

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FOURTEENTH CONGRESS
First Regular Session

House Bill No. 2491

Introduced by Rep. Magtanggol T. Gunigundo I

EXPLANATORY NOTE

Since their adoption, the current provisions on security of tenure and regular employment have been the subject of numerous interpretations through implementing rules by the executive branch and jurisprudence by the judiciary. As such, there is a need to revise the provisions of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, so as to incorporate these interpretations and, more importantly, create a coherent and consistent framework of employment classification.

This bill draws from executive and judicial pronouncements on security of tenure in order to create a holistic and harmonious set of rules regarding classes and rights of employees. In particular, its salient points include the following:

1. The incorporation of the executive and judicial recognition that all classes of employees are entitled to security of tenure.
2. The incorporation of the workers' right to notice and hearing.
3. The clarification of what constitutes regular, casual, and project employment.

Building on these concepts, this bill seeks to introduce the following innovations:

1. Employment may be fixed by the term of the project, task or work to be performed but may not be bound to a mere reference to a time.
2. The period of probationary employment is fixed at six (6) months when all employers shall have enough time to ascertain whether a worker is fit for retention or not.
3. Deliberate misclassification of employees for the purpose of misleading them as to their rights is deemed an unfair labor practice.

With these amendments to the Labor Code, the proposal seeks to balance the legitimate business interests of the employer with the need for protection of workers from the prejudice of non-regularization. After all, for as long as the employer profits

through and by the labor of its employees, it is but fair to recognize the workers' right to remain employed absent any legal cause for his dismissal.

Hence, support for this bill is earnestly sought.

MAGTANGGOL T. GUNIGUNDO I
Representative
Second District, Valenzuela City

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HOUSE BILL NO. 2491

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AN ACT
STRENGTHENING THE SECURITY OF TENURE OF WORKERS IN THE PRIVATE
SECTOR, AMENDING FOR THE PURPOSE ARTICLES 248, 279, 280, 281, AND 288,
AND INTRODUCING NEW ARTICLES 280-A AND 280-B TO PRESIDENTIAL
DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF
THE PHILIPPINES

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

1 **SECTION 1.** Article 248 of the Labor Code is hereby amended as follows:

2

3 “Art. 248. *Unfair labor practices of employers.* - It shall be unlawful

4 for an employer to commit any of the following unfair labor practices:

5 “(a) To interfere with, restrain or coerce employees in the exercise of
6 their right to self-organization;

7 “(b) To require as a condition of employment that a person or an
8 employee shall not join a labor organization or shall withdraw from
9 one to which he belongs;

10 “(c) **TO ENGAGE A LABOR ONLY CONTRACTOR OR** to contract
11 out services or functions being performed by [union] members **OF**
12 **THE BARGAINING UNIT** when such will interfere with, restrain or
13 coerce employees in the exercise of their right to self-organization;

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1 “(d) To initiate, dominate, assist or otherwise interfere with the formation
2 or administration of any labor organization, including the giving of financial
3 or other support to it or its organizers or supporters;
4 “(e) To discriminate in regard to ages, hours of work and other terms
5 and conditions of employment in order to encourage or discourage
6 membership in any labor organization. Nothing in this Code or in any
7 other law shall stop the parties from requiring membership in a
8 recognized collective bargaining agent as a condition for employment,
9 except those employees who are already members of another union at the
10 time of the signing of the collective bargaining agreement.

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

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

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

23 “(h) To pay negotiation or attorney’s fees to the union or its officers or
24 agents as part of the settlement of any issue in collective bargaining or

1 any other dispute; [or]

2 “(i) To violate a collective bargaining agreement[.] ; **OR**

3 **“(J) TO CLASSIFY AS CASUAL, CONTRACTUAL, SUBCONTRACTED**
4 **EMPLOYEES, AGENCY EMPLOYEES, OR OTHER NON-REGULAR**
5 **CLASSIFICATION THOSE EMPLOYEES WHO ARE REGULAR**
6 **EMPLOYEES BY VIRTUE OF ARTICLE 280 OF THIS CODE.**

7 “The provisions of the preceding paragraph notwithstanding, only
8 the officers and agents of corporations, associations or partnerships who
9 have actually participated in, authorized or ratified unfair labor practices
10 shall be held criminally liable.”

