

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Sixteenth Congress
Second Regular Session

5415
HOUSE BILL NO. _____



INTRODUCED BY: REP. FLORENCIO T. FLORES, JR., REP. KARLO ALEXEI B. NOGRALES, AND REP. DEOGRACIAS B. RAMOS, JR.

EXPLANATORY NOTE

Innovation and fast-paced technological progress has constantly redefined jobs and work arrangements such as contracting or subcontracting. This has given rise to the mushrooming of forms of employment engagement that were not adequately captured by the provisions of the 1974 Labor Code of the Philippines, as amended, which was tailored for the manufacturing industries work arrangement. Gaps in the entitlement of labor standards benefits, exercise of labor rights, the blurring of employer-employee relationship and the lack of security of tenure are burning issues under such work arrangements.

This bill proposes the following: (1) clearly defining legitimate contractor or subcontractor as an employer engaged in providing job, work or services to another business; (2) recognizing industry peculiarities through industry tripartite-determined functions or standards on contracting and subcontracting; (3) in the absence of industry-tripartite standards, application of the general standards as determined by DOLE Secretary, after consultation with the TIPC; (4) emphasizing the prohibition against labor-only contracting; (5) licensing of contractors and subcontractors; (6) mandatory posting of bond to answer for the wages and other monetary benefits due the employees in case the contractor fails to pay the same; (7) coverage of the cooperatives as employers in contracting or subcontracting; and (8) reiteration of solidary liability in case of a finding of labor-only contracting.

Thus, the passage of this important measure is earnestly sought.

FLORENCIO T. FLORES, JR.

KARLO ALEXEI B. NOGRALES

DEOGRACIAS B. RAMOS, JR.

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An Act Specifying the Requirements of Legitimate Contracting/Subcontracting amending for this Purpose Articles 106 to 109 of Presidential Decree No. 442, Otherwise Known as the Labor Code of the Philippines, as amended

SECTION 1. Article 106 of PD 442, otherwise known as the Labor Code of the Philippines as amended, is hereby amended to read as:

"ARTICLE 106. CONTRACTOR OR SUBCONTRACTOR. - Whenever a PRINCIPAL 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 Act.

FOR THIS PURPOSE, LEGITIMATE CONTRACTOR OR SUBCONTRACTOR MUST:

- 1) BE LICENSED WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT;
- 2) HAVE SUBSTANTIAL CAPITALIZATION OF AT LEAST THREE MILLION PESOS OR AS MAYBE DETERMINED THROUGH TRIPARTITE CONSULTATION;
- 3) HAVE EQUIPMENT, MACHINERIES AND TOOLS NECESSARY TO PERFORM OR COMPLETE THE JOB, WORK OR SERVICE CONTRACTED OUT; AND
- 4) EXERCISE CONTROL OVER THE PERFORMANCE OR COMPLETION OF THE JOB, WORK OR SERVICE CONTRACTED OUT.

THE SECRETARY OF LABOR AND EMPLOYMENT, BY APPROPRIATE REGULATIONS, SHALL DETERMINE FUNCTIONS THAT CAN BE SUBCONTRACTED BASED ON THE RECOMMENDATION BY APPROPRIATE INDUSTRY TRIPARTITE COUNCIL. IN THE ABSENCE OF INDUSTRY-

SPECIFIC TRIPARTITE STANDARDS ON
CONTRACTING/SUBCONTRACTING, THE SECRETARY OF LABOR AND
EMPLOYMENT SHALL DETERMINE STANDARDS AND ISSUE APPROPRIATE
REGULATIONS AFTER CONSULTATIONS WITH THE NATIONAL TRIPARTITE
INDUSTRIAL PEACE COUNCIL.

In the event that the contractor or subcontractor fails to pay the wages AND OTHER WAGE-RELATED BENEFITS INCLUDING SOCIAL WELFARE BENEFITS, the PRINCIPAL EMPLOYER shall be jointly and severally liable with his/her contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he/she is liable to employees directly employed by him/her.

LABOR-ONLY CONTRACTING IS PROHIBITED. There is "labor-only" contracting where the person supplying workers to a principal does not have substantial capital AND investment in the form of tools, equipment, machineries, work premises, among others, OR [and] the workers recruited and placed ARE UNDER THE CONTROL AND SUPERVISION OF THE PRINCIPAL EMPLOYER [~~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 PRINCIPAL 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. Article 107 of the Labor Code, as amended, is hereby amended to read as:

"ARTICLE 107. PRINCIPAL [~~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 2. Article 107-A is hereby inserted in the Labor Code of the Philippines, as amended, to read as:

