

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

SEVENTEENTH CONGRESS
FIRST REGULAR SESSION

HOUSE BILL NO. **5130**



Introduced by CIBAC Party-List Representative
Sherwin Tugna

AN ACT

PROMOTING THE SECURITY OF TENURE OF WORKERS IN THE PRIVATE SECTOR, AMENDING FOR THE PURPOSES ARTICLES 248, 279, 280, 281, AND 288, AND INTRODUCING NEW ARTICLES 106-A, 106-B, 106-C, 106-D, 106-E, 280-A AND 280-B TO PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES

EXPLANATORY NOTE

Section 3 of the 1987 Constitution states:

The State shall **afford full protection to labor**, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. **They shall be entitled to security of tenure, humane conditions of work, and a living wage.** They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The **State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production** and the right of enterprises to reasonable returns on investments, and to expansion and growth. (Emphasis and Underscoring Supplied.)

It is clear from the mandate of our Constitution that the labor sector should be protected. Many employers have adopted the end of contract policy wherein employees who by their nature of their work should have been regarded as regular employees are considered only to be fixed-term employees. This is being done to

prevent these employees to be regularized and avoid giving them the salaries and benefits granted to regular employees such as minimum wage, 13th month pay, overtime pay, night shift differential, retirement pay, maternity and paternity leaves, as applicable, and payment of mandatory payment of SSS, PAG-IBIG and Philhealth contributions. This widespread practice and the inadequacies in our current laws have left many Filipinos with no choice but to accept the terms of employment given to them in order to ensure that they still to be able to feed their families.

In view of the foregoing, immediate passage of the bill is earnestly sought.

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above the printed name Sherwin Tugna.

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

SECTION 1. – Article 106 of the Labor Code is hereby repealed and substituted as follows:

~~"[ART. 106. Contractor of Subcontractor 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 this employee's in accordance with this Code, the employer shall be jointly and severally liable with his contractor and subcontractor such employees to the extent of the work performed under the contract, in the same manner and extend that he is liable to his employee's 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 within this 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 a 'labor-only' only contracting where the persons supplying the 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 persons and performing activities which are directly related to the principal business of such employer. In such cases, the persons or intermediary shall be considered merely as an agent of the employer who shall be responsible to~~

1 the workers in the same manner and extend as if the latter were directly employed
2 by him.]

3
4 "ART. 106. CONCEPT AND NATURE OF SUBCONTRACTING ARRANGEMENTS.
5 – IN LEGITIMATE SUBCONTRACTING, THERE EXISTS A TRILATERAL
6 RELATIONSHIP UNDER WHICH THERE IS A CONTRACT FOR SPECIFIC JOB,
7 WORK OR SERVICE BETWEEN THE PRINCIPAL AND THE SUBCONTRACTOR,
8 AND A CONTRACT OF EMPLOYMENT BETWEEN THE SUBCONTRACTOR AND
9 ITS WORKERS. HENCE, THERE ARE THREE PARTIES INVOLVED IN THESE
10 ARRANGEMENTS: THE PRINCIPAL WHICH DECIDES TO FARM OUT A JOB OR
11 SERVICE TO A SUBCONTRACTOR WHICH HAS THE CAPACITY TO
12 INDEPENDENTLY UNDERTAKE AND ACTUALLY UNDERTAKES THE
13 PERFORMANCE OF THE JOB, WORK OF SERVICE, AND THE CONTRACTUAL
14 WORKERS ENGAGED BY THE SUBCONTRACTOR TO ACCOMPLISH THE JOB,
15 WORK OR SERVICE.

16
17 "FOR PURPOSES OF THIS CODE, 'SUBCONTRACTING' REFERS TO AN
18 ARRANGEMENT WHEREBY:

- 19
20 (A) A PRINCIPAL AGREES TO PUT OUT OR FARM OUT WITH A
21 CONTRACTOR OR SUBCONTRACTOR THE PERFORMANCE OR
22 COMPLETION OF A SPECIFIC JOB, WORK OR SERVICE WITHIN A
23 DEFINITE OR PREDETERMINED PERIOD, REGARDLESSS WHETHER
24 SUCH JOB, WORK OR SERVICE IS TO BE PERFORMED OR
25 COMPLETED WITHIN OR OUTSIDE THE PREMISES OF THE
26 PRINCIPAL; OR
27 (B) A PERSON, PARTNERSHIP, ASSSOSIATION OR CORPORATION WHICH
28 NOT BEING A PRINCIPAL, CONTRACTS WITH A SUBCONTRACTOR FOR
29 THE PERFORMANCE OF ANY WORK, TASK, JOB OR PROJECT."

30
31 SEC.2- A new Article 106-A is hereby inserted in the Labor Code to read as follows:

32
33 "ART. 106 – A. RIGHTS AND LIABILITIES OF PARTIES. – (A.) *THE*
34 *SUBCONTRACTED EMPLOYEE*. IN ALL CASES, SUBCONTRACTED
35 EMPLOYEES SHALL HAVE ALL RIGHTS AND PRIVILEGES DUE TO REGULAR
36 EMPLOYEES INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

- 37
38 1. SAFE AND HEALTHFUL WORKING CONDITIONS;
39 2. LABOR STANDARDS SUCH AS SERVICE INCENTIVE LEAVES, REST
40 DAYS, OVERTIME PAY, HOLIDAY PAY, THIRTEENTH MONTH PAY AND
41 SEPARATION PAY;
42 3. RETIREMENT BENEFITS;
43 4. SOCIAL SECURITY AND WELFARE BENEFITS;
44 5. SELF-ORGANIZATION, AND COLLECTIVE BARGAINING; AND
45 6. SECURITY OF TENURE.