11 **SEC. 2.** Article 279 of the Labor Code is hereby amended as follows:

12 “Art. 279. *Security of Tenure.* - [In cases of regular employment,
13 the employer shall not terminate the services of an employee] **ALL**
14 **EMPLOYEES SHALL ENJOY SECURITY OF TENURE AND SHALL**
15 **NOT BE TERMINATED FROM EMPLOYMENT** except for a just cause or
16 when authorized by this Title.

17 **“ANY EMPLOYER WHO SEEKS TO DISMISS A WORKER**
18 **SHALL FURNISH HIM A WRITTEN NOTICE STATING THE**
19 **PARTICULAR ACTS OR OMISSION CONSTITUTING THE GROUNDS**
20 **FOR HIS DISMISSAL. IN CASES OF ABANDONMENT OF WORK, THE**
21 **WRITTEN NOTICE SHALL BE SERVED AT THE WORKER'S LAST**
22 **KNOWN ADDRESS.**

1 **“THE WORKER SHALL BE GIVEN AN OPPORTUNITY TO**
2 **ANSWER THE ALLEGATIONS STATED AGAINST HIM IN THE NOTICE**
3 **OF DISMISSAL WITHIN A REASONABLE PERIOD FROM RECEIPT OF**
4 **SUCH NOTICE AND WITH THE ASSISTANCE OF A**
5 **REPRESENTATIVE IF HE SO DESIRES. THE EMPLOYER SHALL**
6 **IMMEDIATELY NOTIFY A WORKER IN WRITING OF A DECISION TO**
7 **DISMISS HIM STATING CLEARLY THE REASONS THEREFOR.**

8 “An employee who is [unjustly] dismissed from work **IN VIOLATION**
9 **OF ANY OF HIS RIGHTS UNDER THIS ARTICLE** shall be entitled to
10 **IMMEDIATE** reinstatement without loss of seniority rights and other
11 privileges and to his full back wages, inclusive of allowances, and to his
12 other benefits or their monetary equivalent computed from the time his
13 compensation was withheld from him up to the time of his actual
14 reinstatement.”

15 **SEC. 3.** Article 280 of the Labor Code is hereby amended as follows:

16 “Art. 280. *Regular and casual employment.* – The provisions of
17 written agreement to the contrary notwithstanding and regardless of the
18 oral agreement of the parties, an employment shall be deemed to be
19 regular where the employee has been engaged to perform activities which
20 are usually necessary or desirable in the usual business or trade of the
21 employer [, except where the employment has been fixed for a specific
22 project or undertaking the completion or termination of which has been
23 determined at the time of the engagement of the employee or where the
24 work or services to be performed is seasonal in nature and employment is

1 for the duration of the season]. **NO EMPLOYER SHALL HIRE OR**
2 **OTHERWISE MAINTAIN REGULAR EMPLOYEES COMPRISING LESS**
3 **THAN 80% OF ITS TOTAL WORKFORCE, INCLUDING WORKERS**
4 **UNDER SUBCONTRACTING ARRANGEMENTS. IN NO CASE SHALL**
5 **SUBCONTRACTORS BE ENGAGED TO PROVIDE WORKERS TO**
6 **PERFORM JOBS USUALLY NECESSARY AND DESIRABLE TO THE**
7 **USUAL BUSINESS OR TRADE OF THE EMPLOYER OR WHICH IS**
8 **PERFORMED BY REGULAR EMPLOYEES.**

9 "An employment shall be deemed to be casual if it is not [covered
10 by the preceding paragraph] **USUALLY NECESSARY OR DESIRABLE**
11 **IN THE USUAL BUSINESS OR TRADE OF THE EMPLOYER: *Provided,***
12 That any employee who has rendered at least one year of service,
13 whether such service is continuous or broken, shall be considered a
14 regular employee with respect to the activity in which he is employed and
15 his employment shall continue [while such activity exists] **UNLESS HE IS**
16 **TERMINATED FOR A JUST CAUSE OR WHEN AUTHORIZED BY THIS**
17 **TITLE."**

18 **SEC. 4.** A new Article 280-A is hereby inserted in the Labor Code to read as
19 follows:

20 **"ART. 280-A. PROJECT AND EXTRA EMPLOYMENT. -**
21 **PROJECT EMPLOYMENT REFERS TO THAT WHICH HAS BEEN**
22 **FIXED FOR A SPECIFIC PROJECT OR UNDERTAKING THE**
23 **COMPLETION OR TERMINATION OF WHICH HAS BEEN**

1 DETERMINED AND MADE KNOWN TO THE EMPLOYEE AT THE TIME
2 OF HIS ENGAGEMENT.

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

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

17 **SEC. 5.** A new Article 280-B is hereby inserted in the Labor Code to read as
18 follows:

19 "ART. 280-B. *PROHIBITION AGAINST FIXED TERM*
20 *EMPLOYMENT.* - NO EMPLOYER SHALL HIRE ANY EMPLOYEE FOR
21 A FIXED PERIOD ONLY, EXCEPT THOSE HIRED AS PROJECT AND
22 EXTRAS WHERE APPROPRIATE. ANY STIPULATION FIXING A
23 PERIOD OF EMPLOYMENT SHALL BE VOID."

