

Republic of the Philippines
House of Representatives
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. **5264**



Introduced by Hon. Anthony M. Bravo
COOP-NATCCO PARTYLIST

EXPLANATORY NOTE

The laws must always be there to balance the interest of capital and labor, recognizing that both are indispensable to one another. Fly-by-night labor service contractors have abused the laborers, where the latter are often are victims of entities that are not sufficiently capitalized, rendering them helpless and left without recourse.

Sufficient changes have been initiated by the Department of Labor and Employment (DOLE) through its department orders - which, unless codified into law, maybe subject to changes by mere policy change or mandate. To address these, the bill seeks to legislate the following changes:

1. Capitalization requirements of labor service contractors
2. Mandatory posting of bonds for contracts
3. Inclusion of labor service related cooperatives as regulated entities
4. Reiterating the right to security of tenure
5. Mandating of separation pay, retirement, and other benefits
6. Right to organization for non-member employees of cooperatives

To secure the much needed protection for the Filipino laborers, the passage of this bill is earnestly sought.


HON. ANTHONY M. BRAVO

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AN ACT
STRENGTHENING WORKERS' RIGHT TO SECURITY OF TENURE,
AMENDING FOR THE PURPOSE ARTICLES 106-109 OF BOOK III
AND ARTICLES 294 [279], 295 [280], 296 [281], 297 [282] AND 298 [283]
OF BOOK VI OF PRESIDENTIAL DECREE NO. 442,
OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES,
AS AMENDED

Sec. 1. Title. – This Act shall be known as the “End of Endo or Contractualization Act of 2016”.

Sec. 2. Article 106 of Presidential Decree 442, as amended, otherwise known as the Labor Code of the Philippines, as amended, is hereby **amended** to read as follows:

“Article 106. Contractor or Subcontractor. – Whenever an employer enters into a contract with a contractor or subcontractor for the performance of specific job, work or service, the engagement must comply with the requirements for a valid outsourcing of job, work or service and the employees of the contractor and of the latter’s subcontractor, if any, shall be paid in accordance with the provisions of this Act.

In the event that the contractor or its subcontractor fails to pay the wages and other wage-related benefits including social welfare benefits, the 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.

For outsourcing of specific job, work or service to be valid, the scope of the tasks to be performed in case of service, or component/phase/product in case of manufacturing or production, must be identifiable and the contractor or subcontractor must be:

- a) An independent business, separate and distinct from the contracting employer;

- b) Substantially capitalized for at least ten million pesos (Php 10,000,000.00), which may be scalable as the number of workers contracted increases. The scaling of capital shall be determined by the Secretary of Labor considering the amount of monthly wages and benefits payable by the contractor or subcontractor under all its outstanding and subsisting job contracts.
- c) Expert or specialist in the field of the outsourced job, work or service;
- d) Employer with sufficient regular employees and have equipment, machineries and tools necessary to perform or complete the job, work or service contracted out; and
- e) Exercise control over the performance and completion of the outsourced job, work or service.

The specific job, work or service that can be subject of outsourcing contract shall be determined solely by the principal or business entity contracting out the work.

There shall also be a written contract of regular employment between the employees deployed or mobilized for the outsourcing contract and the contractor or subcontractor specifying therein the rights, terms and conditions of employment which shall not be lower than the minimum standards set by laws or regulations.

Sec. 3. A new Article 106-A of Presidential Decree No. 442, amended, is hereby provided to read as follows:

“Article 106-A. Prohibition on labor-only or manpower contracting. – Labor-only or manpower contracting is prohibited. There is “labor-only” or manpower contracting where the contractor/subcontractor does not have substantial capital and investment in the form of tools, equipment, machineries, work premises, among others, or the workers recruited and placed are under the control and supervision of the contracting employer. In such cases, the person or intermediary shall be considered merely as an agent of the contracting employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Further, the following are deemed labor-only or manpower contracting:

- a) When a contractor/subcontractor or cooperative has no valid and subsisting license from the DOLE to operate as such; or
- b) When a contractor/subcontractor or cooperative is an in-house agency or “cabo.” For this purpose, “cabo” refers to a person or group of persons or to a labor organization or cooperative, which merely supplies workers to an employer with or without any monetary or other consideration, whether in the capacity of an agent of the employer, or as an ostensible independent contractor;
- c) When a contractor/subcontractor or cooperative merely recruits, hires, and supplies or places its hirees to a contracting employer;
- d) When a contracting employer recruits, selects and hires job applicants but requires membership in a cooperative or employment with contractor as pre-condition before such applicants can be admitted, absorbed or allowed to work by the contracting employer.;
- e) When a contractor/subcontractor is merely substituted or the workers of a previous contractor are merely absorbed by the succeeding contractor;
- f) When the personnel or employee of the contracting employer to where the workers are placed exercise control and/or supervision on them as regards the method and means to perform the job, work or service and in achieving its desired results.

Sec. 4. Article 107 of the Labor Code, as amended, is hereby **amended** to read as:

"Article 107. Licensing of Contractors or Subcontractors. – The Secretary of Labor and Employment, through the regional offices, shall license qualified contractors upon compliance with the requirements set forth in article 106 and payment of license fee of at least thirty thousand pesos (Pup 30,000.00) the Secretary of Labor and Employment shall likewise provide deregistration procedure for those found in violation of any of the provisions of the labor code, as amended. 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 or any other entity. Such contractor shall, likewise, comply with the requirements of other governmental authorities.