46
47 "IN ADDITION, SUBCONTRACTED EMPLOYEES SHALL HAVE THE RIGHT TO A
48 WRITTEN CONTRACT WHICH SHALL INCLUDE THE FOLLOWING TERMS AND
49 CONDITIONS:

- 1 1. THE SPECIFIC DESCRIPTION OF THE JOB, WORK, OR SERVICE TO BE
- 2 PERFORMED BY THE CONTRACTUAL EMPLOYEE;
- 3 2. THE PLACE OF WORK AND TERMS AND CONDITIONS OF
- 4 EMPLOYMENT, INCLUDING A STATEMENT OF THE WAGE RATE
- 5 APPLICABLE TO THE INDIVIDUAL CONTRACTUAL EMPLOYEE;
- 6 3. THE TERM OR DURATION OF EMPLOYMENT WHICH SHALL BE CO-
- 7 EXTENSIVE WITH THE CONTRACT OF THE PRINCIPAL OR
- 8 SUBCONTRACTOR OR WITH THE SPECIFIC PHASE FOR WHICH THE
- 9 SUBCONTRACTUAL EMPLOYEE IS ENGAGED, AS THE CASE MAY BE.

10
11 "THE SUBCONTRACTED EMPLOYEE SHALL BE INFORMED BY THE
12 SUBCONTRACTOR OF THE FOREGOING TERMS AND CONDITIONS ON OR
13 BEFORE THE FIRST DAY OF HIS EMPLOYMENT.

14
15 "(B.) THE PRINCIPAL AND THE SUBCONTRACTOR. THE LEGITIMATE
16 SUBCONTRACTOR SHALL BE CONSIDERED THE EMPLOYER OF THE
17 CONTRACTUAL EMPLOYEE FOR PURPOSES OF ENFORCING THE
18 PROVISIONS OF THE LABOR CODE AND OTHER SOCIAL LEGISLATION. IN ALL
19 CASES OF SUBCONTRACTING, HOWEVER, THE PRINCIPAL SHALL BE
20 SOLIDARILY LIABLE WITH THE CONTRACTOR IN THE EVENT OF ANY
21 VIOLATION OF ANY PROVISION OF THE LABOR CODE, INCLUDING THE
22 FAILURE TO PAY WAGES.

23
24 "THE PRINCIPAL SHALL BE DEEMED THE EMPLOYER OF THE CONTRACTUAL
25 EMPLOYEE IN ANY OF THE FOLLOWING CASES:

- 26 I. WHERE THERE IS LABOR-ONLY CONTRACTING; OR
- 27 II. IN THE ABSENCE OF THE WRITTEN CONTRACT REQUIRED BY
- 28 ARTICLE 106-A;
- 29 III. IN CASES OF VIOLATION OF ARTICLE 106-B; OR
- 30 IV. IN CASES OF VIOLATION OF ARTICLE 106-C.

31
32 "IN ADDITION, THE PRINCIPAL SHALL BE SOLIDARILY LIABLE WITH THE
33 SUBCONTRACTOR IN CASE THE CONTRACT BETWEEN THE PRINCIPAL AND
34 SUBCONTRACTOR IS PRE-TERMINATED FOR REASONS NOT ATTRIBUTABLE
35 TO THE FAULT OF THE SUBCONTRACTOR."

36
37 "ASIDE FROM THE CONSEQUENCES ABOVE,

38
39 SEC.3.- A new Article 106-B is hereby inserted in the Labor Code to read as follows:

40
41 ART. 106-B. PROHIBITION AGAINST LABOR-ONLY SUBCONTRACTING.-
42 ENGAGING IN LABOR-ONLY CONTRACTING OR CONTRACTING WITH A
43 LABOR-ONLY IS STRICTLY PROHIBITED. FOR THIS PURPOSES, LABOR-ONLY
44 CONTRACTING REFERS TO AN ARRANGEMENTS WHERE THE
45 SUBCONTRACTOR MERELY RECRUITS, SUPPLIES OR PLACES WORKERS TO
46 PERFORM A JOB, WORK SERVICE FOR A PRINCIPAL, INCLUDING INSTANCES
47 WHERE ANY OF THE FOLLOWING IS PRESENT:

- 1 (A) THE SUBCONTRACTOR DOES NOT HAVE SUBSTANTIAL CAPITAL AND
2 INVESTMENT WHICH RELATES TO THE JOB, WORK OR SERVICE TO BE
3 PERFORMED;
4 (B) THE EMPLOYEES RECRUITED, SUPPLIED OR PLACED BY SUCH
5 SUBCONTRACTOR ARE PERFORMING ACTIVITIES WHICH ARE DIRECTLY
6 RELATED TO THE USUAL BUSINESS OF THE PRINCIPAL; OR
7 (C) THE PRINCIPAL HAS THE RIGHT TO CONTROL, WHETHER EXERCISED OR
8 NOT, NOT ONLY THE END TO BE ACHIEVED, BUT ALSO THE MANNER AND
9 MEANS TO BE USED IN REACHING THAT END.

