

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

SIXTEENTH CONGRESS
First Regular Session

House Bill No. 562



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

EXPLANATORY NOTE

This year, the Business Process Outsourcing (BPO) industry is expected to generate up to \$16 billion and provide 720,000 jobs ("Transcom Philippines gives BPO industry stable outlook for 2013"; GMA 7 News Online, April 2, 2013). The Information Technology and Business Process Association of the Philippines predicts that the Philippine information technology and business process management (IT-BPM) and global in-house center (GIC) industries will generate \$25 billion by 2016 and provide direct employment to 1.3 million Filipinos, while supporting 3.2 million indirect jobs. ("Phl BPO industry revenues to hit \$16 B in 2013"; Philippine Star, April 2, 2013). Without question, the BPO industry will play a major role in the economy of the nation and the livelihoods of millions of Filipinos for the foreseeable future... and yet, current legislation has not yet been adapted to take into account the special characteristics of the BPO industry, and the special needs of BPO workers. In line with House Bills no. 2592 and 6073 of the previous Congress, this bill is meant to rectify this omission, and bring Philippine law up to date with regard to this vital new industry.

Emmeline Y. Aglipay
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AN ACT
ENSURING THE WELFARE AND PROTECTION OF BUSINESS PROCESS
OUTSOURCING (BPO) WORKERS IN 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 "BPO Workers' Act"

SECTION 2. Declaration of Policy. - It is hereby declared the policy of the State to protect the rights, and promote the welfare of workers in the Business Process Outsourcing (BPO) industry and to take appropriate steps to recognize such rights and welfare, while taking into account the special characteristics of the industry. The State shall strive to improve and promote their social and economic status, living and working conditions, terms of employment, professional growth and career development.

SECTION 3. Coverage. - This Act shall cover all employees in the Business Processing Outsourcing industry.

SECTION 4. Definition of Terms. - For purposes of this Act, the following terms shall be understood as follows:

- a) "*Business Process Outsourcing*" (BPO) is defined as the delegation of service-type business processes to a third-party service provider. It is generally divided into the following sectors: call centers, back office services, data transcription, animation, software development, engineering development and game development. Most BPO companies engage in shift work to complete their 24-hour work cycle.
- b) "*Call Center*" also known as contact center, refers to a central customer service operation where agents - whatever their designation - handle business-related telephone calls, and other IT-related non-voice activities, on behalf of a client.
- c) "*Employer*" includes any person or enterprise acting directly or indirectly in the interest of an employer, in relation to an employee, and shall include government-owned or controlled corporations and institutions, as well as non-profit private institutions or organizations. Indirect employees or contractors shall also be considered "employers" in this Act.
- d) "*Employee*" shall mean any person hired, permitted or suffered to work by an employer
- e) "*Health*" shall connote a sound state of the body and mind of the worker, which enables him to perform his job normally, in a state of well-being.
- f) "*Safe or Safety*" shall refer to the physical or environmental conditions of work or employment, which substantially comply with the prescribed Standards, as defined below.

- g) "*Work Accident*" shall mean an unplanned or unexpected occurrence that may or may not result in personal injury, property damage, work stoppage or interference or any combination thereof, which arises out of and in the course of employment.
- h) "*Work Injury*" shall mean any injury or occupational illness suffered by a person, which arises out of or in the course of employment.
- i) "*Occupational Illness*" shall mean any illness caused by environmental factors, the exposure, to which is characterized or peculiar to a particular process, trade or occupation, and to which an employee or worker is not ordinarily subjected to, or exposed to, outside of, or away from, such employment.
- j) "*Workplace*" means the office, premises or work site, where the workers are habitually employed and shall include the office or place where the workers, who have no fixed or definite work site, regularly report for assignment in the course of their employment.
- k) "*Approved*" shall mean acceptable to the Secretary of Labor and Employment, as indicated in writing, after a proper examination showing compliance with prescribed Standards.
- l) "*Code*" shall mean Presidential Decree 442, the Labor Code, as amended.
- m) "*Agencies*" shall mean government agencies mandated to monitor, administer, promote, and ensure health and safety regulations and standards. These agencies are the Department of Labor and Employment, Bureau of Working Conditions, Employees Compensation Commission and Occupational Safety and Health Center.
- n) "*Department*:" shall mean the Department of Labor and Employment.
- o) "*Secretary*" shall mean the Secretary of Labor and Employment.
- p) "*Bureau*" shall mean the Bureau of Working Conditions.
- q) "*Director*" shall mean the Director of the Bureau of Working Conditions.
- r) "*Standards*" shall mean the Occupational Safety and Health Standards and regulations, as described in Section 18.
- s) "*Enforcement officer*" shall mean the industrial safety engineer, the labor regulation officer, or any duly authorized representatives of the Secretary charged to enforce the Standards.
- t) "*Authorized Representative*" shall mean and include any employees or officials of other government agencies empowered by the Secretary of Labor and Employment to enforce the provisions of the Standards.
- u) "*Workplace Occupational Health and Safety Representative*" (WOHSR) is defined in Section 21 of this Act.
- v) "*Registered Interested Party*" shall mean any duly registered non-stock non-profit organization advocating occupational health and safety (OHS).
- w) "*Shift work*" shall mean the employment practice designed to make use of the 24 hours of the day. Employees are given schedules which correspond to a 24-hour work cycle. The term shift work includes both long-term night shifts and work schedules in which employees change or rotate shifts.

