB, WORK OR SERVICE FOR A PRINCIPAL; AND

(B) EITHER OF THE FOLLOWING ELEMENTS IS PRESENT:

- (i) THE CONTRACTOR OR SUBCONTRACTOR DOES NOT HAVE SUBSTANTIAL CAPITAL OR INVESTMENT WHICH RELATES TO THE JOB, WORK OR SERVICE TO BE PERFORMED AND THE EMPLOYEES RECRUITED, SUPPLIED OR PLACED BY SUCH CONTRACTOR OR SUBCONTRACTOR ARE PERFORMING ACTIVITIES WHICH ARE NECESSARY IN THE USUAL BUSINESS OR TRADE OF THE PRINCIPAL; OR**
- (ii) THE CONTRACTOR DOES NOT EXERCISE THE RIGHT TO CONTROL OVER THE PERFORMANCE OF THE WORK OF THE CONTRACTUAL EMPLOYEE.**

THE FOREGOING PROVISIONS SHALL BE WITHOUT PREJUDICE TO THE APPLICATION OF ARTICLE 248 (C) OF THE LABOR CODE, AS AMENDED.

"SUBSTANTIAL CAPITAL OR INVESTMENT" REFERS TO CAPITAL STOCKS AND SUBSCRIBED CAPITALIZATION IN THE CASE OF CORPORATIONS, TOOLS, EQUIPMENT, IMPLEMENTS, MACHINERIES AND WORK

PREMISES, ACTUALLY AND DIRECTLY USED BY THE CONTRACTOR OR SUBCONTRACTOR IN THE PERFORMANCE OR COMPLETION OF THE JOB, WORK, OR SERVICE CONTRACTED OUT.

THE "RIGHT TO CONTROL" SHALL REFER TO THE RIGHT RESERVED TO THE PERSON FOR WHOM THE SERVICES OF THE CONTRACTUAL WORKERS ARE PERFORMED, TO DETERMINE NOT ONLY THE END TO BE ACHIEVED, BUT ALSO THE MANNER AND MEANS TO BE USED IN REACHING THAT END.

ARTICLE 108-C. EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE CONTRACTOR AND CONTRACTUAL EMPLOYEE. - THE CONTRACTOR OR SUBCONTRACTOR SHALL BE CONSIDERED THE EMPLOYER OF THE CONTRACTUAL EMPLOYEE FOR PURPOSES OF ENFORCING THE PROVISIONS OF THE LABOR CODE AND OTHER SOCIAL LEGISLATION; PROVIDED, THAT THE PRINCIPAL SHALL BE CONSIDERED THE EMPLOYER IN THE CASE OF LABOR-ONLY CONTRACTING AS DEFINED BY ART. 108-B.

ARTICLE 108-D. RIGHTS OF CONTRACTUAL EMPLOYEES. - A CONTRACTUAL EMPLOYEE SHALL BE A REGULAR EMPLOYEE OF THE CONTRACTOR OR SUBCONTRACTOR, AND SHALL BE ENTITLED TO THE RIGHTS OF A REGULAR EMPLOYEE.

ARTICLE 108-E. CONTRACT BETWEEN CONTRACTOR OR SUBCONTRACTOR AND CONTRACTUAL EMPLOYEE. - NOTWITHSTANDING ORAL OR WRITTEN STIPULATIONS TO THE CONTRARY, THE CONTRACT BETWEEN THE CONTRACTOR OR SUBCONTRACTOR AND THE CONTRACTUAL EMPLOYEE SHALL BE IN WRITING, AND SHALL NOT INCLUDE ANY PROVISIONS CONTRARY TO THIS CODE.