10
11 "AS USED IN THIS CODE, 'SUBSTANTIAL CAPITAL AND INVESTMENT' IN
12 SUBCONTRACTING ARRANGEMENTS REFERS TO TOOLS, EQUIPMENTS,
13 IMPLEMENTS, MACHINERIES AND WORK PREMISES ACTUALLY AND
14 DIRECTLY USED BY THE SUBCONTRACTOR IN THE PERFORMANCE OR
15 COMPLETION OF THE JOB, WORK OR SERVICE CONTRACTED OUT. THE USE
16 OF THE SUBCONTRACTOR OF THE EQUIPMENT, FACILITIES AND
17 MACHINERIES AND TOOLS OF THE PRINCIPAL IS AN INDICATION THAT THE
18 SUBCONTRACTOR HAS NO SUBSTANTIAL CAPITAL AND INVESTMENT. THE
19 EXISTENCE OF CAPITAL STOCKS AND SUBSCRIBED CAPITALIZATION IN
20 RELATION TO CORPORATIONS ENGAGED IN SUBCONTRACTING DOES NOT
21 ITSELF CONSTITUTE SUBSTANTIAL CAPITAL AND INVESTMENT.

22
23 "AS USED IN THIS CODE, THE 'RIGHT TO CONTROL' IN SUBCONTRACTING
24 ARRANGEMENTS SHALL REFER TO THE RIGHT RESERVED TO THE PERSON
25 WHOM THE SERVICES OF THE CONTRACTUAL WORKERS ARE PERFORMED
26 TO DETERMINE NOT ONLY THE END TO BE ACHIEVED BUT ALSO THE
27 MANNER AND MEANS TO BE USED IN REACHING THAT END."

28
29 SEC. 4,- A new Article 106-C is hereby inserted in the Labor Code to read as
30 follows:

31
32 ART. 106-C. PROHIBITIONS IN SUBCONTRACTING ARRANGEMENTS.-
33 REGARDLESS OF COMPLIANCE WITH THE IMMEDIATELY PRECEDING
34 ARTICLE, THE FOLLOWING ACTS SHALL BE PROHIBITED FOR BEING
35 CONTRARY TO LAW OR PUBLIC POLICY:

- 36
37 (A) ENGAGING OR MAINTAINING BY THE PRINCIPAL OF
38 SUBCONTRACTED EMPLOYEES IN EXCESS OF TWENTY PERCENT
39 (20%) OF THE PRINCIPAL'S TOTAL WORKFORCE PROVIDED THAT
40 SUCH SUBCONTRACTED EMPLOYEES DO NOT PERFORM WORK
41 THAT IS NECESSARY OR DESIRABLE OR DIRECTLY RELATED TO
42 THE USUAL BUSINESS OR TRADE OR BUSINESS OF THE
43 EMPLOYER;
44 (B) CONTRACTING OUT OF A JOB, WORK OR SERVICE WHEN THE
45 SAME RESULTS IN THE TERMINATION OF REGULAR EMPLOYEES
46 AND REDUCTION OF WORK HOURS OR REDUCTION OR SPLITTING
47 OF THE BARGAINING;
48 (C) CONTRACTING OUT OF WORK WITH A "ÇABO". FOR THIS PURPOSE
49 'CABO' REFERS TO A PERSON GROUP OF PERSONS OR TO A
50 LABOR GROUP WHICH, IN THIS GUISE OF A LABOR ORGANIZATION

1 OR COOPERATIVE, SUPPLIES WORKERS TO AN EMPLOYER WITH
2 OR WITHOUT ANY MONETARY OR OTHER CONSIDERATION,
3 WHETHER IN THE CAPACITY OF AN AGENT OF THE EMPLOYER, OR
4 AS AN OSTENSIBLE INDEPENDENT CONTRACTOR;

5 (D) TAKING UNDUE ADVANTAGE OF THE ECONOMIC SITUATION OR
6 LACK OF BARGAINING STRENGTH OF THE CONTRACTUAL
7 EMPLOYEE, OR UNDERMINING HIS SECURITY OF TENURE OR
8 BASIC RIGHTS, OR CIRCUMVENTING THE PROVISIONS OF
9 REGULAR EMPLOYMENT, IN ANY OF THE FOLLOWING INSTANCES:

- 10
11 I. IN ADDITION TO HIS ASSIGNED FUNCTIONS, REQUIRING THE
12 CONTRACTUAL EMPLOYEE TO PERFORM FUNCTIONS WHICH
13 ARE CURRENTLY BEING PERFORMED BY THE REGULAR
14 EMPLOYEES OF THE PRINCIPAL OR OF THE CONTRACTOR
15 OR SUBCONTRACTOR;
16 II. REQUIRING HIM TO SIGN, AS A PRECONDITION TO
17 EMPLOYMENT OR CONTINUED EMPLOYMENT, AN
18 ANTEDATED RESIGNATION LETTER, A BLANK PAYROLL, A
19 WAIVER OF LABOR STANDARDS INCLUDING MINIMUM
20 WAGES AND SOCIAL WELFARE BENEFITS, OR A QUITCLAIM
21 RELEASING THE PRINCIPAL OR SUBCONTRACTOR FROM
22 ANY LIABILITY AS TO THE PAYMENT OF FUTURE CLAIMS; AND
23 III. REQUIRING HIM TO SIGN A CONTRACT FIXING THE PERIOD
24 OF EMPLOYMENT TO A TERM SHORTER THAN THE TERM OF
25 THE CONTRACT BETWEEN THE PRINCIPAL AND THE
26 CONTRACTOR, UNLESS THE LATER CONTRACT IS DIVISIBLE
27 INTO PHASES FOR WHICH SUBSTANTIALLY DIFFERENT
28 SKILLS ARE REQUIRED AND THIS IS MADE KNOWN TO THE
29 EMPLOYEE AT THE TIME OF ENGAGEMENT.

