

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session
5728
HOUSE BILL NO. _____



INTRODUCED BY REPRESENTATIVE ALFRED VARGAS

EXPLANATORY NOTE

The Philippines has established itself as the preferred location for information technology and business process outsourcing (IT-BPO) services due to the Filipinos' competitive advantage in language skills and cultural affinity. The country is now the number one IT-BPO industry in the world, surpassing India in 2010. The Philippine IT-BPO industry currently employs 1.2 million people and is the second largest source of income for the country's economy.

However, contact centers in the country are posting a high attrition rate of almost 50% per year. According to the Contact Center Association of the Philippines and International Labor Organization, IT-BPO agents cite the nature of night-shift work as the primary cause why many IT-BPO workers leave the industry. Moreover, this particular peculiarity of the BPO industry is also linked to the health and occupational safety concerns of the IT-BPO workers, such as, but not limited to, sleep disorders, fatigue, eye strain, voice and hearing problems, and psychological stress. These issues must be addressed to uplift the welfare and morale of the IT-BPO workers which will, in turn, ensure the continuous growth of the IT-BPO industry in the Philippines.

This bill seeks to protect the labor rights and welfare of the greatest asset of the IT-BPO industry – its workers. It consists of two parts. The first part enumerates the general employment standards in the IT-BPO industry. Among the rights and benefits accorded to the IT-BPO employees include, but not limited to the protection from understaffing and overloading, mandatory regularization, right to self-association, freedom from excessive company bond, and security of tenure. The second part seeks to promote occupational health and safety in the BPO industry which includes the formulation of occupational health and safety (OHS) standards and creating OHS representatives in the workplace that will monitor the health conditions in the office.

To ensure that the Philippines and its people can fully reap and enjoy the economic benefits given by the IT-BPO sector, the passage of this bill is earnestly sought.


ALFRED VARGAS

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AN ACT
ENSURING THE RIGHTS, WELFARE AND SAFETY OF THE WORKERS IN THE INFORMATION TECHNOLOGY AND BUSINESS PROCESS OUTSOURCING (IT-BPO) INDUSTRY IN THE PHILIPPINES

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

SECTION 1. **Short Title.** – This Act shall be known as the “IT-BPO Workers’ Rights, Welfare and Safety Act”.

SECTION 2. **Declaration of Policy.** – It is the policy of the State to protect the rights, and promote the welfare of workers in the Information Technology and Business Process Outsourcing (IT-BPO) industry. The State shall strive to promote and enhance the working conditions, terms of employment, professional growth and career development of employees.

SECTION 3. **Coverage.** – This Act shall cover all employees in the IT-BPO industry.

SECTION 4. **Definition of Terms.** – For purposes of this Act, the following terms shall be understood as follows:

- a) “Information Technology and Business Process Outsourcing” (IT-BPO) describes the whole outsourcing industry in the Philippines. It is the delegation of one or more information technology-intensive business processes to an external provider. Its corresponding sectors include call centers, data transcription, animation, software and applications development, engineering development and game development.
- b) “Call Center” refers to a centralized office for receiving and transmitting requests by telephone or Internet. Call center operations include, but are not limited to, the granting of incoming product support, information inquiries from consumers, and outgoing calls for telemarketing, clientele, product services, and debt collection.
- c) “Employer” includes any person or enterprise acting directly or indirectly in the interest of an employer, in relation to an employee, and shall include government-owned or controlled corporations, as well as non-profit private institutions or organizations. Indirect employers or contractors shall also be considered “employers” in this Act.

- d) "Employee" shall refer to any person employed by an employer in a temporary/probationary or permanent capacity.
- e) "Health" shall connote a sound state of the body and mind of the worker, which enables him to perform his job normally, in a state of well-being.
- f) "Safe or Safety" shall refer to the physical or environmental conditions of work or employment, which substantially comply with the prescribed Standards, as defined below.
- g) "Work Accident" shall mean an unplanned or unexpected occurrence that may or may not result in personal injury, property damage, work stoppage or interference or any combination thereof, which arises out of and in the course of employment.
- h) "Work Injury" shall mean any injury or occupational illness suffered by a person, which arises out of or in the course of employment
- i) "Occupational Illness " shall mean any illness caused by environmental factors, the exposure, to which is characterize or peculiar to a particular process, trade or occupation and to which an employee or worker is not ordinarily subjected to, or exposed to, outside of or away from such employment.
- j) "Workplace" means the office, premises or work site, where the workers are habitually employed and shall include the office or place where workers, who have no fixed or definite worksite, regularly report for assignment in the course of their employment
- k) "Approved" shall mean acceptable to the Secretary of Labor and Employment, as indicated in writing, after a proper examination showing compliance with prescribed standards.
- l) "Code" shall mean Presidential Decree 442, the Labor Code as amended.
- m) "Agencies" shall mean government agencies mandated to monitor, administer, promote, and ensure health and safety regulation and standards. These agencies are the Department of Labor and Employment, Bureau of Working Conditions, Employees Compensation Commission and Occupational Safety and Health Center.
- n) "Department" shall mean the Department of Labor and Employment.
- o) "Secretary" shall mean the Secretary of Labor and Employment.
- p) "Bureau" shall mean the Bureau of Working Conditions.
- q) "Director" shall mean the Director of the Bureau of Working Conditions.