PART ONE: GENERAL EMPLOYMENT STANDARDS

SECTION 5. Standard of Treatment. - The employer and the supervisors must, at all times, treat the BPO worker in a just and humane manner and ensure and provide that rights and benefits of BPO workers be accorded them as mandated by the Code. Abusive language, physical violence or any act which debases the dignity of a person shall not be used against the employee.

SECTION 6. Access to Relevant Information. - The State shall ensure that BPO companies allow their workers and employees access to relevant information to make them understand their rights, benefits, obligations, conditions and realities attending to their profession. BPO companies shall not restrain their employees from organizing or attending activities, such as, but are not limited to, workshops and symposia, that seek to equip BPO workers with relevant information with regard to their rights, welfare and conditions.

SECTION 7. Protection from Understaffing or Overloading. - There shall be no understaffing or overloading of BPO workers. The ratio of BPO worker to client quota or quantitative targets shall be such as to reasonably effect a sustained quality of service at all times

without overworking the worker and over-extending his/her services beyond what is stipulated in the employment contract, or what is allowed as the worker's regular hours of work. The employer may request the employee to perform tasks beyond the duties stipulated in the employment contract; Provided, That the employee consents and that such tasks are duly compensated by the employer with an additional pay of not less than 25% of the regular rate per hour.

SECTION 8. Regularization. - All BPO workers shall be considered regular employees upon the completion of their sixth month of employment as trainee or apprentice, or upon the completion of a maximum probationary training period of six months.

SECTION 9. Right to Self-Association. - It shall be unlawful for any person or company to restrict the right of BPO workers to join, organize, or assist organizations, to collective bargaining and to participate in the deliberation of issues and in the formulation of policies that affect them, in accordance with the Code.

SECTION 10. Freedom from Excessive Company Bond. - It shall be unlawful for any person or company to compel a BFO worker to commit to a company bond, imposing an unreasonable fee to be paid by the employee upon leaving the company before a specified length of time.

SECTION 11. Protection from Discrimination. - BPO workers shall be protected from discrimination by reason of sex, sexual orientation, age, political or religious beliefs, civil status, pregnancy, physical characteristics or disability, or ethnicity.

SECTION 12. Hours of Work. - The hours of work for BPO workers shall be governed by the provisions of the Code, as supplemented by other applicable laws as well as this Act.

SECTION 13. Work on Holidays. - BPO workers may be required to work on days designated as non-working holidays in the Philippines given the nature of their profession; Provided, That the employer shall duly compensate the employee's work on such days in accordance to existing laws with regard to holiday pay.

SECTION 14. Leave Benefits. - BPO workers shall be entitled to all leave benefits and privileges, such as but not limited to maternity, paternity, vacation and sick leaves, as provided for under existing laws; Provided, that upon separation of the employee from service, they shall be entitled to all accumulated leave credits with pay. No employee may be terminated based solely on unapproved leaves without affording the employee due process in an administrative proceeding.

SECTION 15. Transportation Benefits. - In the absence of or in the lack of safe and adequate public transportation services in BPO workers' places of work, they shall, at least between 9:00 p.m. and 6:00 a.m., be entitled to safe transportation service, which may include, but are not limited to shuttle services, to and from the place of work to designated drop-off points, to be provided by the company in order to facilitate the safe commute of employees at vulnerable times.

SECTION 16. Security of Tenure. - No employee may be terminated except for just cause as may be provided by the Code and other existing laws and after due process in an administrative proceeding as provided for under the law.

