

Republic of the Philippines  
**HOUSE OF REPRESENTATIVES**  
Quezon City

**SIXTEENTH CONGRESS**  
Second Regular Session

**HOUSE BILL NO. 5140**



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**INTRODUCED BY ANAKPAWIS PARTY-LIST  
REPRESENTATIVE FERNANDO L. HICAP**

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#### **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 profit maximization schemes include labor-only-contracting, subcontracting, hiring of casuals and contractuals, 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 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 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 the core of contractualization as an employer strategy, it is important to realize that the entire framework of labor law, including international labor law, is based on permanent employer-employee relationships.

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 contractuals now outnumber regulars among Filipino workers. As labor groups and advocates have described, contractualization is a dagger in the hearts of Filipino workers.

Large corporations such as Shoemart (SM), a retail company owned by Philippines' richest Filipino, Henry Sy, is notorious for employing contractual employees with shortened employment tenures of 3 to 5 months.

In 2011, the Philippine Airlines (PAL), the country's flag carrier have succeeded in outsourcing its ground operations that retrenched 6,000 regular employees in favor of contractual workers.

Majority of the country's 37.6 million employed persons are either employed in contractual, temporary, probationary, seasonal and odd jobs. Based on official government data, an estimate of 44% of workers employed in various industries are not regulars. The rate of contractual employment is also high in the construction sector (81%) and quarrying sector (59%).

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.

With the end in view of uplifting the Filipino workers from deepening poverty and misery, prohibiting contractualization, fundamentally, shall protect the national interest and democratic ideals of Filipino society.

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



**FERNANDO L. HICAP**  
Anakpawis Party-list

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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.**

**Section 2.** The Article 107 of the Labor Code of the Philippines is hereby repealed.

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

**Article 279. Security of tenure. – NO employer shall terminate the services of an employee except for a just cause or when authorized by this Title. A REGULAR employee who is unjustly dismissed from work shall be entitled to IMMEDIATE reinstatement without loss of seniority rights and other privileges, to his/her full back wages inclusive of allowances, and to his/her other benefits or their monetary equivalent computed from the time his/her compensation was withheld from him up to the time of his/her 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/she is employed and his/her 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 probationary employment shall not exceed six (6) months from the 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/she 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/her 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 Clause. - This Act shall take effect fifteen (15) days after publication in the Official Gazette or in at least (2) newspapers of general circulation.