ARTICLE 108-F. EFFECT OF TERMINATION OF CONTRACTUAL EMPLOYMENT. - IN CASES OF TERMINATION OF EMPLOYMENT DUE TO THE EXPIRATION OF THE CONTRACT BETWEEN THE PRINCIPAL AND THE CONTRACTOR OR SUBCONTRACTOR, OR DUE TO THE COMPLETION OF THE PHASE OF THE JOB, WORK, OR SERVICE FOR WHICH THE CONTRACTUAL EMPLOYEE IS ENGAGED, THE EMPLOYEE SHALL NOT BE ENTITLED TO SEPARATION PAY FROM THE PRINCIPAL. HOWEVER, THIS SHALL BE WITHOUT PREJUDICE TO COMPLETION BONUSES OR OTHER EMOLUMENTS, INCLUDING RETIREMENT PAY AS MAY BE PROVIDED BY LAW OR IN THE CONTRACT BETWEEN THE PRINCIPAL AND THE CONTRACTOR OR SUBCONTRACTOR.

ARTICLE 108-G. LICENSING OF CONTRACTORS AND SUBCONTRACTORS. - THERE SHALL BE A SYSTEM OF LICENSING OF JOB CONTRACTORS AND SUBCONTRACTORS TO GOVERN CONTRACTING ARRANGEMENTS. THIS SYSTEM SHALL BE FORMULATED BY THE SECRETARY OF LABOR AND EMPLOYMENT, IN CONSULTATION WITH REPRESENTATIVES FROM THE DEPARTMENT OF TRADE AND INDUSTRY, EMPLOYEE ORGANIZATIONS, AND EMPLOYER ORGANIZATIONS, WITH PARTICULAR ATTENTION GIVEN TO ADAPTING THE RULES TO THE PECULIAR NEEDS OF

DIFFERENT INDUSTRIES, AND SHALL BE IMPLEMENTED BY THE REGIONAL OFFICES OF THE DOLE.

FAILURE TO OBTAIN A LICENSE OR THE LACK OF A LICENSE SHALL GIVE RISE TO THE PRESUMPTION THAT THE CONTRACTOR IS ENGAGED IN PROHIBITED LABOR-ONLY CONTRACTING.

ARTICLE 108-H. GOOD FAITH CONTRACTING. – CONTRACTING OUT OF A JOB, WORK OR SERVICE MUST BE DONE IN GOOD FAITH, AND WITHOUT TAKING UNDUE ADVANTAGE OF THE ECONOMIC SITUATION OR LACK OF BARGAINING STRENGTH OF THE CONTRACTUAL EMPLOYEE, OR UNDERMINING HIS SECURITY OF TENURE OR BASIC RIGHTS, OR CIRCUMVENTING THE PROVISIONS OF REGULAR EMPLOYMENT. THE SECRETARY OF LABOR AND EMPLOYMENT MAY, BY APPROPRIATE REGULATIONS, RESTRICT OR PROHIBIT SPECIFIC ACTIONS IN RELATION TO THE CONTRACTING OUT OF A JOB, WORK, OR SERVICE WITHIN A SPECIFIC INDUSTRY, SHOULD THE SAME PROVE, AFTER DUE CONSULTATION WITH EMPLOYERS AND EMPLOYEES IN SUCH INDUSTRY, TO BE UNDULY DETRIMENTAL TO THE RIGHT OF EMPLOYEES TO SECURITY OF TENURE.

SECTION 4. Article 109 of Presidential Decree Number 442, or the Labor Code of the Philippines, is hereby amended to read as follows:

ARTICLE 109. SOLIDARY LIABILITY. – The provisions of existing laws to the contrary notwithstanding, every principal or indirect employer shall be held solidarily responsible with the contractor or subcontractor, and for purposes of determining the extent of their civil liability under this chapter, shall be considered as direct employers, **IN THE FOLLOWING INSTANCES:**

- (1) **FOR ANY VIOLATIONS OF PROVISIONS OF THIS CODE;**
- (2) **FOR MONETARY CLAIMS OF CONTRACTUAL EMPLOYEES AGAINST THE PRINCIPAL IN THE CASE OF LABOR-ONLY CONTRACTING;**
- (3) **FOR MONETARY CLAIMS OF CONTRACTUAL EMPLOYEES IN THE EVENT OF THE COMMISSION OF ACTS IN VIOLATION OF REGULATIONS ISSUED PURSUANT TO ARTICLE 108-H.**
- (4) **IN CASE THE CONTRACT BETWEEN THE PRINCIPAL AND CONTRACTOR OR SUBCONTRACTOR IS PRETERMINATED FOR REASONS ATTRIBUTABLE TO THE FAULT OF THE PRINCIPAL.**

