

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 4444



Introduced by TUCP Party-List
Rep. RAYMOND DEMOCRITO C. MENDOZA

EXPLANATORY NOTE

Since the passage of the Labor Code in 1974 which allowed contracting and subcontracting, regulation has failed to protect the workers from abuse and exploitation. Contractualization has become a widespread practice covering millions of workers. It has led to violations of workers' rights to organize, to bargain collectively and to strike. Contractualization has created a pool of workers who have no social security, no healthcare, no access to Pag-IBIG and no Security of Tenure. This is work offering the laborer no hope and no future. This is precarious work and has no place in a decent society. Contractualization is inherently exploitative, it dilutes the core labor standards and undermines the workers' right to a decent life. It limits the choices of workers to freely shape their own future.

This Bill aims to totally prohibit contractualization and all its forms including all fixed-term employment. There is a need to pass a law to strengthen security of tenure and to end abusive practices of contractualization. This bill intends to totally prohibit contracting, subcontracting, manpower agency hiring, outsourcing, including those undertaken by so-called service cooperatives engaged in manpower supply. All workers must be treated as regular employees doing away with other types or definitions of employment.

The practice of contractualization must be stopped and employees must be regularized. Only then can they have security of tenure and exercise their right to self-organization and to bargain collectively. Without regularization, trade union organizing will almost become impossible to undertake. This Bill will strengthen the security of tenure of workers who will be directly hired and be working with a company or the principal. By ending contractualization, regularizing workers and strengthening their security of tenure, they can better exercise their right to organize and collectively bargain with their employers which can provide them with their fair share of the wealth that they have helped to create.

Moreover, contractualization clashes with the principle of social justice enshrined in our Constitution and must therefore be criminalized. Thus, this legislative proposal provides penal provisions against violators. It is the deepest hope of Filipino workers that this bill will be immediately enacted.



RAYMOND DEMOCRITO C. MENDOZA
Representative, TUCP Party-List

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 4444

Introduced by TUCP Party-List
Rep. RAYMOND DEMOCRITO C. MENDOZA

AN ACT
STRENGTHENING WORKERS RIGHT TO SECURITY OF TENURE,
AMENDING FOR THE PURPOSE ARTICLES 106 TO 109 OF BOOK III,
ARTICLES 294 [279] TO 296 [281] OF BOOK VI, AND ARTICLE 303 [288]
OF BOOK VII OF PRESIDENTIAL DECREE NO. 442, OTHERWISE
KNOWN AS VTHE LABOR CODE OF THE PHILIPPINES, AS AMENDED.

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

SECTION 1. Title. This Act shall be known as the "SECURITY OF TENURE
ACT OF 2016".

SECTION 2. Article 106 of Presidential Decree 442, as amended, otherwise
known as the Labor Code of the Philippines is hereby repealed and
substituted as follows:

**"ARTICLE 106. PROHIBITION OF CONTRACTUALIZATION AND
FIXED TERM EMPLOYMENT. ALL FORMS OF
CONTRACTUALIZATION AND FIXED TERM EMPLOYMENT ARE
HEREBY PROHIBITED. VIOLATIONS SHALL CONSTITUTE
UNFAIR LABOR PRACTICE AND SHALL BE DEEMED UNLAWFUL
AND PENAL IN NATURE AND WILL BE SUBJECT TO CRIMINAL
PROSECUTION.**

**THERE IS CONTRACTUALIZATION WHENEVER AN EMPLOYER
ENTERS INTO A CONTRACT WITH ANOTHER PERSON FOR THE
PERFORMANCE OF THE FORMER'S WORK. THIS INCLUDES
WORKING ARRANGEMENTS WHEREBY:**

- a. A PRINCIPAL AGREES TO CONTRACT OUT OR FARM OUT
WITH A CONTRACTOR, SUBCONTRACTOR, MANPOWER
AGENCY, WORKERS' COOPERATIVE, OR A SIMILAR OR

ANALOGOUS ENTITY, THE PERFORMANCE OR COMPLETION OF A SPECIFIC JOB, WORK OR SERVICE WITHIN A DEFINITE OR PREDETERMINED PERIOD; REGARDLESS OF WHETHER SUCH JOB, WORK OR SERVICE IS TO BE PERFORMED OR COMPLETED WITHIN OR OUTSIDE THE PREMISES OF THE PRINCIPAL; OR

- b. A PERSON, PARTNERSHIP, ASSOCIATION, OR CORPORATION WHICH NOT BEING A PRINCIPAL, CONTRACTS WITH A CONTRACTOR, SUBCONTRACTOR, MANPOWER AGENCY, WORKERS' COOPERATIVE OR ANY OTHER SIMILAR OR ANALOGOUS ENTITY FOR THE PERFORMANCE OF ANY WORK, TASK, JOB OR PROJECT."