"ARTICLE 107-A. LICENSING OF JOB CONTRACTORS - THE SECRETARY OF LABOR AND EMPLOYMENT THROUGH THE REGIONAL OFFICES SHALL ISSUE QUALIFIED APPLICANTS THE JOB CONTRACTOR'S LICENSE IN ACCORDANCE WITH GUIDELINES PRESCRIBE FOR THE PURPOSE. THE APPLICANT MUST BE A FILIPINO CITIZEN OR A CORPORATION OF WHICH ONE HUNDRED PERCENT (100%) OF AUTHORIZED AND VOTING CAPITAL IS OWNED AND CONTROLLED BY FILIPINO CITIZENS, A PARTNERSHIP, CRAFT UNION OR ANY OTHER ENTITY. SUCH CONTRACTOR SHALL, LIKEWISE, COMPLY WITH THE REQUIREMENTS OF OTHER GOVERNMENTAL AUTHORITIES

UNLICENSED CONTRACTORS OR SUBCONTRACTORS SHALL BE DEEMED ENGAGED IN LABOR-ONLY CONTRACTING. THE PRINCIPAL EMPLOYER SHALL BE CONSIDERED THE DIRECT EMPLOYER OF ALL EMPLOYEES UNDER THE CONTRACTING/SUBCONTRACTING

AGREEMENT.

THE SECRETARY OF LABOR AND EMPLOYMENT MAY IMPOSE A FINE AGAINST UNLICENSED CONTRACTORS OR SUBCONTRACTORS IN AN AMOUNT TO BE DETERMINED THROUGH CONSULTATION WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL.

SECTION 4. Article 108 of the Labor Code as amended, is hereby amended to read as:

“ARTICLE 108. MANDATORY POSTING OF BOND. - THE CONTRACTOR OR SUBCONTRACTOR SHALL FURNISH A BOND TO THE PRINCIPAL EMPLOYER EQUAL TO THE COST OF LABOR UNDER THE CONTRACT BETWEEN THE CONTRACTOR OR SUBCONTRACTOR AND ITS EMPLOYEES. THE BOND SHALL ANSWER FOR THE WAGES AND OTHER MONETARY BENEFITS DUE THE EMPLOYEES IN CASE THE CONTRACTOR OR SUBCONTRACTOR FAILS TO PAY THE SAME.”

SECTION 5. A new Article 108-A of the Labor Code, as amended, is hereby inserted to read as:

“ARTICLE 108-A. APPLICABILITY TO COOPERATIVES. THE PROVISIONS OF THIS ACT SHALL APPLY TO COOPERATIVES ENGAGED IN CONTRACTING OR SUBCONTRACTING ARRANGEMENTS. COOPERATIVES ARE DEEMED EMPLOYERS AND THEIR EMPLOYEES, MEMBERS OR NON-MEMBERS, SHALL BE ENTITLED TO THE FOLLOWING RIGHTS AND PRIVILEGES ACCORDED TO CONTRACTOR'S OR SUBCONTRACTOR'S EMPLOYEES:

- MINIMUM WAGE;
- SAFE AND HEALTHFUL WORKING CONDITIONS;
- LABOR STANDARDS SUCH AS BUT NOT LIMITED TO SERVICE INCENTIVE LEAVE, REST DAYS, OVERTIME PAY, HOLIDAY PAY 13TH MONTH PAY AND SEPARATION PAY AS MAY BE PROVIDED IN THE SERVICE AGREEMENT OR UNDER THE LABOR CODE;
- RETIREMENT BENEFITS UNDER THE SSS OR RETIREMENT PLANS OF THE CONTRACTOR, IF THERE IS ANY;
- SOCIAL SECURITY AND WELFARE BENEFITS;
- SELF-ORGANIZATION, COLLECTIVE BARGAINING AND PEACEFUL CONCERTED ACTIVITIES; AND
- SECURITY OF TENURE.

SECTION 5. Article 109 of the Labor Code as amended, is hereby amended to read as:

“ARTICLE 109.SOLIDARY LIABILITY. – The provisions of existing laws to the contrary notwithstanding, PRINCIPAL employer shall be held solidarily LIABLE [responsible] with his/HER contractor or subcontractor for UNPAID WAGES, LABOR STANDARDS AND OTHER WELFARE BENEFITS TO THE WORKERS IF THERE IS A FINDING OF LABOR-ONLY CONTRACTING.

SECTION 6. Rules and Regulations. - The Secretary of Labor and Employment shall promulgate the necessary implementing rules and regulations within one hundred and twenty (120) days from the effectivity of this Act.

SECTION 7. Sunset Provision. - After every five (5) years from the effectivity of this Act, there shall be an Automatic Review to be conducted by the Tripartite Industrial Peace Council. For purposes of this Act, Automatic Review shall mean the programmed and systematic evaluation by the Council of the accomplishments and impact of this Act, as well as the performance and accomplishments of the Department of Labor and Employment and other implementing agencies, for purposes and in aid of legislation.

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 Provisions. - If any provision of this law or the application thereof to any person or circumstance, is held invalid, the remainder of this law, or the application of such provision or part to other persons or circumstances, shall not be affected thereby.

SECTION 10. Effectivity. - 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.