

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FOURTEENTH CONGRESS

House Bill No. 2961

Introduced by **HONORABLE EVITA R. ARAGO**

EXPLANATORY NOTE

Even as the Constitution provides for the right of workers to security of tenure, employment practices that abrogate this right still persist. Preventing workers from becoming regular employees and the denial by employers of the existence of employee-employer relationship are but two of the grave employment practices inconsistent with the workers' right to security of tenure. Such practices are usually employed through the following means:

- (1) classification of regular employees as "casual";
- (2) "renewal" of employment contract every six months;
- (3) firing of employees and hiring of new ones every five or six months;
- (4) labor- contracting;
- (5) and hiring of "agency workers".

In general, these unfair labor practices violate the right of workers to just and humane employment terms and conditions, to self-organization and collective bargaining. The non-recognition of workers as regular employees, for instance, is tantamount to withholding them benefits accorded to regular employees, including the right to join unions and engage in collective bargaining. Similarly, these labor practices violate the right of regular members in the sense that they weaken the latter's bargaining unit because they cannot recruit workers who should have been regular employees.

Unfortunately, the legal provisions at present do not deter unscrupulous employers from committing anti-labor practices. Furthermore, the law on subcontracting is even vague and admits interpretation inconsistent with the provision of the law on regular employment.

This bill therefore intends to correct the significant omissions and loopholes in our laws by amending relevant sections in the Labor Code. Specifically, it seeks to: (1) render the misclassification of regular employees into other kinds of employees as an unfair labor practice and provide penalties thereof; and (2) harmonize the laws on subcontracting and regular employment. Through these, we hope to secure and strengthen the constitutionally guaranteed right of our workers to security of tenure.

Hence, support of this bill is earnestly sought.

MARIA EVITA R. ARAGO
Representative
3rd District of Laguna

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House Bill No. 2961

Introduced by **HONORABLE EVITA R. ARAGO**

**AN ACT
STRENGTHENING THE CONSTITUTIONAL RIGHT TO SECURITY OF
TENURE**

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

1 SECTION 1. **Short Title.** – This Act shall be known as the SECURITY OF
2TENURE OF THE WORKERS ACT OF 2007”.

3

4 SEC. 2. Article 106 of the Labor Code of the Philippines, as amended, is
5hereby amended to read as follows:

6 “ART. 106. Contractor or sub-contractor. – Whenever an
7 employer enters into a contract with another person for the
8 performance of the former’s work, the employees of the contractor
9 and of the latter’s subcontractor, if any, shall be paid in accordance
10 with the provisions of this Code.

11 In the event that the contractor or sub-contractor fails to pay
12 the wages of his employees in accordance with this Code, the

1 employer shall be jointly and severally liable with his contractor or
2 sub-contractor to such employee to the extent of the work
3 performed under the contract, in the same manner and extent that
4 he is liable to employees directly employed by him.

5 The Secretary of Labor and Employment may, by
6 appropriate regulations, restrict or prohibit the contracting out of
7 labor to protect the rights of workers established under this Code.
8 In so prohibiting or restricting, he may make appropriate distinctions
9 between labor-only contracting as well as differentiation within
10 these types of contracting, and determine who among the parties
11 involved shall be considered the employer for purposes of this
12 Code, to prevent any violation or circumvention of any provision of
13 this Code.

14 There is "labor-only contracting" where the person supplying
15 workers to an employer does not have substantial capital [or] AND
16 investment in the form of tools, equipment, machinery, work
17 premises, among others, and the workers recruited and placed by
18 such person are performing activities which are directly related to
19 the principal business of such employer or WHERE THE
20 PRINCIPAL EMPLOYER HAS THE RIGHT OF CONTROL OVER
21 MEANS BY WHICH THE PURPORTED AGENCY OR
22 CONTRACTUAL EMPLOYEE PERFORMS THE ACTIVITIES,
23 NOTWITHSTANDING THE FACT THAT THE AGENCY OR

1 CONTRACTOR HAS SUBSTANTIAL CAPITAL AND
2 INVESTMENT IN THE FORM OF TOOLS, EQUIPMENT,
3 MACHINERIES, WORK PREMISES, AMONG OTHERS. In such
4 cases, the person or intermediary shall be considered merely as
5 agent of the employer who shall be responsible to the workers in
6 the same manner and extent as if the latter were directly employed
7 by [him] SUCH PRINCIPAL EMPLOYER.