SECTION 5. Article 280 of Presidential Decree Number 442, or the Labor Code of the Philippines, is hereby amended to read as follows:

“ARTICLE 280. REGULAR EMPLOYMENT. – THE PROVISIONS OF ANY WRITTEN AGREEMENT TO THE CONTRARY NOTWITHSTANDING, AND REGARDLESS OF ANY ORAL AGREEMENT OF THE PARTIES, EMPLOYMENT SHALL BE DEEMED TO BE REGULAR WHERE:

- (1) **THE EMPLOYEE HAS BEEN ENGAGED TO PERFORM ACTIVITIES WHICH ARE NECESSARY**

IN THE USUAL BUSINESS OR TRADE OF THE EMPLOYER, EXCEPT WHERE:

- (A) THE WORK OR SERVICES TO BE PERFORMED FALLS UNDER ALLOWABLE FIXED-TERM EMPLOYMENT UNDER ART. 280-A, PARAGRAPHS (2), (3) AND (4); AND
 - (B) THE EMPLOYEE IS UNDER PROBATIONARY EMPLOYMENT, THE MAXIMUM PERIOD OF PROBATION HAVING NOT YET BEEN TERMINATED OR EXPIRED.
- (2) THE EMPLOYEE IS A LEARNER ALLOWED OR SUFFERED TO WORK AFTER THE TERMINATION OF TRAINING UNDER ART. 75 (D)

ARTICLE 280-A. FIXED TERM EMPLOYMENT. - EMPLOYMENT FOR A FIXED TERM SHALL ONLY BE ALLOWED IN CASES OF:

- (1) PROJECT EMPLOYMENT UNDER ARTICLE 280-B;
- (2) SEASONAL EMPLOYMENT, WHERE THE WORK OR SERVICES TO BE PERFORMED IS SEASONAL IN NATURE AND THE EMPLOYMENT IS FOR THE DURATION OF THE SEASON;
- (3) IN INDUSTRIES THAT ARE CERTIFIED BY THE PRESIDENT, IN AN EXECUTIVE ORDER, AS ALLOWABLE, DUE TO EXISTING AND SUBSTANTIAL LOSSES IN THE INDUSTRY AS A WHOLE, BROUGHT ABOUT BY AN INABILITY TO PRICE GOODS COMPETITIVELY IN THE MARKET DESPITE RESORT TO ALL REASONABLE MEASURES; PROVIDED THAT SUCH CERTIFICATION SHALL BE FOR A PERIOD OF AT MOST FIVE (5) YEARS; PROVIDED FURTHER THAT THE PRESIDENT MAY RENEW THE CERTIFICATION UPON EXPIRY, SHOULD THE CIRCUMSTANCES SUBSIST, FOR A SIMILAR PERIOD AND SUBJECT TO SIMILAR RENEWALS;
- (4) IN THE FOLLOWING INSTANCES:
 - (A) REPLACEMENT OF AN EMPLOYEE WHO IS TEMPORARILY ABSENT; PROVIDED THAT THE ABSENCE IS NOT DUE TO A STRIKE OR LOCKOUT;
 - (B) TEMPORARY INCREASE IN THE VOLUME OF BUSINESS, WHICH EMPLOYMENT SHALL IN NO CASE EXCEED SIX (6) MONTHS IN A TWELVE (12) MONTH PERIOD;
 - (C) TO MEET EXPANSION OF A COMPANY'S ACTIVITY, WHICH SHALL IN NO CASE BE LESS THAN SIX (6) MONTHS NOR MORE THAN THREE (3) YEARS; PROVIDED, THAT EMPLOYEES STILL HIRED AFTER THE PROJECT EMPLOYMENT CONTRACT SHALL BE REGULAR EMPLOYEES;