30
31 (E) CONTRACTING OUT OF A JOB OR SERVICE THROUGH AN IN-
32 HOUSE AGENCY WHICH REFERS TO A:

- 33 I. SUBCONTRACTOR ENGAGED IN THE SUPPLY OF LABOR
34 WHICH IS OWNED, MANAGED AND CONTROLLED BY THE
35 PRINCIPAL; OR
36 II. SUBCONTRACTOR IN WHICH THE PRINCIPAL OWNS OR
37 OTHERWISE REPRESENTS ANY SHARE OF STOCK; OR
38 III. SUBCONTRACTOR WHICH OPERATES SOLELY FOR THE
39 PRINCIPAL.

40
41 (F.) CONTRACTING OUT OF A JOB, WORK OR SERVICE THAT IS
42 NECESSARY AND DESIRABLE OR DIRECTLY RELATED TO THE
43 BUSINESS OR OPERATION OF THE PRINCIPAL BY REASON OF A
44 LOCKOUT OR STRIKE WHETHER ACTUAL OR IMMINENT;

45
46 (G.) CONTRACTING OUT OF A JOB, WORK OR SERVICE BEING
47 PERFORMED BY OR PREVIOUSLY PERFORMED BY REGULAR
48 EMPLOYEES AND/OR MEMBERS OF THE BARGAINING UNIT."

49
50 SEC. 5.- A new 106-D is hereby inserted in the Labor code to read as follows:

1
2 "ART.106-D. REGISTRATION OF SUBCONTRACTOR.- (A.) MANDATORY
3 REGISTRATION. IT SHALL BE MANDATORY FOR ALL PERSONS OR ENTITIES
4 ACTING AS CONTRACTORS OR SUBCONTRACTORS TO REGISTER UNDER A
5 REGISTRATION HEREBY ESTABLISHED TO GOVERN CONTRACTING
6 ARRANGEMENTS AND TO BE IMPLEMENTED BY THE REGIONAL OFFICES OF
7 THE DEPARTMENT OF LABOR AND EMPLOYMENT.

8
9 "NON-REGISTERED PERSONS OR ENTITIES ACTING AS
10 CONTRACTORS OR SUBCONTRACTORS SHALL BE DEEMED AS LABOR-ONLY
11 CONTRACTORS. MERE REGISTRATION WITHOUT A SHOWING OF A
12 COMPLIANCE WITH ALL REQUIREMENTS FOR LEGITIMATE
13 SUBCONTRACTING AND AVOIDANCE OF ALL PROHIBITIONS OF
14 SUBCONTRACTING SHALL NOT INDICATE LEGITIMATE SUBCONTRACTING.

15
16 "(B) REQUIREMENTS FOR REGISTRATION. A SUBCONTRACTOR MAY
17 BE LISTED IN THE REGISTRY OF SUBCONTRACTORS UPON COMPLETION
18 AND SUBMISSION OF AN APPLICATION FORM PROVIDED BY THE
19 DEPARTMENT. IN THE APPLICATION FORM, THE APPLICANT
20 SUBCONTRACTOR SHALL PROVIDE THE FOLLOWING INFORMATION:

- 21
22 I. THE NAME AND BUSINESS ADDRESS OF THE APPLICANT AND THE
23 AREA OR AREAS WHERE IT SEEKS TO OPERATE;
24 II. THE NAMES AND ADDRESS OF OFFICERS, IF THE APPLICANT IS A
25 CORPORATION PARTNERSHIP, COOPERATIVE OR UNION;
26 III. THE NATURE OF THE APPLICANT'S BUSINESS AND THE INDUSTRY
27 OR INDUSTRIES WHERE THE APPLICANT SEEKS TO OPERATE;
28 IV. THE NUMBER OF REGULAR WORKERS, THE LIST OF CLIENTS, IF
29 ANY, THE NUMBER OF PERSONNEL ASSIGNED TO EACH CLIENT, IF
30 ANY, AND THE SERVICES PROVIDED TO THE CLIENT;
31 V. THE DESCRIPTION OF THE PHASES OF THE CONTRACT AND THE
32 NUMBER OF EMPLOYEES COVERED IN EACH PHASE, WHERE
33 APPROPRIATE; AND
34 VI. A COPY OF AUDITED FINANCIAL STATEMENTS IF THE APPLICANT
35 IS A CORPORATION, PARTNERSHIP, COOPERATIVE OR A UNION,
36 OR A COPY OF THE LATEST INCOME TAX RETURN IF THE
37 APPLICANT IS A SOLE PROPRIETORSHIP.

38
39 "THE APPLICATION SHALL BE SUPPORTED BY THE FOLLOWING:

- 40
41 I. A CERTIFIED COPY OF A CERTIFICATE OF REGISTRATION OF FIRM OR
42 BUSINESS NAME FROM THE SECURITIES AND EXCHANGE
43 COMMISSION (SEC), DEPARTMENT OF TRADE AND INDUSTRY
44 (DTI), COOPERATIVE DEVELOPMENT AUTHORITY (CDA), OR FROM THE
45 DOLE IF THE APPLICANT IS A UNION; AND
46
47 II. A CERTIFIED COPY OF THE LICENSE OR BUSINESS PERMIT ISSUED
48 BY THE LOCAL GOVERNMENT UNIT OR UNITS WHERE THE
49 SUBCONTRACTOR OPERATES.
50

1 "THE APPLICATION SHALL BE VERIFIED AND SHALL INCLUDE AN
2 UNDERTAKING THAT THE SUBCONTRACTORS SHALL ABIDE BY ALL
3 APPLICABLE LABOR LAWS AND REGULATIONS.

