

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5898



Introduced by **REP. CARLOS M. PADILLA**

EXPLANATORY NOTE

In these times of global economic recession, a number of our countrymen have lost their jobs, and many employers have limited the work hours of their employees and reduced their take-home pay. Unemployment rate has gone up, especially as fresh graduates continue to join the labor force. As an ill-effect, a new type of discrimination has emerged – discrimination against an individual due to age. These displaced workers face a bleak future, especially as most employers prefer young employees. Prejudice against an aging workforce is evident in the qualifications posted in job notices and differences in benefits received.

The Constitution mandates the State to promote equality of employment opportunities for all. This means that an individual should not be discriminated against due to his age, sex, creed, political inclination, or status in life. The basis for employment should be the skills and qualifications necessary to perform the occupation.

This Bill seeks to eliminate age discrimination in employment by prohibiting and penalizing any employer, labor contractor, and labor organization that will discriminate against any individual because of his or her age.

This Bill is a counterpart version of Senate Bill No. 29, originally filed by Hon. Pia S. Cayetano.

In view of the foregoing, approval of this Bill is earnestly requested.


CARLOS M. PADILLA

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5698

Introduced by **REP. CARLOS M. PADILLA**

AN ACT
PROHIBITING THE DISCRIMINATION ON THE EMPLOYMENT OF ANY
INDIVIDUAL ON THE BASIS MERELY OF AGE

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

SECTION 1. Short Title. –The Act shall be known as the “Anti-Age Discrimination in Employment Act of 2015.”

SECTION 2. Declaration of Policies. – The State shall promote equal opportunities in employment for everyone. To achieve this end, it shall be the policy of the State to:

- a.) Promote employment of individuals on the basis of their abilities, knowledge, skills and qualifications rather than their age.
- b.) Prohibit arbitrary age limitations in employment.
- c.) Assist both employers and employees in devising ways to resolve problems that may take place as a direct or indirect impact of age discrimination on employment.

SECTION 3. Recognition of Rights. – Pursuant to the above-declared principles, the following rights of citizens are hereby acknowledged, and the State guarantees their enjoyment to:

- a.) The right to qualify for a job position regardless of age, and on the basis of their merits and qualifications.
- b.) The right of older applicants or employees to be treated equally with the younger applicants or employees in terms of hiring, compensation, trainings, benefits, promotions, and other employment activities.
- c.) The right of any individual to access public records in the exercise of his or her rights granted under this Act.

SECTION 4. Definition of Terms. – The following terms shall have their respective meanings:

- a.) **"Employee"** includes any individual employed by an employer.
- b.) **"Employer"** includes any person acting directly or indirectly in the interest of an employer relating to an employee and shall include the Government and all its branches, subdivision and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions, or organizations.
- c.) **"Harassment"** means subjecting a person to unwanted conduct by an employer or by their co-workers that creates an intimidating, hostile or degrading work environment, making the person feel as though he/she should leave the job.
- d.) **"Instructions to Discriminate"** means an order by an employers or manager or manager to their lower managers or other workers to engage in discriminatory behavior to compel a person to quit his/her job.
- e.) **"Job Applicant"** includes any person who applied for a specific and vacant position for which an employer is seeking candidates, met the predefined, documented minimum requirements related to a specific, open position, applied for the position during the period that the applicant flow log remained open, and who complied with the hiring employer's formal recruitment practices.
- f.) **"Labor Contractor"** means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such person.
- g.) **"Labor Organization"** means any union or association of employees which exists in whole or in part for the purpose of collective bargaining, or for dealing with employers concerning terms and conditions of employment.
- h.) **"Publisher"** includes any person or juridical entity engaged in the printing of information on paper and its distribution, buying or otherwise securing of airtime or space on television, radio, internet and similar media, or other similar methods.
- i.) **"Victimization"** means harassing the person making th ecomplaintg or witnesses to the complaint, usually with the aim or compelling the withdrawal of the complaint, the dismissal of the witnesses or the dismissal of the person who made the complaint.

SECTION 5. *Employers Covered.* – The provisions of this Act shall apply to all employers, including national and local governments. It shall also apply to labor contractors and labor organizations.

SECTION 6. *Individuals Covered.* – The provisions of this Act shall apply to all individuals, whether employees or job applicants who may be subject to discrimination in the workplace, or hiring process, due to age.

SECTION 7. *Education and Research Programs.* – The Department of Labor and Employment (DOLE) and the Civil Service Commission shall:

- a.) Conduct studies and researches, and come up with corresponding guidelines aimed at minimizing impediments to the employment of older persons, and creating an inclusive workplace, and furnish such information to employers, labor groups, and the general public, and
- b.) Promote programs, in coordination with public and private agencies, that will further enhance the knowledge and skills of every individual, regardless of age.

