

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 1208

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Introduced by BAYAN MUNA Party-list
Representative CARLOS ISAGANI T. ZARATE

AN ACT PROHIBITING END OF CONTRACT (ENDO) PRACTICES OR LABOR CONTRACTUALIZATION

EXPLANATORY NOTE

The “end of contract” policy or the now commonly and notoriously known as “ENDO” and labor contractualization blatantly violate the worker’s right to security of tenure. Worse still the previous Aquino administration had aggravated the workers’ sufferings when on November 14, 2011 the then Labor Secretary signed Department Order 18-A that further promoted and even further institutionalized burdensome contractual arrangements.

It is a Constitutional mandated policy for the State “to assure the right of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.”

However ‘Endo’ and Department Order 18-A pose clear barriers to the enjoyment of these basic labor rights, as it expressly lays down procedures for businesses to engage in job contracting and sub-contracting, which essentially distort job security.

The main contention with D.O 18-A is that by defining “legitimate contracting and subcontracting” (Section 4) and setting forth procedures for registration of “legitimate contractors” (Section 14), the order legitimizes job contractual arrangements, resulting to the distortion of job security and the grave undermining of workers’ basic rights stipulated in the declaration of state policy.

This corrupted policy gravely undermines workers’ rights to security of tenure, self-organization, and collective bargaining. It even essentially encourages more establishments to engage in contracting and subcontracting.

There are numerous cases already reported to prove the grave social costs of job contracting and subcontracting. A glaring case in point is the Eton Residences tragedy last Jan. 27, 2011, where 10 construction workers were killed while another one was seriously injured. These workers were employed under multiple subcontracting chains, which were nonetheless recognized by the Labor department as “legitimate subcontracting”.

Despite the employment arrangement’s legitimacy, these contractual workers were found out to earn below poverty level wages (P260/day) and had no sufficient personal protective equipment.

Based on the research made by the Ecumenical Institute for Labor Education and Research (EILER), these violations stemmed from the principal's desire to minimize costs via subcontracting.

The group also noted the Kentex factory fire that killed 72 workers in Valenzuela in May 2015. The said incident once again brought to fore the issue of "endo" or labor contractualization, as more than half of Kentex workers are contractuels hired through a manpower agency.

Large corporations like the Shoemart (SM) chain of malls owned by Philippines' richest Filipino, Henry Sy, is notorious for employing contractual employees with shortened employment tenures of 3 to 5 months.

In another case in 2011, the Philippine Airlines (PAL), the country's flag carrier, have succeeded in outsourcing its ground operations that retrenched 6,000 regular employees in favor of contractual workers.

Majority of the country's 37.6 million employed persons are either employed in contractual, temporary, probationary, seasonal and odd jobs. Based on official government data, an estimate of 44% of workers employed in various industries are not regulars. The rate of contractual employment is also high in the construction sector (81%) and quarrying sector (59%).

In general, contractualization is aimed at pressing down workers' wages and increasing capitalists' profits.

In particular, it is aimed at the following: 1) weakening trade unionism through the reduction of the traditional base of trade unions which are permanent workers; 2) systematic and efficient co-opting of workers into subscribing to an ideology that attacks workers' organization and unionism (employment vs. union mentality); 3) depriving workers of benefits and wages that are due to regular workers and the possibility of improving their working conditions through unionism and collective bargaining and; 4) allowing capitalists to earn maximum profits and lessen the impact of economic crisis by constant adjustments in current and long-term production costs through wage reduction and elimination of workers' benefits from long-term employment.

Based on recent studies, contractualization is extensive in the Philippines, with 7 out of 10 firms implementing combinations of flexible work arrangements, and with estimates showing that contractuels now outnumber regulars among Filipino workers. As labor groups and advocates have described, contractualization is a dagger in the hearts of Filipino workers.

With this reality, the State must determinedly protect and uphold workers' rights to decent and long-term employment by upholding their right to security of tenure, declaring illegal all forms of contractual employment and penalizing those who will carry out this anti-worker scheme.

With the end in view of uplifting the Filipino workers from the deepening poverty and misery, prohibiting 'endo' or labor contractualization, fundamentally, shall protect the national interest and democratic ideals of Filipino society.

In view of the foregoing, the passage of this proposal is earnestly sought.