4
5 "(C.) FILLING AND PROCESSING OF APPLICATIONS. THE APPLICATION AND
6 ITS SUPPORTING DOCUMENTS SHALL BE FILLED IN TRIPPLICATE IN THE
7 REGIONAL OFFICES WHERE THE APPLICANT PRINCIPALLY OPERATES. NO
8 APPLICATION FOR REGISTRATION SHALL BE ACCEPTED UNLESS ALL THE
9 FOREGOING REQUIREMENTS ARE COMPLIED WITH. THE CONTRACTOR OR
10 SUBCONTRACTOR SHALL BE DEEMED REGISTERED UPON PAYMENT OF A
11 REGISTRATION FEE TO BE DETERMINED BY THE REGIONAL OFFICE.

12
13 "WHERE ALL THE SUPPORTING DOCUMENTS HAVE BEEN SUBMITTED, THE
14 REGIONAL OFFICE MAY DENY OR APPROVED THE APPPLICATION WITHIN
15 SEVEN (7) WORKING DAYS AFTER ITS FILING.

16
17 "UPON REGISTRATION, THE REGIONAL OFFICE SHALL RETURN ONE SET OF
18 THE DULY-STAMPED APPLICATION DOCUMENTS TO THE APPLICANT,
19 RETAIN ONE SET FOR ITS FILE, AND TRANSMIT THE REMAINING SET TO THE
20 BUREAU OF LOCAL EMPLOYMENT. THE BUREAU SHALL DEVICE THE
21 NECESSARY FORMS FOR THE EXPEDITIOUS PROCESSING OF ALL
22 APPLICATIONS FOR REGISTRATION.

23
24 "(D.) ANNUAL REPORTING OF REGISTERED CONTRACTORS. THE
25 SUBCONTRACTOR SHALL SUBMIT IN TRIPPLICATED COPIES AN ANNUAL
26 REPORT USING A PRESCRIBED FORM TO THE APPROPRIATE REGIONAL
27 OFFICE NOT LATER THAN THE FIFTEENTH OF JANUARY OF THE FOLLOWING
28 YEAR. THE REPORT SHALL INCLUDE THE FOLLOWING DOCUMENTS:

- 29
30 I. A LIST OF CONTRACTS ENTERED WITH THE PRINCIPAL DURING
31 THE SUBJECT REPORTING PERIOD;
32 II. THE NUMBER OF WORKERS COVERED BY EACH CONTRACT WITH
33 THE PRINCIPAL;
34 III. A SWORN STATEMENT SIGNED BY THE HIGHEST EXECUTIVE
35 OFFICER AND THE CHIEF FINANCIAL OFFICER THAT THE
36 CONTRACTOR OR SUBCONTRACTOR HAS REMITTED ALL KINDS OF
37 PAYMENTS AND PREMIUMS TO THE SOCIAL SECURITY SYSTEM
38 (SSS), THE HOME DEVELOPMENT MUTUAL FUND (HDMF),
39 PHILHEALTH, EMPLOYES COMPENSATION COMMISSION (ECC),
40 AND THE BUREAU OF INTERNAL REVENUE (BIR) FOR ALL THE
41 CONTRACTUAL EMPLOYEES PERTAINING TO THE REPORTING
42 PERIOD.

43
44 "THE REGIONAL OFFICE SHALL RETURN ONE SET OF DULY-STAMPED
45 REPORT TO THE SUBCONTRACTOR, RETAIN ONE SET FOR ITS FILE, AND
46 TRANSMIT THE REMAINING SET TO THE BUREAU OF LOCAL EMPLOYMENT
47 WITHIN FIVE (5) DAYS FROM RECEIPT THEREOF.

1 "(E.) DELISTING OF CONTRACTORS OF SUBCONTRACTORS. THE REGIONAL
2 DIRECTOR SHALL CANCEL THE REGISTRATION OF CONTRACTORS OR
3 SUBCONTRACTORS BASED ON ANY OF THE FOLLOWING GROUNDS:

- 4
- 5 I. NON-SUBMISSION OF CONTRACTS BETWEEN THE PRINCIPAL AND
- 6 THE SUBCONTRACTORS WHEN REQUIRED TO DO SO;
- 7 II. NON-SUBMISSION OF THE ANNUAL REPORT INCLUDING THE
- 8 DOCUMENTS LISTED UNDER ARTICLE 106 (D);
- 9 III. ENGAGEMENT IN LABOR-ONLY CONTRACTING;
- 10 IV. VIOLATION OF THE PROHIBITED ACTIVITIES PROVIDED BY THIS
- 11 CODE;
- 12 V. NON COMPLIANCE WITH LABOR STANDARDS AND WORKING
- 13 CONDITIONS.
- 14

15 "(F.) RENEWAL OF REGISTRATION OF SUBCONTRACTORS . ALL
16 REGISTERED SUBCONTRACTORS MAY APPLY FOR RENEWAL OF
17 REGISTRATION EVERY TWO (2) YEARS. FOR THIS PURPOSE, THE
18 TRIPARTITE INDUSTRIAL PEACE COUNCIL (TIPO) AS CREATED UNDER
19 EXECUTIVE ORDER NO. 49, SHALL SERVE AS THE OVERSIGHT COMMITTEE
20 TO VERIFY AND MONITOR THE FOLLOWING:

- 21
- 22 I. ENGAGING IN ALLOWABLE CONTRACTING ACTIVITIES; AND
- 23 II. COMPLIANCE WITH ADMINISTRATIVE REPORTING REQUIREMENTS;
- 24