8 IN THE PERFORMANCE OF ITS JOB, THE LEGITIMATE
9 SUBCONTRACTOR MUST USE ITS OWN EQUIPMENT,
10 FACILITIES, MACHINERIES AND TOOLS AND CANNOT RELY
11 ON THE PRINCIPAL CONTRACTOR. THE USE OF THE
12 SUBCONTRACTOR OF THE EQUIPMENT, FACILITIES,
13 MACHINERIES AND TOOLS OF THE PRINCIPAL IS AN
14 INDICATION THAT THE SUBCONTRACTOR HAS NO
15 SUBSTANTIAL CAPITAL AND INVESTMENT.

16 THE EMPLOYER AND THE LABOR-ONLY CONTRACTOR
17 OR SUBCONTRACTOR WHO VIOLATE THE FOREGOING
18 PROVISION SHALL BE SOLIDARILY LIABLE TO PAY
19 INDEMNITY OF NO LESS THAN FIFTY THOUSAND PESOS
20 (P50,000.00) TO EACH EMPLOYEE UNDER THE LABOR-ONLY
21 CONTRACTOR OR SUBCONTRACTOR, WITHOUT PREJUDICE
22 TO THE OTHER MONETARY AWARDS SUCH AS BACKWAGES,
23 MONETAR CLAIMS, AND CBA BENEFITS.”

1 SEC. 3. Article 248 of the Labor Code of the Philippines, as amended, is
2 hereby amended to read as follows:

3 "ART. 248. Unfair labor practices of employers. – It shall be
4 unlawful for an employer to commit any of the following unfair labor
5 practices:

6 (a) x x x;

7 (b) x x x;

8 © x x x;

9 (d) x x x;

10 (e) x x x;

11 (f) x x x

12 (g) x x x;

13 (h) x x x;

14 (i) x x x;

15 (j) TO CLASSIFY AS CASUAL, CONTRACTUAL,
16 SUBCONTRACTOR'S OR LABOR-ONLY CONTRACTOR'S
17 EMPLOYEES, AGENCY EMPLOYEES, AND OTHER NON-
18 REGULAR WORKERS THOSE EMPLOYEES WHO ARE
19 REGULAR EMPLOYEES BY VIRTUE OF THE ACTIVITIES THEY
20 PERFORM AND OTHER CIRCUMSTANCES WHICH MAKE
21 THEIR EMPLOYMENT REGULAR."

22 SEC. 4. Article 280 of the Labor Code of the Philippines, as amended, is
23 hereby further amended as follows:

1 “ART. 280. Regular and Casual Employment; PENALTY IN
2 CASE OF VIOLATION. – The provisions of written contract to the
3 contrary notwithstanding and regardless of the oral agreement of
4 the parties, an employee shall be deemed to be regular where the
5 employee has been engaged to perform activities which are usually
6 necessary and desirable in the usual trade or business of the
7 employer, except where the employment has been fixed for a
8 specific project or undertaking the completion or termination of
9 which has been determined at the time of engagement of the
10 employee, or where the work or services to be performed is
11 seasonal in nature and the employment is for the duration of the
12 season.

13 SEASONAL AND PROJECT EMPLOYEES SHALL HAVE
14 THE RIGHT TO SECURITY OF TENURE, SUBJECT TO THE
15 PROVISIONS ON PROBATIONARY EMPLOYMENT, AND ARE
16 ENTITLED TO RESUME THEIR EMPLOYMENT IN THE SAME
17 OR SIMILAR POSITION UPON THE START OF THE NEXT
18 SEASON OR PROJECT, AS THE CASE MAY BE: *PROVIDED*,
19 THAT DURING THE TIME THAT THEIR SERVICES ARE NOT
20 ACTUALLY AVAILED OF BY THE ESTABLISHMENT, THEY
21 SHALL BE CONSIDERED TO BE ON AUTHORIZED LEAVE
22 WITHOUT PAY.