24 **SEC. 6.** Article 281 of the Labor Code is hereby amended as follows:

1 “ART. 281. *Probationary employment.* - Probationary employment
2 shall not exceed six (6) months from the date the employee started
3 working [unless it is covered by an apprenticeship agreement stipulating a
4 longer period]. The services of an employee who has been engaged on a
5 probationary basis may be terminated for a just cause or when he fails to
6 qualify as a regular employee in accordance with reasonable standards
7 made known by the employer to the employee at the time of his
8 engagement. **IN ALL CASES**, an employee who is allowed to work after
9 a probationary period, **EVEN UNDER THE GUISE OF AN EXTENSION**,
10 shall be considered a regular employee.”

11 **SEC. 7.** Article 288 of the Labor Code is hereby amended as follows:

12 “ART. 288. *Penalties.* - Except as otherwise provided in this Code,
13 or unless the acts complained of hinge on a question of interpretation or
14 implementation of ambiguous provisions of an existing collective
15 bargaining agreement, any violation of the provision~~S~~**S** of this Code
16 declared to be unlawful or penal in nature shall be punished with a fine of
17 not less than One Thousand Pesos (P1,000.00) nor more than Ten
18 Thousand Pesos (P10,000.00) or imprisonment of not less than three
19 months nor more than three years, or both such fine and imprisonment at
20 the discretion of the court.

21 **“ANY PRINCIPAL OR SUB-CONTRACTOR WHO ENGAGES IN**
22 **LABOR ONLY CONTRACTING SHALL BE SOLIDARILY LIABLE TO**
23 **INDEMNIFY EACH SUBCONTRACTED EMPLOYEE NO LESS THAN**
24 **FIFTY THOUSAND PESOS (P50,000.00) WITHOUT PREJUDICE TO**

1 OTHER MONETARY AWARDS TO WHICH SUCH SUBCONTRACTED
2 EMPLOYEE MAY BE ENTITLED SUCH AS BACKWAGES, MONETARY
3 CLAIMS AND BENEFITS UNDER AN APPLICABLE CERTIFIED
4 BARGAINING AGREEMENT.

5 "ANY EMPLOYER WHO DELIBERATELY CATEGORIZES OR
6 OTHERWISE TREATS REGULAR EMPLOYEES TO BE ANY
7 NON-REGULAR EMPLOYEE SHALL BE LIABLE TO INDEMNIFY
8 EACH MISCLASSIFIED EMPLOYEE NO LESS THAN
9 FIFTY-THOUSAND PESOS (P50,000.00) WITHOUT PREJUDICE TO
10 OTHER MONETARY AWARDS TO WHICH SUCH EMPLOYEE MAY BE
11 ENTITLED SUCH AS BACKWAGES, MONETARY CLAIMS AND
12 BENEFITS UNDER AN APPLICABLE CERTIFIED BARGAINING
13 AGREEMENT.

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

16 "Any provision of law to the contrary notwithstanding, any criminal
17 offense punished in this Code shall be under the concurrent jurisdiction of
18 the Municipal or City Courts and the Courts of First Instance."

19 **SEC. 8. Implementing Rules and Regulations.** - The Department of Labor
20 and Employment (DOLE) shall issue, within 60 days after the effectivity of this Act, the
21 rules and regulations for its effective implementation.

22 **SEC. 9. Separability Clause.** - If, for any reason, any section or provision of
23 this Act is held unconstitutional or invalid, the other sections or provisions hereof shall
24 not be affected thereby and shall continue to be in full force and effect.

1 **SEC. 10. Repealing Clause.** - All laws, decrees, executive orders, rules and
2 regulations, or parts thereof inconsistent with the provisions of this Act are hereby
3 repealed or modified accordingly.

4 **SEC. 11. Effectivity Clause.** - This Act shall take effect after fifteen (15) days
5 from its publication in the *Official Gazette* or in at least two (2) national newspapers of
6 general circulation.

Approved.