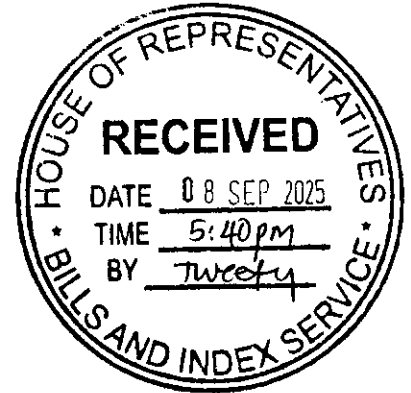




Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila



Twentieth Congress
First Regular Session

HOUSE BILL NO. 4436

Introduced by Representative Johanne Monich G. Bautista

EXPLANATORY NOTE

Article XIII, Section 3 of the Constitution mandates the State to afford full protection to labor and to promote full employment and equality of employment opportunities for all. It guarantees the right of workers to security of tenure. Consequently, 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.

Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, as amended, addresses the situation of permanent lay-off of employees, such as in cases of retrenchment and closures or cessation of operations of an establishment. However, the Labor Code does not provide express guidelines on the temporary lay-off of employees, who are put on "floating status" for the duration of the suspension or temporary closure or cessation of operations of an establishment.

This gap in the law leaves employers without clear guidance in the treatment of their employees, and employees without adequate recourse when faced with the situation of temporary suspension of employment.

This bill seeks to address that gap by providing for a comprehensive framework for both employers and employees in times of a *bona fide* suspension of work. It provides for the permissible cases when there may be a temporary suspension of work, the conditions and limitations for the same, and the protections given to both employers and employees in such cases.

This bill is not intended to limit the employers' prerogative in responding to financial or economic difficulties. Rather, it is a necessary legislation to balance such prerogative with the constitutional guarantees of security of tenure and full protection to labor. By setting these rules, the bill ensures to harmonize and protect the interests of both labor and capital.

Ultimately, this bill affirms that even during times of economic difficulty, the dignity of work and the rights of workers must remain inviolable. This legislation is important towards a more equitable and resilient labor framework which acknowledges the difficulties faced by both the enterprises and the workforce.

In view of the foregoing, the immediate passage of this Bill is immediately sought.


JOHANNE MONICH G. BAUTISTA
Representative, TRABAHO Party-List



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**AN ACT REGULATING THE TEMPORARY LAY-OFF
OF EMPLOYEES IN THE PRIVATE SECTOR, AND FOR OTHER PURPOSES**

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

SECTION 1. *Short Title.* – This Act shall be known as the “*Floating Status Law.*”

SECTION 2. *Declaration of Policy.* – It is the declared policy of the State to afford full protection to labor and promote full employment. The State shall protect the rights of workers and promote their welfare, particularly during occasions where there is temporary suspension of work. Towards these ends, the State shall safeguard the rights of workers to be protected from temporary and permanent lay-off and ensure that workers are given ample aid during such uncertain times.

SECTION 3. *Coverage.* – This Act shall apply to all establishments, project sites, including Philippine Economic Zone Authority (PEZA) establishments, and all other places where work is being undertaken in all branches of economic activity, except in the public sector.

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

- (a) **Managerial employee** – any person vested with powers or prerogatives to lay down and execute management policies or hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees.
- (b) **Supervisory employee** – any person who, in the interest of the employer, effectively recommends managerial actions if the exercise of such authority is not

merely routinary or clerical in nature, but require the use of independent judgement.

- (c) **Temporary suspension of work** – the suspension of operations, business, or undertaking, in whole or in part, of the employer resulting to a temporary stoppage of the carrying out of work of the employees for a period not exceeding six (6) months.
- (d) **Temporary lay-off** – the status of an employee during a temporary work suspension where an employee remains employed with the employer.

SECTION 5. *Bona fide Suspension of Work.* – The suspension of operations, business or undertaking, in whole or in part, of the employer shall be considered a valid exercise of management prerogative if it is due to any of the following reasons:

- (a) There is a dire exigency for the suspension of work, compelling the employer to temporarily put an employee out of work; or
- (b) There is a temporary shutdown of operations, business or undertaking to prevent business losses, which are substantial, serious, actual, and real, and are reasonably imminent.

In either case, there must be no available post to which the affected employee can be assigned. Further, the suspension of work must be exercised by the employer in good faith, is intended for the advancement of employer's interest, and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.

For the avoidance of doubt, the employer must prove that these circumstances are temporary in nature at the time the management decision is made. The circumstances are considered temporary when such event will not last longer than six (6) months per *bona fide* suspension of work.

SECTION 6. *Duration of Suspension of Work.* – The duration of the suspension of work for any *bona fide* reason, as provided in this Act, shall be limited to three (3) months upon written notice to the Department of Labor and Employment at least one (1) month prior to the *bona fide* suspension of work: *Provided*, That suspension of work may be extended by the employer upon submission to the Department of Labor and Employment of an affidavit by the employer or the employer's President or person occupying a similar position, attesting that the extension is necessary in furtherance of the *bona fide* suspension of work: *Provided, further*, That such affidavit shall be submitted within one (1) month prior to the expiration of the initial three (3) month period; *Provided, finally*, That in no event shall the total duration of suspension of work be more than six (6) months.

SECTION 7. *Covered Employees.* – This Act shall apply to all employees and workers, regardless of their position, designation, or employment status, including regular and non-regular employees, except managerial and supervisory employees, and workers employed by contractors who are assigned to covered establishments or project sites: *Provided*, That for workers employed by contractors, the duties and responsibilities imposed under this Act shall be complied with by the contractors: *Provided, further*, That managerial and supervisory

employees shall be covered by prevailing laws and regulations prior to the enactment of this Act.