SECTION 8. *Prohibition of Age Discrimination.*

a.) It shall be unlawful for an employer to –

- 1.) Print or publish, or cause to be printed or published, in any form of media, including internet, any notice of advertisement relating to employment suggesting preferences, limitations, specifications, and discrimination based on age;
- 2.) Require the declaration of age or birthdate during the application process: Provided that, it shall not be unlawful to the extent that the employer verifies without prejudice that the applicant is of legal age;
- 3.) Decline any employment application because of the individual's age;
- 4.) Discriminate against an individual in terms of compensation, terms and conditions, or privileges of employment on account of such individual's age;
- 5.) Deny any employee's promotions or opportunities for trainings on the basis of his/her age;
- 6.) Forcibly lay-off an employee merely because of age;
- 7.) Impose early retirement on the basis of the employee's age;
- 8.) Engage in harassment, give instructions to discriminate and/or practice victimization in the context of age discrimination amounting to constructive dismissal; and

- 9.) Dismiss an employee solely because of age.
- b.) It shall be unlawful for a labor contractor to refuse to refer for employment, or otherwise discriminate against any individual because of such person's age.
- c.) It shall be unlawful for a labor group to –
 - 1.) Deny membership to any individual because of his/her age;
 - 2.) Exclude from its membership any individual because of the individual's age;
 - 3.) Cause or attempt to cause an employer to discriminate against an individual in violation of this act.
- d) It shall be unlawful for a publisher to print or publish any notice of advertisement relating to employment suggesting preferences, limitations, specifications, and discrimination based on age unless it falls under the exceptions found in Section 9.
- e.) It shall be unlawful for a co-worker to engage in harassment and/or victimization in the context of age discrimination.

SECTION 9. Exceptions. – It shall not be unlawful for an employer to set age limitations in employment if:

- a.) Age is a *bona fide* occupational qualification reasonably necessary in the normal operation of the particular business, or where the differentiation is based on reasonable factors, other than age, subject to the guidelines issued by the tripartite industrial peace council established by Republic Act No. 10395, the CSC and civil society organizations which have experience and proven track record in uplifting the rights of workers;
- b.) The intent is to observe the terms of a *bona fide* seniority system that is not intended to evade the purpose of this Act;
- c.) The intent is to observe the terms of a *bona fide* employee retirement or a voluntary early retirement plan consistent with the purpose of this Act; *Provided*, that such retirement or voluntary retirement plans are in accordance with the Labor Code, as amended, and other related laws; and
- d.) The case is covered by one of the exceptions under appropriate regulations issued by the Secretary of Labor based on objective justification, to attain a legitimate aim, including the health, welfare and safety of the individual and/or the larger public and the particular training requirements of the job, taking into consideration appropriate and relevant scientific studies, advancements and developments in technologies and the output of the consultations with the Tripartite Industrial Peace Council, the CSC and other relevant stakeholders.

SECTION 10. *Investigation and Enforcement.* – The DOLE and CSC shall have the authority to investigate, file cases 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 11. *Consultations and Reports.* – The Tripartite Industrial Peace Council, the CSC and civil society organizations which have experience and proven track record in uplifting the rights of workers, shall conduct public consultations on the status of the implementation of this Act. A progress report on the implementation of this Act shall be submitted by DOLE and CSC to the appropriate committees in the Senate and House of Representatives annually.

SECTION 12. *Presumptions.* – For any violation of this Act arising out of an employer-employee relationship, a prima facie case of age discrimination is established if the complainant is able to show that:

1. He/she was qualified for the job or for the additional benefits or promotion;
2. An unfavorable action was taken by the employer or labor contractor against the complainant; and
3. A decision was made in favor of an individual belonging to a favored age bracket.

Upon proving all of the elements, the burden of proof is now upon the employer or labor contractor to show that they did not commit an age-based discriminatory act.

SECTION 13. *Jurisdiction.* - Notwithstanding any provision of law to the contrary, the labor arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the violations arising out of an employer-employee relationship by virtue of this Act: *Provided*, that any violation of this Act that does not arise out of an employer-employee relationship shall be under the jurisdiction of regular courts.

Any violation of this Act in the public sector shall constitute a ground for disciplinary action and shall be governed by the applicable provisions of the Administrative Code of 1987 (Executive Order No. 292).

Recovery of civil liability in the administrative proceedings shall bar recovery under the Civil Code.

SECTION 14. *Administrative Sanctions.* – Any violation of this Act in the private sector shall be punishable with a fine of not less than ten thousand pesos (Php10,000.00) but not more than forty thousand pesos (Php40,000.00).

SECTION 15. *Remedies.* - The aggrieved party shall be granted back wages, damages, reinstatement, and any other relief as may be deemed equitable.

SEC. 16. Procedure for Prosecution. Acts of age-based discrimination in employment are not only violations of the civil rights but are also criminal offenses against the State which shall be subject to prosecution and punishment as herein provided.

No criminal prosecution under this Act may be instituted without a final judgment finding that an act of and age-aged discrimination was committed, having been first obtained in the preceding provision. During the pendency of such administrative proceeding, the running of the period of prescription of the criminal offense herein penalized shall be considered interrupted: *Provided, however,* that the final judgment in the administrative proceedings shall not be binding in the criminal case nor be considered as evidence of guilt but merely as proof of compliance of the requirements therein set forth.

SECTION 17. Penalty. – At the discretion of the court, any violation of this Act shall be punished with a fine of not less than fifty thousand pesos (P50,000.00) 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. Implementing Rules and Regulations. – The DOLE and the CSC shall, within one hundred eighty (180) days from the effectivity of this Act, jointly promulgate the necessary Implementing Rules and Regulations to carry out the provisions of this Act."

SECTION 19. 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 20. 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 20. Effectivity. – This Act shall take effect fifteen (15) days after publication in the Official Gazette or in at least (2) newspapers of general circulation.

Approved,