

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5110

INTRODUCED BY REPRESENTATIVES
RAFAEL V. MARIANO, TEDDY CASIÑO,
NERI JAVIER COLMENARES, LUZVIMINDA C. ILAGAN,
EMERENCIANA A. DE JESUS AND ANTONIO L. TINIO

EXPLANATORY NOTE

Aside from being a Constitutional right, security of tenure is one of the very few legal protections for Filipino workers inscribed in our laws. Despite this, local and foreign-owned companies continue to violate these laws by enforcing various forms of labor flexibilization and labor contractualization schemes.

Contractual employment schemes can be viewed as the micro-economic firm-level aspect of the continuing and worsening economic restructuring of the world economy that is part of the macro-level liberalization, deregulation and privatization policies of neoliberal globalization. Labor flexibilization pertains to innovations in work organization and employment schemes associated with the adoption of new production technologies and/or human resource management designed to extract greater profits prompted by increasing global competition and crisis.

These schemes to maximize profit include labor-only-contracting, subcontracting, hiring of casuals and contractuels, hiring of apprentices so that in the Philippines labor flexibilization is used synonymously with "contractualization" or "casualization" of labor. While labor flexibilization may garner superprofits for the big capitalists, it increases the exploitation of workers, poses obstacles to their genuine unionization, and raises the rate of unemployment and underemployment.

According to the International Labor Forum, "the use of contract labor and "precarious work" is part of the a global business strategy to undermine decent work and cut labor costs through labor market "flexibilization" or 'casualization'."

In the past decade, contractual employment proliferated due to the neoliberal policies of globalization. In fact, a big chunk of locally-generated employment is attributed to contractual or temporary jobs across industries particularly in special economic zones, the service sector and industries concentrated on export-oriented production mainly of semi-manufactures with little value-added.

Contractual employment is an employment strategy that aggravates domestic unemployment by destroying regular and permanent jobs while exposing contractual or temporary workers to substandard and inhumane working conditions.

In general, contractualization is aimed at pressing down workers' wages and increasing capitalists' profits.

In particular, it is aimed at the the following: 1) weakening trade unionism through the reduction of the traditional base of trade unions which are permanent workers; 2) systematic and efficient co-opting of workers into subscribing to an ideology that attacks workers' organization and unionism (employment vs. union mentality); 3) depriving workers of benefits and wages that are due to regular workers and the possibility of improving their working conditions through unionism and collective bargaining and; 4) allowing capitalists to earn maximum profits and lessen the impact of economic crisis by constant adjustments in current and long-term production costs through wage reduction and elimination of workers' benefits from long-term employment.

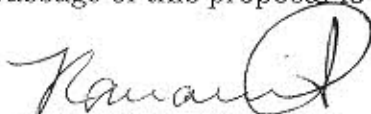
To understand what the core of contractualization as an employer strategy, it is important to understand that the entire framework of labor law, including international labor law, is based on the permanent employer/employee relationship.

Contractualization is not a mere short-term tactic to reduce costs or to defeat a union organizing drive, but a long-term strategy for shedding all obligations to workers and eliminating all employee rights based on the existence of an employment relationship. It thereby removes various obstacles to the extreme exploitation of workers which they have won through decades of struggles.

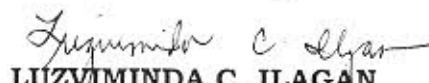
Based on recent studies, contractualization is extensive in the Philippines, with 7 out of 10 firms implementing combinations of flexible work arrangements and with estimates showing that contractals now outnumber regulars among Filipino workers. As labor groups and advocates have described, contractualization is a dagger in the hearts of Filipino workers.

With this reality, the State must determinedly protect and uphold workers' rights to decent and long-term employment by protecting their security of tenure, declaring illegal all forms of contractual employment and penalizing those who will continue to carry out this anti-worker scheme.

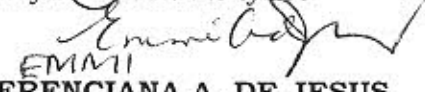
In view of the foregoing, the passage of this proposal is earnestly sought.


RAFAEL V. MARIANO
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**AN ACT
STRENGTHENING THE WORKERS' RIGHT TO
SECURITY OF TENURE, AMENDING FOR THE PURPOSE ART. 106 OF PD
442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE
PHILIPPINES**

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

SECTION 1. *Article 106 of Presidential Decree 442, as amended is hereby amended to read as follows:*

"Article 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.]~~

FOR ALL INTENTS AND PURPOSES, THE CONTRACTOR, SUB-CONTRACTOR, AGENCY, PERSON OR INTERMEDIARY SHALL BE CONSIDERED MERELY AS AGENT OF THE EMPLOYER OR THE PRINCIPAL WHO SHALL BE RESPONSIBLE FOR THE WORKERS IN THE SAME MANNER AND EXTENT AS IF THE LATTER WERE DIRECTLY EMPLOYED BY THE SAID EMPLOYER OR PRINCIPAL."

SECTION 2. Separability Clause. If any portion or provision of this Act is declared void or unconstitutional, the remaining portions or provisions hereof shall not be affected by such declaration.

SECTION 3. Repealing Clause. All laws, ordinances, rules, regulations, issuances, or parts thereof inconsistent with this Act are hereby repealed or modified accordingly;

SECTION 4. Effectivity Clause. 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.