- r) "Standards" shall mean the Occupational Safety and Health Standards and regulations, as described in Section 19.
- s) "Enforcement Officer" shall mean the industrial safety engineer, the labor regulation officer, or any duly authorized representatives of the Secretary to enforce the Standards.
- t) "Authorized Representative" shall mean and include any employees or official of other government agencies empowered by the Secretary of Labor and Employment to enforce the provisions of the Standards.
- u) "Workplace Occupational Health and Safety Representative" (WOHSR) is defined in Section 22 of this Act.
- v) "Registered Interested Party" shall mean any duly registered non-stock non-profit organization advocating occupational health and safety (OHS).
- w) "Shift Work" shall mean the employment practice designed to make use of the 24 hours of the day. Employees are given schedules which correspond to a 24-hour work cycle. The term shift work includes both long-term night shifts and work schedules in which employees change or rotate shifts.

PART ONE: GENERAL EMPLOYMENT STANDARDS

SECTION 5. *Standard of Treatment.* – The State shall ensure that IT-BPO employees are treated in a humane manner and without prejudice. It shall be unlawful for any person or company to commit any act meant to degrade the dignity of their employee. IT-BPO companies must also guarantee that the rights and benefits of their employees are well-provided.

SECTION 6. *Access to Relevant Information.* – It is the duty of IT-BPO companies to ensure that their employees have access to relevant information to equip them with the knowledge with regard to their rights, welfare and condition. IT-BPO employees must not be restrained from organizing or attending activities, such as, but not limited to workshops, seminars, and the like.

SECTION 7. *Protection from Understaffing or Overloading.* – There shall be no understaffing or overloading of IT-BPO employees. Companies must not overwork the employee and or over-extend his services beyond what is specified in the employment contract.

SECTION 8. *Regularization.* – All IT-BPO employees shall be considered regular employees upon the completion of their six (6) months of employment as a trainee or apprentice, or upon the completion of a maximum probationary training period of six (6) months.

SECTION 9. *Right to Self-Association.* – It shall be unlawful for any person or company to restrict the rights of IT-BPO employees to self-organization, collective bargaining and negotiations, and participate in policy and decision-making processes affecting their rights and benefits.

SECTION 10. *Freedom from Excessive Company Bond.* – No IT-BPO employee shall be forced to commit to a company bond that requires him to pay an unreasonable fee for leaving the company before a specified length of time.

SECTION 11. **Protection from Discrimination.** – IT-BPO employees shall be protected from discrimination by reason of sex, sexual orientation, age, political or religious beliefs, civil status, pregnancy, physical characteristics or disability, or ethnicity.

SECTION 12. **Hours of Work.** – The hours of work for IT-BPO employees shall be governed by the provision of the Code, as supplemented by other applicable laws as well as this Act.

SECTION 13. **Overtime Work.** – IT-BPO employees may be required to render services beyond their required working hours in cases provided for in the Code; Provided, that the employee is paid for the overtime work with an additional compensation equivalent to not less than his regular wage plus twenty-five percent (25%).

SECTION 14. **Night Shift Differential.** – IT-BPO employees shall be paid a night shift differential of not less than ten percent (10%) of their regular wage for each hour of work performed between nine o'clock in the evening and six o'clock in the morning.

SECTION 15. **Work on Holidays.** – IT-BPO employees may be required to work on days designated as non-working holidays in the Philippines given the nature of their profession; Provided, that the employer shall duly compensate the employee's work on such days in accordance to existing laws with regard to holiday pay.

SECTION 16. **Leave Benefits.** – IT-BPO employees shall be entitled to all leave benefits and privileges provided for under existing law: Provided, that upon separation of the employee from services, they shall be entitled to all accumulated leaves credits with pay. It shall be unlawful for IT-BPO companies to terminate their employees based solely on unapproved leaves without providing them due process in an administrative proceeding.