25 SEC. 6.- Anew Article 106-E is hereby inserted in the labor Code to read as follows:

26
27 "ART. 106-E. DUTY TO PRODUCE COPY OF CONTRACT.-THE PRINCIPAL OR
28 SUBCONTRACTOR SHALL PRODUCE A COPY OF THE CONTRACT BETWEEN
29 THE PRINCIPAL AND THE CONTRACTOR IN THE COURSE OF INSPECTION.
30 THE SUBCONTRACTOR SHALL ALSO PRODUCE A COPY OF THE CONTRACT
31 OF EMPLOYMENT OF SUBCONTRACTED WORKERS WHEN DIRECTED TO DO
32 SO BY THE REGIONAL DIRECTOR OR HIS AUTHORIZED REPRESENTATIVE.

33
34 "A COPY OF THE CONTRACT BETWEEN THE SUBCONTRACTED EMPLOYEE
35 AND THE SUBCONTRACTOR SHALL BE FURNISHED TO THE CERTIFIED
36 BARGAINING AGENT, IF THERE IS ANY.

37
38 SEC. 7.- Article 248 of the Labor code is hereby amended to read as follows:

39
40 "Art.248. Unfair Labor Practices of Employers.- It shall be unlawful for an employer to
41 commit any of the following unfair labor practices:

- 42
- 43 (a) To interfere with, restrain or coerce employees in the exercises of their right
- 44 to self-organization;
- 45 (b) To require as a condition of employment that a person or an employee shall
- 46 not join a labor organization or shall withdraw from one to which he belongs;
- 47 (c) To ENGAGE A LABOR-ONLY CONTRACTOR OR TO contract out services,
- 48 function being performed by {union} MEMBERS OF, OR POSITION
- 49 COVERED BY, THE BARGAINING UNIT AND/OR REGULAR RANK-AND –
- 50 FILE AND SUPERVISORY EMPLOYEES { when such will interfere with,

1 restrain or coerce employees in the exercise of their rights to self-
2 organization};

3 (d) To initiate, dominate, assist or otherwise interfere with the formation or
4 administration of any labor organization, including the giving of financial or
5 other support to its organizers or supporters;

6 (e) To discriminate in regard to wages, hours of work and other terms and
7 conditions of employment in order to encourage or discourage membership in
8 any labor organization. Nothing in this Code or in any other law shall stop the
9 parties from requiring membership in a recognized collective bargaining agent
10 as a condition of employment, except those employees who are already
11 members of another union at the time of the signing of the collective
12 bargaining agreement.

13
14 Employees of an appropriate bargaining unit who are not members of the
15 recognized collective bargaining agent may be assessed a reasonable fee
16 equivalent to the dues and other fees paid by members of the recognized
17 collective bargaining agent, if such non-union members accept the benefits
18 under the collective bargaining agreement: Provided, that the individual
19 authorization required under Article 242, paragraph (0) of this Code shall not
20 apply to the non-members of the recognized collective bargaining agent;

21 (f) To dismiss, discharge or otherwise prejudice or discriminate against an
22 employee for having given or being about to give testimony under this Code;

23 (g) To violate the duty to bargain collectively as prescribed by this Code;

24 (h) To pay negotiation or attorney's fees to the union or its officers or agents as
25 part of the settlement of any issue in collective bargaining or any other
26 dispute; [or]

27 (i) To violate a collective bargaining agreement [..]; OR

28 (j) TO DENY THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP
29 AND/OR TO CLASSIFY AS CASUAL, CONTRACTUAL, SUBCONTRACTED
30 EMPLOYEES, AGENCY EMPLOYEES, OR OTHER NON-REGULAR
31 CLASSIFICATION THOSE EMPLOYEES WHO ARE REGULAR
32 EMPLOYEES BY VIRTUE OF ARTICLE 280 OF THIS CODE.

33
34 "The provisions of the preceding paragraph notwithstanding, only the officer and
35 agents of corporation, associations or partnership who have actually participated
36 in, authorized or ratified unfair labor practices shall be held criminally liable."

37
38 SEC.8.- Article 279 of the Labor Code is hereby amended to read as follows:

39
40 "ART.279 Security of Tenure.-~~[In case s of regular employment, employer shall~~
41 ~~not terminate the services of an employee]~~ ALL EMPLOYERS SHALL ENJOY
42 SECURITY OF TENURE AND SHALL NOT BE TERMINATED except for a just
43 cause or when authorized by this Title. ALSO, THE RIGHT TO NOTICE IN
44 EMPLOYMENT RELATIONS REQUIRES ANY EMPLOYER WHO SEEKS TO
45 DISMISS A WORKER TO FURNISH HIM A WRITTEN NOTICE STATING THE
46 PARTICULAR ACTS OR COMMISSIONS CONSTITUTING THE GROUNDS
47 FOR HIS DISMISSAL. IN CASE OF ABANDONMENT OF WORK, THE
48 WRITTEN NOTICE SHALL BE SERVED AT THE WORKER'S LAST KNOWN
49 ADDRESS. DUE PROCESS ENTITLES THE WORKER TO AN OPPORTUNITY
50 TO ANSWER THE ALLEGATIONS STATED AGAINST HIM IN THE NOTICE OF

DISMISSAL WITHIN A PERIOD OF FIVE (5) CALENDAR DAYS FROM RECEIPT OF SUCH NOTICE AND WITH THE ASSISTANCE OF A REPRESENTATIVE IF HE SO DESIRES. THE RIGHT TO NOTICE REQUIRES THE EMPLOYER TO AFFORD THE WORKER AMPLE OPPORTUNITY TO BE HEARD AND TO DEFEND HIMSELF WITH THE ASSISTANCE OF HIS REPRESENTATIVE IF HE SO DESIRES.