CARLOS ISAGANI T. ZARATE
Bayan Muna Party-list

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Introduced by **BAYAN MUNA Party-list**
Representative **CARLOS ISAGANI T. ZARATE**

**AN ACT PROHIBITING END OF CONTRACT (ENDO) PRACTICES OR
LABOR CONTRACTUALIZATION**

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

Section 1. This law would be known as the 'NO ENDO LAW'

Section 2. The Article 106 of the Labor Code of the Philippines is hereby amended as follows:

Article 106. Contractor or subcontractor is a person or an entity with whom an employer or principal enters into a contract for the performance of the latter's work.

When the employer or principal contracts the performance of a work that is necessary or desirable to its business or operations, the worker or workers supplied by the contractor or subcontractor, agency, person or intermediary shall be considered the employee or employees of the employer or principal, and not of the contractor or subcontractor, etc. For all intents and purposes, the contractor, subcontractor, agency, person or intermediary shall be considered merely as agent of the employer or the principal who shall be responsible for the workers in the same manner and extent as if the latter were directly employed by the said employer or principal. For this purpose, the worker or workers supplied by the contractor, subcontractor, agency, person or intermediary under this paragraph shall be considered regular employee or employees of the employer or principal, as provided for in Article 280 and Article 281, as amended, of the Labor Code.

Section 3. The Article 107 of the Labor Code of the Philippines is hereby repealed.

Section 4. Article 279 of the Labor Code of the Philippines is hereby amended to read as follows:

Article 279. Security of tenure. – No employer shall terminate the services of an employee except for a just cause or when authorized by this Title. A regular employee who is unjustly dismissed from work shall be entitled to immediate reinstatement without loss of seniority rights and other privileges, entitled to his/her full back wages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement. If reinstatement is no longer feasible due to strained relationships between the parties, the employer, other than the payment of backwages, is also liable to pay the dismissed employee or employees separation pay equivalent to at least one (1) month pay for every year of service, whichever is higher;

PROVIDED FURTHER that a fraction of at least five months is considered as one (1) year for purposes of this provision.

FURTHER, without prejudice to the other penalties that may be imposed under this Code, any employer who unjustly dismissed an employee shall be liable to pay a fine of double the amount of the full backwages, inclusive of allowances, that the dismissed employee is adjudged to receive.

Section 5. Article 280 of the Labor Code of the Philippines is hereby amended to read as follows:

ARTICLE 280. Regular and casual employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee or worker has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or worker or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any casual employee or worker who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he/she is employed and his/her employment shall continue while such activity exists.

Any stipulation in any written or oral contract of employment, also known as ENDO contract, for a definite or fixed period designed to subvert the provisions of this act and covering work activities which are necessary or desirable in the usual business or trade of the employer as defined under this title, shall be null and void ab initio and the person or persons responsible for such acts shall be penalized in accordance with Section 8 hereof. Further, notwithstanding the void character of such 'ENDO contract', the worker or employee affected shall be deemed a regular employee of the employer concerned, in accordance, with the provisions of this Act.

Section 6. Article 281 of the Labor Code of the Philippines is hereby amended to read as follows:

Article 281. Probationary employment. A probationary employment shall not exceed six (6) months from the first day of service of an employee. This provision applies to all workers or employees, regardless of the nature of employment, continuous or broken. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he/she fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of engagement. An employee, who is allowed to work after a probationary period, shall automatically be considered a regular employee.

Section 7. Investigation and Enforcement. - The DOLE shall have the authority to investigate and require the keeping of records necessary for the administration of this Act. It shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this Act.

Section 8. Penalty. - Any violation of this Act by the employer or principal shall be punished with a fine not less than one million pesos (P1,000,000.00) but not more than ten million pesos (P10,000,000.00), or imprisonment of not less than six (6) months but not more than three (3)

years, or both, at the discretion of the court. Furthermore, the business permit of the violating corporation or business entity would be suspended for one (1) month to three (3) years for the first offense and the cancellation of its business permit for the second offense. If the offense is committed by a corporation, trust, firm, partnership or association or other entity, the penalty shall be imposed upon the guilty officer or officers of such corporation, trust, firm, partnership or association or entity.

Section 9. Separability Clause. - Should any provision herein be subsequently declared invalid or unconstitutional, the same shall not affect the validity or the legality of the other provisions not so declared.

Section 10. Repealing Clause. - All laws, presidential decrees, executive orders, rules and regulations, other issuances, and parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed and modified accordingly.

Section 11. Effectivity Clause. - This Act shall take effect fifteen (15) days after publication in the Official Gazette or in at least (2) newspapers of general circulation.

Passage of this bill is earnestly sought.

Approved,