- (D) PART-TIME CONTRACTS, WHERE THE EMPLOYEE UNDERTAKES TO RENDER SERVICES FOR A NUMBER OF HOURS OR DAYS LESS THAN TWO THIRDS (2/3) OF THE USUAL NUMBER OF WORKING HOURS OR DAYS FOR THE SAME POSITION IN THE ESTABLISHMENT;
- (E) CONSTRUCTION WORK;
- (F) PROFESSIONAL SPORTS;
- (G) CORPORATE OFFICERS, AND THOSE OCCUPYING MANAGERIAL, CONFIDENTIAL, OR TECHNICAL POSITIONS;
- (H) OVERSEAS FILIPINO WORKERS; AND
- (I) OFFICIALS OF PRIVATE ACADEMIC INSTITUTIONS.

ARTICLE 280-B. PROJECT EMPLOYMENT. – PROJECT EMPLOYMENT EXISTS WHEN EMPLOYMENT HAS BEEN FIXED FOR A SPECIFIC PROJECT OR UNDERTAKING, SEPARATE AND DISTINCT FROM THE USUAL BUSINESS OR TRADE OF THE EMPLOYER, THE COMPLETION OR TERMINATION OF WHICH HAS BEEN DETERMINED AT THE TIME OF ENGAGEMENT.

PROJECT EMPLOYMENT SHALL BE VALID IF IN COMPLIANCE WITH REGULATIONS ISSUED BY THE SECRETARY OF LABOR AND EMPLOYMENT, WHICH SHALL INCLUDE THE FOLLOWING REQUIREMENTS:

1. THAT THE FIXED PERIOD OF EMPLOYMENT WAS KNOWINGLY AND VOLUNTARILY AGREED UPON BY THE PARTIES; AND
2. THAT THE EMPLOYER MUST SUBMIT A LIST OF PROJECT EMPLOYMENT CONTRACTS TO THE DOLE OFFICE WITH JURISDICTION OVER THE PLACE OF WORK OF THE EMPLOYEE, PRIOR TO THEIR EFFECTIVITY, FOR RECORD PURPOSES;

SECTION 6. Article 281 of Presidential Decree Number 442, or the Labor Code of the Philippines, is hereby amended to read as follows:

ARTICLE 281. Probationary employment. – Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. 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. An employee who is allowed to work after a probationary period shall be considered a regular employee.

THE TERMINATION OF PROBATIONARY EMPLOYEES SHALL NOT BE VALID IF DONE TO PRECLUDE ACQUISITION OF SECURITY OF TENURE BY THE EMPLOYEE. THE PRESENCE OF ANY OF THE FOLLOWING CIRCUMSTANCES SHALL CREATE A REBUTTABLE PRESUMPTION OF THE INTENT TO CIRCUMVENT THE RIGHT TO SECURITY OF TENURE OF PROBATIONARY EMPLOYEES:

- 1. TERMINATION OF ALL OR ALMOST ALL OF THE PROBATIONARY EMPLOYEES AT THE END OF THE PROBATIONARY PERIOD AND THE SUCCEEDING HIRING OF A NEW SET OF PROBATIONARY EMPLOYEES; AND**
- 2. A DISPROPORTIONATELY HIGH NUMBER OF PROBATIONARY EMPLOYEES VIS-A-VIS REGULAR EMPLOYEES.**

SECTION 7. RULES AND REGULATIONS. – The Department of Labor, in consultation with the Department of Trade and Industry and other government agencies charged with the administration and enforcement of this Act or any of its parts, shall promulgate the necessary implementing rules and regulations within sixty (60) days from the effectivity of this Act; provided, that such rules shall delegate the reception of evidence of losses under Article 280-A (3) to the Department of Labor, alone or in coordination with the Department of Trade and Industry. Such rules and regulations shall become effective fifteen (15) days after announcement of their adoption in newspapers of general circulation.

SECTION 8. REPEALING CLAUSE. – All laws, decrees, rules, and regulations or parts thereof, which are contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 9. SEPARABILITY CLAUSE. – If any part or provision of this Act is declared unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

SECTION 10. EFFECTIVITY CLAUSE. – This Act shall take effect fifteen (15) days from its publication in two (2) national newspapers of general circulation after its approval by the President.

Approved.