"An employee who is ~~[unjustly]~~ dismissed from work IN VIOLATION OF ANY OF THIS RIGHTS UNDER THIS ARTICLE, INCLUDING THE RIGHT TO NOTICE AS ELABORATED IN THE PRECEDING PARAGRAPH 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 of their monetary equivalent computed from the time his compensation was withheld from him up to time of his actual reinstatement."

SEC. 9. – Article 280 of the Labor Code is hereby amended to read as follows:

"ART. 280. Regular and Casual Employment.- The provisions of written agreement to the contrary notwithstanding and regardless of the 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 OR DIRECTLY RELATED TO 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 in nature and the employment is for the duration of the season].~~

"An employment shall be deemed to be casual if it is not USUALLY NECESSARY OR DESIRABLE OR ~~[covered by the preceding paragraph]~~ RELATED TO THE USUAL BUSINESS OF THE EMPLOYER: 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 IN and his employment shall continue ~~[while such activity exists]~~ UNLESS HE IS TERMINATED FOR A JUST CAUSE OR WHEN AUTHORIZED BY THIS TITLE."

SEC. 10.- A new Article 280-A is hereby inserted in the Labor Code to read as follows:

"ART. 280-A, PROJECT, EXTRA, AND SEASONAL EMPLOYMENT. – PROJECT EMPLOYMENT REFERS TO THAT WHICH HAS BEEN FIXED FOR A SPECIFIC PROJECT OR UNDERTAKING THE COMPLETION OR TERMINATION OF WHICH HAS BEEN DETERMINED AND MADE KNOWN TO THE EMPLOYEE AT THE TIME OF HIS ENGAGEMENT.

"EXTRA EMPLOYMENT REFERS TO ADDITIONAL WORK TO BE PERFORMED IN RESTAURANT AND HOTEL ESTABLISHMENTS SPECIFICALLY FOR BANQUET FUNCTIONS, SEMINARS AND SIMILAR FUNCTIONS WHERE THE REGULAR EMPLOYEES CANNOT REASONABLY COPE WITH THE INCREASED DEMANDS OF SUCH EVENTS.

1
2 "SEASONAL EMPLOYMENT REFERS TO THE PERFORMANCES OF
3 AGRICULTURAL WORK THAT IS SEASONAL IN NATURE AND THE
4 EMPLOYMENT IS FOR THE DURATION OF THE PLANTING OR
5 HARVESTING SEASON.
6

7 "PROJECT, EXTRA AND SEASONAL EMPLOYEES SHALL HAVE THE RIGHT
8 TO SECURITY OF TENURE AND ARE ENTITLED TO RESUME THEIR
9 EMPLOYMENT IN THE SAME OR SIMILAR POSITION UPON THE START OF
10 THE NEXT PROJECT OR OCCASION FOR EXTRA OR SEASONAL
11 EMPLOYMENT, AS THE CASE MAY BE: PROVIDED, THAT DURING THE
12 TIME THAT THEIR SERVICE ARE NOT ACTUALLY AVAILED OF, THEY
13 SHALL BE CONSIDERED TO BE ON AN AUTHORIZED LEAVE WITHOUT
14 PAY."
15

16 SEC. 11.- A new Article 280-B is hereby inserted in the Labor Code to read as
17 follows:
18

19 "ART. 280-B. PROHIBITION AGAINST FIXED TERM EMPLOYMENT.- NO
20 EMPLOYER SHALL HIRE ANY EMPLOYEES; (2) EXTRA EMPLOYEES; (3)
21 SEASONAL EMPLOYEES, (4) IN INDUSTRIES THAT ARE CERTIFIED BY THE
22 PRESIDENT IN AN EXECUTIVE ORDER, AS ALLOWABLE, DUE TO EXISTING
23 AND SUBSTANTIAL LOSSES IN THE INDUSTRY AS A WHOLE BROUGHT
24 ABOUT BY AN INABILITY TO PRICE GOODS COMPETITIVELY IN THE
25 MARKET DESPITE RESORT TO ALL REASONABLE MEASURES; PROVIDED
26 THAT SUCH CERTIFICATION SHALL BE FOR A PERIOD OF AT MOST
27 THREE (3) YEARS: PROVIDED FURTHER, THAT THE PRESIDENT MAY
28 RENEW THE CERTIFICATION UPON EXPIRY SHOULD THE
29 CIRCUMSTANCES SUBSIST FOR A SIMILAR PERIOD AND SUBJECT TO
30 SIMILAR RENEWALS; (5) OVERSEAS FILIPINO WORKERS; (6) THOSE
31 HIRED TO PLAY PROFESSIONAL SPORTS; (7) THOSE APPOINTED TO
32 SENSITIVE POSITIONS IN EDUCATIONAL INSTITUTIONS SUCH AS DEAN,
33 ASSISTANT DEAN, PRINCIPAL AND COLLEGE, SECRETARY; AND (8)
34 THOSE EMPLOYED AS MEMBERS OF MANAGERIAL STAFF, OTHER THAN
35 THE FOREGOING EXCEPTIONS, ANY STIPULATION FIXING A PERIOD OF
36 EMPLOYMENT SHALL BE VOID."
37