SECTION 17. **Security of Tenure.** – IT-BPO employees shall be entitled to security of tenure. No employee may be terminated except for just cause as may provided by the Code and other existing laws and after due process in an administrative proceeding as provided for under the law.

PART TWO: OCCUPATIONAL HEALTH AND SAFETY STANDARDS AND REGULATIONS.

SECTION 18. **Employers Obligation** – Article 106 of the Code expressly prohibits "labor only" contracting. Employers engaging independent contractors to perform work on their behalf have a duty to minimize the health and safety risk of the contractor's employees. This is because they are deemed to be employees for the purposes of the Code, as well as this Act, and because employers have a duty to protect third parties at or near their workplace. A failure to maintain a safe workplace for the contractor's employee may constitute a contravention of the employer's general duty under the law.

SECTION 19. **Occupational Health and Safety Standards and Regulations for IT-BPO Employees.** – Pursuant to its mandate, the Department of Labor and Employment is tasked to establish Occupational Health and Safety Standards for IT-BPO work. The Standards shall adhere to the prevailing standards of health and safety for IT-BPO work and other similar employment. Minimum provisions in the Standards must be in agreement with the recommendations of the International Labor Organization's recommendations.

SECTION 20. *The Nature of IT-BPO Night-Shift Work.* – Establishments engaged in shift work to complete their 24-hour work cycle expose their employees to health and security risk, as well as unnatural stresses, and such a night shift work is considered to be hazardous under this Act.

SECTION 21. *Compliance with the Standards.* – The Standards shall be strictly enforced in all establishments operating in the country. Compliance with the provisions of the Standards shall be mandatory and subject to inspection by enforcement officers and/or authorized representatives, as shall be outlined in the standards.

SECTION 22. *Workplace Occupational Health and Safety Representative.* – From among the employees, a Workplace Occupational Health and Safety Representative (WOHSR) is to be elected for the purpose of consultation and in-house monitoring of the Standards. The WOHSR is responsible for reviewing the actions taken in guaranteeing the health, safety and welfare of employees; and investigating and taking initial measures to resolve the any matter that may be a risk to health and safety at the workplace. The employees may elect more than one WOHSR upon approval by the Department. The powers, functions, and manner of election the WOHSR shall be included in the Standards, subject to the following guidelines: (a) that all employees are entitled to vote in an election of the WOHSR; and (b) that the powers of WOHSR shall include, but not be limited to, the power to inspect any part of workplace, and to require the establishment of a health and safety committee.

SECTION 23. *Workplace Policy on Occupational Health and Safety.* – Each establishment shall formulate their own occupational health and safety (OHS) policy, which adheres at minimum to the Standards as defined in Section 19 of this Act. Any additional safety measure deemed appropriate and necessary to the nature of the localized work environment may also be included. The policy must be reviewed annually by the employers, the WOHSR and an Enforcement Officer or Authorized Representative.

IT-BPO companies shall be responsible in informing their employees about the OHS policy. They shall disseminate informational materials to the employees free of charge.

SECTION 24. *Occupational Health Program.* – The company Physician shall formulate and implement a comprehensive occupational health program for the benefit of all employees.

SECTION 25. *Health Insurance.* – IT-BPO employees are entitled to free medical examination upon commencement of employment, and annually during the tenure of employment. They shall also be provided with full health insurance, the coverage of which shall be agreed upon by the employer and its employees.

SECTION 26. *Work Related Injuries, Sickness and Death Compensation.* – All employees and their dependents shall also be compensated for injuries, medical complications, illness, disability and death arising from, and related to, their work in accordance to existing laws, labor policies, guidelines or circular as the case may be. The employees compensation commission shall promptly process any claims for/by injured, disable deceased employees or their dependents.

SECTION 27. *Prohibition Against Elimination or Diminution of Benefits.* – Nothing in this Act shall be construed to eliminate or diminish in any way existing benefits being enjoyed by IT-BPO employees at the time of the effectivity of this Act, or benefits beyond the minimum standard set forth by this Act.

SECTION 28. ***Penal Provision.*** – Any person or company who violated the provision of this Act shall be punished with a fine of not less than One Hundred Thousand Pesos (P 100,000) and/or imprisonment of not less than two (2) months but not more than (1), or both, at the discretion of the court.

SECTION 29. ***Separability Clause.*** – If any provision of this act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SECTION 30. ***Repealing Clause.*** – All laws, executive orders, presidential decrees, presidential proclamation, rule and regulations or parts thereof inconsistent with the provisions of this act are hereby repealed or modified accordingly.

SECTION 31. ***Effectivity Clause*** – This act shall take effect fifteen (15) days from its publication in the official gazette or at least two (2) national newspaper of general circulation.

Approved.