

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

House Bill No. **4396**



Introduced by Representatives **EMMI A. DE JESUS** and **LUZVIMINDA C. ILAGAN**

EXPLANATORY NOTE

Contractual employment has long been a bane for the Filipino workers and people. While it surely allows capitalists to rake in bigger profits, it has not brought about anything beneficial to workers. Contractuals receive wages that are lower than those received by regulars and are denied various benefits. They can be removed from work any time and therefore find a hard time forming unions and asserting their rights. Women contractuals are denied maternity benefits, especially in the havens of contractualization in the country -- the export processing zones, malls and other segments of the service sector of the economy.

Contractualization has also been used to weaken the already few existing unions in the country. Workers who retire or are laid off from work are replaced with contractuals until the latter constitutes a significant section of the workforce. In other cases, contractual workers are hired in numbers that turn unionized workers into a minority. The overall effect is to undermine unions' capacity to hold strikes and halt production in order to pressure managements to heed particular demands. Through contractual employment, managements are able to use and turn the workers against each other.

The Labor Code, which was approved under the Marcos dictatorship, gives the Labor Secretary the power to issue guidelines on contractual employment. The Herrera Law, which amended the Labor Code in 1989, did not remove this immense power from the Labor Secretary and did not uphold workers' regular employment. The said power has been used by Labor Secretaries to legalize contractual employment, virtually teaching capitalists on how to contractualize work forces in a legal way. Under the present government of Benigno Simeon Aquino III, Labor Secretary Rosalinda Baldoz has issued Department Order 18-A Series of 2011 to legalize contractual employment.

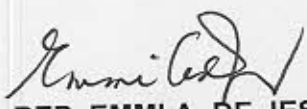
As such, from the 1990s to the present, contractual employment has spread throughout the country. Now, contractuals far outnumber the regular workers in the country. The service sector, the biggest sector of the economy, has become a haven for contractualization, especially the malls, fast food chains, and hotels. Special economic zones or SEZs, especially the export-processing zones among these, also rely heavily on contractualization, where an estimated 80 to 90 per cent of workers are contractuals. Big agro-corporations employ a huge number of contractuals. Contractualization has a woman's face, since many work areas where contractual employment is rampant exhibit a high concentration of women workers.

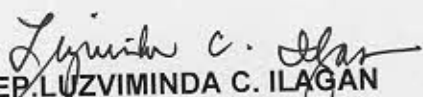
The government says it has to legalize contractual employment in order to attract foreign and local investors and therefore create jobs. It presses down workers' wages and curtail trade-union rights, which are also carried out with the legalization of contractualization. It is telling that the government's so-called instrument for creating jobs is used by capitalists to destroy jobs when they remove workers from work especially for forming unions and standing up for their rights. The government also condones these instances of "job destruction" carried out by capitalists, belying its claim of championing job generation.

Contractual employment has made it easier for capitalists to lay off workers and has therefore contributed to the widespread unemployment in the country. This is most revolting as the International Labor Organization's "Global Employment Trends 2014" shows that the Philippines has the highest unemployment rate in all of Southeast Asia. Independent think-tank Ibon Foundation has shown that unemployment has been growing under the Aquino administration and that the jobs being generated have been decreasing. Unemployment soared from 4.37 million in 2011 to 4.49 million in 2013 while job generation dropped from 1.2 million in 2011 to a mere 317,000 in the same year.

Contractualization has always figured in the major labor issues in the Philippines for the past years. The Philippine Airlines retrenched 2,600 regular and unionized workers in order to replace them with contractual workers provided by subcontracting agencies suspected by many to be dummy companies of the owner of the country's flag carrier. Numerous contractuels have been removed from work for fighting for their rights and for forming unions. Those responsible for the death of 10 construction workers during the construction of the Eton Towers in Makati City were not penalized, mainly because of pro-capitalist laws on workers' occupational health and safety and secondarily because of levels upon levels of subcontracting.

In the meantime, however, workers' job security should be upheld and regular employment should be promoted. By making subcontracting agencies superfluous and making employers responsible for their employees, this bill seeks to stop contractual employment and uphold workers' rights to job security. Contractual employment is most exploitative and, most unjust for workers, thereby most unacceptable to them and to the Filipino people. It must as such be eradicated totally and not merely be reduced incrementally. The enactment of this proposed measure is sought.


REP. EMMI A. DE JESUS
Gabriela Women's Party


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Gabriela Women's Party

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**AN ACT PROHIBITING CONTRACTUALIZATION AND PROMOTING REGULAR
EMPLOYMENT**

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

Section 1. The Article 106 of the Labor Code of the Philippines is hereby amended as follows:

Article 106. Contractor or subcontractor is a person or an entity with whom an employer or principal enters into a contract for the performance of the latter's work.

When the contractor or subcontractor contracts to perform work that is necessary and desirable for the business of the employer, the employees or workers of the contractor or subcontractor shall be considered the employees of the employer and not of the contractor or subcontractor and for all intents and purposes, the contractor, subcontractor, 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.

~~[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 2. The Article 107 of the Labor Code of the Philippines is hereby repealed.

~~[Article 107. Indirect employer. The provisions of the immediately preceding article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.]~~

Section 3. Article 279 of the Labor Code of the Philippines is hereby amended to read as follows:

Article 279. Security of tenure. – ~~[In cases of regular employment, the]~~ NO employer shall ~~[not]~~ terminate the services of an employee except for a just cause or when authorized by this Title. A~~[n]~~REGULAR employee who is unjustly dismissed from work shall be entitled to IMMEDIATE reinstatement without loss of seniority rights and other privileges and to his full back wages, 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.

Section 4. Article 280 of the Labor Code of the Philippines is hereby amended to read as follows:

ARTICLE 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, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the

engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: 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 while such activity exists.

"ANY STIPULATION IN ANY WRITTEN OR ORAL CONTRACT OF EMPLOYMENT FOR A DEFINITE OR FIXED PERIOD DESIGNED TO SUBVERT THE PROVISIONS OF THIS ACT AND COVERING WORK ACTIVITIES WHICH ARE NECESSARY OR DESIRABLE IN THE USUAL BUSINESS OR TRADE OF THE EMPLOYER AS DEFINED UNDER THIS TITLE SHALL BE NULL AND VOID AB INITIO."

Section 5. Article 281 of the Labor Code of the Philippines is hereby amended to read as follows:

Article 281. Probationary employment. A [P]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] FIRST DAY OF SERVICE FOR ALL WORKERS REGARDLESS OF THE NATURE OF EMPLOYMENT, CONTINUOUS OR BROKEN. 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.

Section 6. Investigation and Enforcement. - The DOLE shall have the authority to investigate and require the keeping of records necessary for the administration of this Act. It shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this Act.

Section 7. Penalty. - Any violation of this Act shall be punished with a fine of not less than fifty thousand pesos (P100,000.00) but not more than five hundred thousand pesos (P500,000.00), or imprisonment of not less than three (3) months but not more than two (2) years, or both at the discretion of the court. If the offense is committed by a corporation, trust, firm, partnership or association or other entity, the penalty shall be imposed upon the guilty officer or officers of such corporation, trust, firm, partnership or association or entity.

Section 8. Separability Clause. - Should any provision herein be subsequently declared invalid or unconstitutional, the same shall not affect the validity or the legality of the other provisions not so declared.

Section 9. Repealing Clause. - All laws, presidential decrees, executive orders, rules and regulations, other issuances, and parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed and modified accordingly.

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