The Secretary of Labor and Employment shall impose a fine of One Hundred Thousand Pesos (Php 100,000.00) against any contractor or subcontractor carrying on an outsourcing arrangement without a license from the dole.

Sec. 5. Article 108 of the Labor Code, as amended, is hereby **amended** to read as follows:

"Article 108. Mandatory Posting of Bond. – The contractor or subcontractor and the contracting employer shall furnish a bond equal to the cost of labor under the outsourcing 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 or the contracting employer fails to pay the same."

Sec. 6. A new Article 108-A of the Labor Code, as amended, is hereby **amended** to read as follows:

"Article 108-A. Applicability to Cooperatives. – The provisions of this Act shall apply to cooperatives. 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:

- a) Minimum wage;
- b) Safe and healthful working conditions;
- c) 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;
- d) Retirement benefits under the SSS or retirement plans of the contractor, if there is any;
- e) Social security and welfare benefits;
- f) Security of tenure."

Sec. 7. 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, the contracting employer shall be held solidarily liable 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 or manpower contracting."

Sec. 8. Article 294 [279] of the Labor Code, as amended, is hereby **amended** to read as follows:

“Article 294 [279]. Security of Tenure. – All employees irrespective of employment status or position shall not be dismissed without cause and due process.

A dismissal without cause and due process is illegal dismissal and the employee shall be entitled to reinstatement without loss of seniority rights and benefits. Additionally, the illegally dismissed employee shall be entitled to full backwages and accrued benefits and remunerations provided by law, company policy and collective bargaining agreement, computed from the time compensation was withheld up to the time of actual reinstatement. Unremitted SSS, Philhealth and Pag-ibig contributions shall likewise be paid. Actual, moral, exemplary and other forms of damages may also be awarded.

The employer shall have the burden of proving that the termination is with cause and due process.”

Sec. 9. Article 295 [280] of the Labor Code, as amended, is hereby **repealed** and a new Article 295 [280] is provided to read as follows:

“Article 295 [280]. Employer-Employee Relationship. – There exists an employer-employee relationship when the worker is engaged to render work or service under the control or supervision of the employer, not only as to the end to be achieved, but also the manner, means and method in reaching the end.

Payment or remuneration to the worker, however denominated, also indicates the existence of employer-employee relationship.”

Sec. 10. Article 296 [281] of the Labor Code, as amended, is hereby **amended** to read as follows:

“Article 296 [281]. Probationary Employment. – Probationary employment shall not exceed six (6) months from the first day of service regardless of the nature of work to be performed.

The rights, terms and conditions of employment of probationary employee which shall not be lower than the minimum standards set by laws or regulations, the job description and qualification standards to qualify for regular employment shall be in a written contract and made known by the employer to the employee at the time of his/her engagement.

The services of a probationary employee may be terminated for just and authorized cause under articles 297 [282] and 298 [283] of the Labor Code, as amended, or when he/she fails to qualify as a regular employee.

- a) The probationary employee shall automatically become regular employee in any of following instances:
- b) After meeting the standards stipulated in the written contract of probationary employment; or
- c) Repeated engagement of the same employee after the expiration of the probationary employment.”

Sec. 13. Article 297 [282] of the Labor Code, as amended, is hereby **amended** to read as follows:

"Article 297 [282]. Just Causes of Termination. – An employer may terminate for any of the following causes:

- a) Serious misconduct or willful disobedience by the employee of the lawful orders of his/her employer or representative in connection with his/her work;
- b) Gross and habitual neglect by the employee of his/her duties;
- c) Fraud or wilful breach by the employee of the trust reposed in him/her by his/her employer or duly authorized representative;
- d) Commission of a crime or offense by the employee against the person of his/her employer or any immediate member of his/her family or his/her duly authorized representatives; and
- e) Act or omission expressly specified as ground for dismissal in the company rules and regulations formulated in observance of workers right to participate in policy and decision-making processes affecting their rights and benefits, or as provided in the duly registered collective bargaining agreement."

Sec. 14. Article 298 [283] of the Labor Code, as amended, is hereby **amended** to read as follows:

"Article 298 [283]. Closure of Establishment and Reduction of Personnel. – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof and payment of separation pay equivalent to at least one (1) month pay for every year of service. A fraction of at least six (6) months shall be considered one (1) whole year.

Sec. 15. A new Article 298-A of the Labor Code, as amended, is hereby provided to read as follows:

"Article 298-A. Proof of authorized cause and Payment of separation pay. – Within the prescribed one (1) month notice, the employer shall submit to the Department of Labor and Employment for validation proof and undertaking on the existence of the authorized cause and compliance with the preconditions which will be set out in the implementing rules and regulations. In case of loss or measures to prevent losses, a certification on actual or potential losses issued by the Securities and Exchange Commission or the Bureau of Internal Revenue shall be sufficient.

The employer shall pay all separation benefits granted by law to the employee upon the effectivity date of the separation of an employee. Upon receipt of separation pay, an employee shall be barred from filing claims or complaints arising therefrom."

Sec. 16. Exclusion of local private recruitment and placement agencies under Article 25 of the Labor Code, as amended, and its implementing rules and regulations. – Article 25 of the Labor Code, as amended, and its implementing rules and regulations on Private Recruitment and Placement Agencies (PRPA) are excluded from the coverage of this Act. However, the PRPA are expressly prohibited from engaging in outsourcing or job contracting as provided under this Act.

Sec. 17. Implementing 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.

Sec. 18. 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.

Sec. 19. 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.

Sec. 20. Effectivity Clause. – 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.

APPROVED,