SECTION 8. *Obligations of the Employer.* – During the *bona fide* suspension of work, every employer shall have the following obligations:

- (a) Inform the employees through a written notice of the suspension of work, the reason/s thereto, the duration thereof, and the employees affected thereby, at least one (1) month prior to the start of such suspension of work;
- (b) Within one (1) month from the actual suspension of work, pay the affected employee the pro-rated amounts of the 13th Month Pay, cash equivalent of the Service Incentive Leave under Article 95 of the Labor Code, if applicable, and other incentives, bonuses, and compensations under collective bargaining agreement, valid contract, company policy, or company practice earned by and due to the affected employee as of the date of the start of the *bona fide* suspension of work;
- (c) Refer the affected employees to the DOLE for short-term or emergency employment programs for the duration of the *bona fide* suspension of work; and
- (d) Immediately reinstate the affected employees upon the resumption of work, without diminution of rank and benefits.

SECTION 9. *Right to Seek Employment.* – During the *bona fide* suspension of work, the employee shall have the right to seek other employment without being considered resigned or terminated from his or her work: *Provided*, That this right is without prejudice to any non-disclosure/confidentiality agreement, non-compete agreement, non-solicitation agreement, or any other valid agreement between the employee and employer of the same nature: *Provided, further*, That upon cessation of the *bona fide* suspension of work the employee may choose to report back to work or resign from employment.

SECTION 10. *Employment and Livelihood Programs.* – The Department of Labor and Employment, in coordination with the Department of Trade and Industry, the Technical Education and Skills Development Authority, and other relevant government agencies, and in partnership with the private sector, is hereby mandated to develop and implement a program for employees under *bona fide* suspension of work to provide them short-term or emergency employment, self-employment, training, and livelihood opportunities for the duration of their *bona fide* suspension of work.

Upon notification from the employer, the Department of Labor and Employment shall assist the affected employees to secure short-term or emergency employment, self-employment, training, and livelihood opportunities for the duration of their *bona fide* suspension of work, subject to the guidelines to be issued by the Department pursuant to this Act.

SECTION 11. *Social Security Benefits.* – Employees who are affected by a *bona fide* suspension of work shall be entitled to the following social security benefits:

- (a) Involuntary Separation Benefits under Section 14-B of Republic Act No. 11199, otherwise known as the Social Security Act of 2018: *Provided*, That an employee

who is temporarily laid-off due to a *bona fide* suspension of work under this Act shall be considered as involuntarily unemployed or separated for the purposes of claiming the Involuntary Separation Benefits under the Social Security Act of 2018; and

- (b) Government premium subsidy to Philippine Health Insurance Corporation (PhilHealth) as indirect contributor, pursuant to Republic Act No. 11223, otherwise known as the “Universal Health Care Act,” for the duration of the *bona fide* suspension of work, except when the affected employee secures gainful employment or livelihood during the same period.

SECTION 12. *Permanent Lay-off.* – Upon the lapse of the duration of the *bona fide* suspension of work and without the resumption of operations, business, or undertaking of the employer, the affected employee shall be considered as terminated from employment, through no fault of and without prejudice to the employee. In such case, the employer shall:

- (c) Submit to the DOLE within one (1) month prior to the lapse of the *bona fide* suspension of work an affidavit by the employer or the employer’s President or person occupying a similar position, attesting that the operations, business, or undertaking of the employer will not resume upon the lapse of the period of the *bona fide* suspension of work due to any of the reasons provided under Section 5 of this Act;
- (d) Serve the affected employee a written notice informing him or her of the termination of his or her employment due to the non-resumption of the employer’s operations, business, or undertaking within one (1) month prior to the lapse of the *bona fide* suspension of work; and
- (e) Pay the affected employee a separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher: *Provided*, That a fraction of at least six (6) months shall be considered one (1) whole year: *Provided, finally*, That the duration of the *bona fide* suspension of work shall be considered in the computation of the separation pay.

SECTION 13. *Non-Diminution of Benefits.* – Benefits granted under this Act shall not in any manner mean any reduction, diminution, discontinuation, or elimination of other existing benefits provided by law, valid contract, company policy, and/or collective bargaining agreement. Rights already vested prior to the effectivity of this Act shall remain to be in full force and effect upon the passage of this Act.

SECTION 14. *Reportorial Requirements.* – The employer shall submit a final report to the Department of Labor and Employment not later than thirty (30) days from the resumption or cessation of the suspension of work, which shall include the final disposition of the affected employees, and the reason for such resumption.

SECTION 15. *Penal Provision.* – Any violation of this Act shall be punished with a fine of not less than One Hundred Thousand Pesos (P100,000.00) but not more than One Million Pesos (P1,000,000.00), or imprisonment of not less than one year (1) year but not more than three (3) years, or both, at the discretion of the court.

If the violation is committed by a corporation, trust or firm, partnership, association, or any entity, the penalty of imprisonment shall be imposed on the entity's responsible officers, including, but not limited to, the president, vice-president, chief executive officer, general manager, managing director, or partner directly responsible therefor.

SECTION 16. *Implementing Rules and Regulation.* – The Department of Labor and Employment shall promulgate the necessary rules and regulations for the effective implementation of this Act within one hundred twenty (120) days from its effectivity.

SECTION 17. *Appropriations.* – The amount necessary to carry out the provisions of this Act shall be included in the budget of the concerned government agencies in the General Appropriations Act.

SECTION 18. *Separability Clause.* – If, for any reason, any section or provision of this Act is declared unconstitutional or invalid, the other sections or provisions which are not affected shall continue to be in full force and effect.

SECTION 19. *Repealing Clause.* – All laws, presidential decrees, executive orders, or issuances, or any part thereof which are inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SECTION 20. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or any newspaper of general circulation.

Approved,