1 An employment shall be deemed to be casual if it is not
2 covered by the preceding paragraph. [Provided, That any employee
3 who has rendered at least one year of service, whether such
4 service is continuous or broken, shall be considered a regular
5 employee with respect to the activity in which he is employed and
6 his employment shall continue while such activity exists] CASUAL
7 EMPLOYEES SHALL HAVE THE RIGHT TO SECURITY OF
8 TENURE AND MAY BE TERMINATED ONLY FOR JUST OR
9 AUTHORIZED CAUSES. HOWEVER, THEIR POSITION, NOT
10 BEING NECESSARY OR DESIRABLE TO THE USUAL TRADE
11 OR BUSINESS OF THE EMPLOYER, MAY BE ELIMINATED IF
12 THE SERVICES ATTACHED THERETO ARE NO LONGER
13 AVAILED OF BY THE EMPLOYER: *PROVIDED*, THAT IF THE
14 POSITION HAS BEEN IN EXISTENCE FOR MORE THAN ONE
15 YEAR, IT SHALL BE CONSIDERED AS REGULAR IN NATURE,
16 SUBJECT TO THE PROVISIONS ON PROBATIONARY
17 EMPLOYMENT. TERMINATION WILL THEN BE ALLOWED
18 ONLY IF THERE IS JUST OR AUTHORIZED CAUSE.

19 THE PRINCIPAL EMPLOYER MUST DIRECTLY HIRE
20 WORKERS WHO ARE PERFORMING ACTIVITIES WHICH ARE
21 USUALLY NECESSARY OR DESIRABLE TO THE USUAL TRADE
22 OR BUSINESS OF THE EMPLOYER, WITHOUT PREJUDICE TO
23 THEIR PROPER CLASSIFICATION AS REGULAR, SEASONAL,

1 PROJECT OR EMPLOYEES HIRED FOR A SPECIFIC
2 UNDERTAKING, AS PROVIDED FOR IN THE FIRST
3 PARAGRAPH. THE PRINCIPAL EMPLOYER CANNOT HIRE
4 THROUGH SUBCONTRACTORS, LABOR CONTRACTORS, OR
5 OTHER SIMILAR AGENCIES AND "MANPOWER" SERVICE
6 PROVIDERS, WORKERS PERFORMING ACTIVITIES WHICH
7 ARE USUALLY NECESSARY OR DESIRABLE TO THE USUAL
8 TRADE OR BUSINESS OF THE EMPLOYER, REGARDLESS OF
9 THE AMOUNT OF INVESTMENT AND CAPITAL OF THE
10 SUBCONTRACTOR OR LABOR CONTRACTOR.

11 LIKEWISE, IN NO CASE SHALL REGULAR EMPLOYMENT
12 BE SUBJECT TO A TERM, EXCEPT WHERE THE
13 EMPLOYMENT HAS BEEN FIXED FOR A SPECIFIC PROJECT
14 OR UNDERTAKING THE COMPLETION OR TERMINATION OF
15 WHICH HAS BEEN DETERMINED AT THE TIME OF
16 ENGAGEMENT OF THE EMPLOYEE, OR WHERE THE WORK
17 OR SERVICE TO BE PERFORMED IS SEASONAL IN NATURE
18 AND THE EMPLOYMENT IS FOR THE DURATION OF THE
19 SEASON SUBJECT TO PARAGRAPH 2 HEREOF.

20 HOWEVER, TERM EMPLOYMENT SHALL BE ALLOWED
21 FOR OVERSEAS FILIPINO WORKERS, SHOULD THE VALID
22 CONTRACT OF EMPLOYMENT SO PROVIDED FOR A TERM.

1 EMPLOYEES WHO ARE REGULAR, REGARDLESS OF
2 THE ORAL OR WRITTEN AGREEMENTS TO THE CONTRARY,
3 SHALL BE CONSIDERED PART OF THE APPROPRIATE
4 COLLECTIVE BARGAINING UNIT AND MAY EXERCISE THE
5 RIGHT TO SELF-ORGANIZATION AND COLLECTIVE
6 BARGAINING.

7 AN EMPLOYER WHO VIOLATES THE FOREGOING
8 SHALL BE LIABLE TO PAY INDEMNITY OF FIFTY THOUSAND
9 PESOS (P50,000.00) TO EACH EMPLOYEE, WITHOUT
10 PREJUDICE TO THE OTHER MONETARY AWARDS SUCH AS
11 BACKWAGES, MONETARY CLAIMS, AND CBA BENEFITS.”

12

13 SEC. 5. **Repealing Clause.** – Art. Of PD 442 as amended, otherwise
14 known as the Labor Code of the Philippines, and all other acts, rules and
15 regulations are hereby repealed, modified, or amended accordingly.

16

17 SEC. 6. **Separability Clause.** If any part, section or provision of this Act
18 shall be held invalid or unconstitutional, the other provisions not affected thereby
19 shall continue in full force and effect.

20 SEC. 7. **Effectivity.** – This Act shall take effect fifteen (15) days after its
21 publication in the Official Gazette or in at least two newspapers of general
22 circulation.

23 Approved,