38 SEC. 12. Article 280 of the Labor Code is hereby amended to read as follows:
39

40 "ART. 281.- Probationary Employment.- Probationary employment shall not
41 exceed six (6) months from the date the employee started working [unless it is
42 covered by an apprenticeship agreement stipulating a longer period]. The
43 services of an employee who has been engaged on a probationary basis may be
44 terminated for a just cause or [when he fails] UPON FAILURE to qualify as a
45 regular employee in accordance with reasonable standards made known by the
46 employer to the employee at the time of his engagement. An employee who is
47 allowed to work after a probationary period, EVEN UNDER THE GUISE OF AN
48 EXTENSION, shall be considered a regular employee,"
49

1 THE TERMINATION OF PROBATIONARY EMPLOYEES SHALL NOT BE
2 VALID IF DONE TO PRECLUDE ACQUISITION OF SECURITY OF TENURE BY
3 THE EMPLOYEE. THE PRESENCE OF ANY OF THE FOLLOWING
4 CIRCUMSTANCES SHALL CREATE A REBUTABLE PRESUMPTION OF THE
5 INTENT TO CIRCUMVENT THE RIGHT TO SECURITY OF TENURE OF
6 PROBATIONARY EMPLOYEES.

- 7
- 8 1. TERMINATION OF ALL OR ALMOST ALL OF THE PROBATIONARY
9 EMPLOYEES AT THE END OF THE PROBATIONARY PERIOD AND THE
10 SUBSEQUENT HIRING OF EMPLOYEES PERFORMING THE SAME
11 WORK OR TASK AND/OR OCCUPYING THE SAME POSITION AS THOSE
12 VACATED BY THE PREVIOUS PROBATIONARY EMPLOYEES.
- 13 2. MAINTAINING PROBATIONARY EMPLOYEES IN EXCESS OF THIRTY
14 PERCENT (30%) OF THE TOTAL WORKFORCE, HOWEVER, NEWLY-
15 CREATED COMPANIES/EMPLOYERS ARE EXEMPTED FROM
16 OBSERVING THE FOREGOING PERCENTAGE RESTRICTION WITHIN
17 ONE (1) YEAR FROM THE START OF THEIR BUSINESS OPERATIONS.
- 18
- 19

20 SEC. 13.- Article 288 of the Labor Code is hereby amended to read as follows:

21
22 "ART. 288. Penalties.- Except as otherwise provided in this Code, or unless the
23 acts complained of hinge on a question of interpretation or implementation of
24 ambiguous provisions of an existing collective bargaining agreement, any
25 violation of the provisions of this Code declared to be unlawful or penal in nature
26 shall be punished with a fine of not less than One Thousand Pesos (p1,000.00)
27 nor more than three years, or both such fine and imprisonment at the direction of
28 the court.

29
30 "ANY PRINCIPAL OR SUBCONTRACTOR WHO ENGAGES IN LABOR ONLY
31 CONTRACTING AND/OR VIOLATES 106,106-A, 106-B, 106-C, 106-D AND 106-
32 E SHALL BE SOLIDARILY LIABLE TO INDEMNIFY EACH SUBCONTRACTED
33 EMPLOYEE NOT LESS THAN FIFTY THOUSAND PESOS (P50,000.00)
34 WITHOUT PREJUDICE TO OTHER MONETARY AWARDS TO WHICH SUCH
35 SUBCONTRACTED EMPLOYEE MAY BE ENTITLED SUCH AS BACKWAGES,
36 MONETARY CLAIMS AND BENEFITS UNDER AN APPLICABLE CERTIFIED
37 BARGAINING AGREEMENT OR COMPANY POLICY, WHETHER WRITTEN OR
38 OTHERWISE.

39
40 "ANY EMPLOYER WHO DELIBERATELY CATEGORIZES OR OTHERWISE
41 TREATS REGULAR EMPLOYEES TO BE ANY NON-REGULAR EMPLOYEE
42 SHALL BE LIABLE TO ENDEMNIFY EACH MISCLASSIFIED EMPLOYEE NO
43 LESS THAN FIFTY THOUSAND PESOS (P50,000.00) WITHOUT PREJUDICE
44 TO OTHER MONETARY AWARDS TO WHICH SUCH EMPLOYEE MAY BE
45 ENTITLED SUCH AS BACKWAGES, MONETARY CLAIMS AND BENEFITS
46 UNDER AN APPLICABLE CERTIFIED BARGAINING AGREEMENT.

47
48 "In addition to such penalty, any alien found guilty shall be summarily deported
49 upon completion of service of sentence.

1 "Any provision of law to the contrary notwithstanding, any criminal offense
2 punished in this Code, shall be under the concurrent jurisdiction of the Municipal
3 or City court's and Courts of First Instance. "

4
5 SEC.14. Implementing Rules and Regulations.- The Department of Labor and
6 Employment (DOLE) SHALL ISSUE, WITHIN SIXTY (60) days after the effectivity
7 of this Act, the rules and regulations for its effective implementation.
8

9 SEC.15. Separability Clause.- If for any person, any section or provision of this
10 Act is held unconstitutional or valid, the other section or provisions hereof shall
11 not be affected thereby and shall continue to be in full force and effect.
12

13 SEC.16. Repeating Clause.- All laws, decrees, executive orders, rules and
14 regulations, or parts thereof inconsistent with the provisions of this Act are hereby
15 repealed or modified accordingly.
16

17 SEC.17. Effectively Clause.- This Act shall take effect fifteen (15) days after its
18 publication in the Official Gazette or in at least two (2) newspapers of general
19 publications.
20

21
22 Approved,