PART TWO: OCCUPATIONAL HEALTH AND SAFETY STANDARDS AND REGULATIONS

SECTION 17. Employers' Obligation. Article 106 of the Code expressly prohibits "labor only" contracting. Employers engaging independent contractors to perform work on their behalf have a duty to minimize the health and safety risks of the contractor's employees. This is because they are deemed to be employees for the purposes of the Code, as well as this Act, and because employers have a duty to protect third parties at or near their workplace. A failure to maintain a safe workplace for the contractor's employees may constitute a contravention of the employer's general duty under the law.

SECTION 18. Occupational Health and Safety Standards and Regulations for BPO Workers. - Pursuant to its mandate, the Department of Labor and Employment is tasked to establish Occupational Health and Safety Standards (Standards) for BPO work. The Standards shall adhere to the prevailing standards of health and safety for BPO work and other similar employment. It is imperative that the minimum provisions in the Standards meet the International Labor Organizations recommendations. The Standards should be reviewed annually by the agencies, WOHSR, and registered interested parties, and must include provisions related to the Enforcement Officers and Authorized Representatives, as well as the WOHSR as defined below.

SECTION 19. The Nature of BPO Night-Shift Work. - Establishments engaged in shift work to complete their 24-hour work cycle expose their employees to health and security risks, as well as unnatural stresses, and as such night- shift work is considered to be hazardous under this Act

SECTION 20. Compliance with the Standards. - The Standards shall be strictly enforced in all establishments operating in the country. Compliance with the provisions of the Standards shall be mandatory and subject to inspections by Enforcement Officers and/or Authorized Representatives, as shall be outlined in the Standards.

SECTION 21. Workplace Occupational Health and Safety Officer. - From among the employees, a Workplace Occupational Health and Safety Officer (WOHSO) is to be elected for the purposes of consultation and in-house monitoring of the Standards. The WOHSO shall review the measures taken to ensure the health, safety, and welfare of the employees; investigate and attempt to resolve any matters that may be a risk to health and safety at the place of work. The employees may elect more than one WOHSO representative upon approval by the Department. The powers, functions, and manner of election the WOHSO shall be included in the Standards, subject to the following guidelines: (a) that all employees are entitled to vote in an election of the WOHSO; (b) that the powers of a WOHSO shall include, but not be limited to, the powers to inspect any part of the workplace, and to require the establishment of a health and safety committee.

SECTION 22. Workplace Policy on Occupational Health and Safety. - Each establishment shall formulate their own occupational health and safety policy, which adheres at minimum to the Standards as defined in Section 18 of this Act. Any additional safety measures deemed appropriate to the nature of the localized work environment may also be included, pending approval by the Bureau. The policy must be reviewed annually by the employers, the WOHSO and an Enforcement Officer or Authorized Representative.

All employees shall be informed of the OHS policy. Informational materials such as posters, brochures and similar devices shall be distributed to the employees free of charge.

SECTION 23. Health Program. The company physician shall, in addition to his duties stated in the Labor Code, develop and implement a comprehensive occupational health program for the benefit of all employees.

SECTION 24. Health Insurance. All employees are entitled to free full medical examination upon commencement of employment, and annually during the tenure of employment. The establishment shall provide full health insurance to the employees, the coverage of which shall be agreed upon by the company and its employees.

SECTION 25. Work-Related Injuries, Sickness and Death Compensation. All employees and their dependents shall be also be compensated for injuries, medical complications, illness, disability and death arising from, and related to, their work, in accordance to existing laws, labor policies, guidelines or circulars as the case may be. The Employees Compensation Commission shall promptly process any claims for/by injured, disabled, deceased employees or their dependents.

SECTION 26. Prohibition Against Elimination or Diminution of Benefits. - Nothing in this Act shall be construed to eliminate or diminish in any way existing benefits being enjoyed by BPO employees at the time of the effectivity of this Act, or benefits beyond the minimum standards set forth by this Act.

SECTION 27. Penal Provision. - Any person or company who violates the provisions of this Act shall be punished with a fine of not less than One Hundred Thousand Pesos (P100,000) and/or imprisonment of not less than two (2) months but not more than one (1), or both, at the discretion of the Court.

SECTION 28. Separability Clause. - If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SECTION 29. Repealing Clause. - All laws, executive orders, presidential decrees, presidential proclamations, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 30. Effectivity Clause. - This Act shall take effect fifteen (15) days from its publication in the Official Gazette or at least two (2) national newspapers of general circulation.

Approved.