SECTION 3. Article 294[279] of the Labor Code, as amended, is hereby amended to read as follows:

"ARTICLE 294 [279]. SECURITY OF TENURE. ALL EMPLOYEES IRRESPECTIVE OF EMPLOYMENT STATUS OR POSITION SHALL NOT BE DISMISSED WITHOUT CAUSE AND DUE PROCESS.

A DISMISSAL WITHOUT JUST OR AUTHORIZED CAUSE AND DUE PROCESS IS ILLEGAL AND THE EMPLOYEE SHALL BE ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND BENEFITS. ADDITIONALLY, THE ILLEGALLY DISMISSED EMPLOYEE SHALL BE ENTITLED TO FULL BACKWAGES AND ACCRUED BENEFITS AND REMUNERATIONS PROVIDED BY LAW, COMPANY POLICY AND COLLECTIVE BARGAINING AGREEMENT, COMPUTED FROM THE TIME COMPENSATION WAS WITHHELD UP TO THE TIME OF ACTUAL REINSTATEMENT. UNREMITTED SSS, PHILHEALTH, AND PAG-IBIG CONTRIBUTIONS SHALL LIKEWISE BE PAID. ACTUAL, MORAL, EXEMPLARY AND OTHER FORMS OF DAMAGES MAY ALSO BE AWARDED.

THE EMPLOYER SHALL HAVE THE BURDEN OF PROVING THAT THE TERMINATION IS WITH CAUSE AND DUE PROCESS."

SECTION 4. Article 295 [280] of the Labor Code, as amended, is hereby amended to read as follows:

"ARTICLE 295 [280]. EMPLOYER-EMPLOYEE RELATIONSHIP. THERE EXISTS AN EMPLOYER-EMPLOYEE RELATIONSHIP WHEN THE WORKER IS ENGAGED TO RENDER WORK OR SERVICE UNDER THE CONTROL OR SUPERVISION OF THE EMPLOYER, NOT ONLY AS TO THE END TO BE ACHIEVED, BUT ALSO AS TO THE MANNER, MEANS, AND METHOD IN REACHING THE END.

PAYMENT OF REMUNERATION, HOWEVER DENOMINATED, TO THE WORKER ALSO INDICATES THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP.”

SECTION 5. A new Article 295-A is hereby inserted to the Labor Code to read as follows:

“ARTICLE 295-A. STATUS OF EMPLOYMENT. ALL EMPLOYEES, EXCEPT THOSE UNDER PROBATIONARY EMPLOYMENT, ARE DEEMED REGULAR, INCLUDING PROJECT AND SEASONAL EMPLOYEES.

ANY PROVISION AND EMPLOYMENT CONTRACTS FIXING THE PERIOD OF EMPLOYMENT SHALL BE VOID; AND THE EMPLOYEE SO ENGAGED SHALL AUTOMATICALLY BE DEEMED A REGULAR EMPLOYEE OF THE EMPLOYER.

PROJECT AND SEASONAL EMPLOYEES ARE REGULAR FOR THE DURATION OF THE PROJECT OR SEASON, AS THE CASE MAYBE. FOR THIS PURPOSE, PROJECT EMPLOYMENT IS EMPLOYMENT IN AN EXISTING PROJECT OR UNDERTAKING THE COMPLETION OR TERMINATION OF WHICH HAS BEEN DETERMINED AND MADE KNOWN TO THE EMPLOYEE AT THE TIME OF THE ENGAGEMENT, WHILE SEASONAL IS AN EMPLOYMENT BASED ON THE EXISTENCE OF A SEASON IN AGRICULTURAL WORK. IN PROJECT AND SEASONAL EMPLOYMENT, WORKERS ARE CALLED TO WORK FROM TIME TO TIME AND TEMPORARILY LAID-OFF DURING THE COMPLETION OF THE PROJECT OR OFF-SEASON, BUT ARE IN THE WORK POOL ON LEAVE WITH OR WITHOUT PAY STATUS IN BETWEEN PROJECTS OR SEASONS. SEASONAL WORKERS SHALL HAVE THE RIGHT OF FIRST REFUSAL TO THE TASK, WORK, OR PROJECT, WHICH IS THE SUBJECT MATTER OF HIS/HER EMPLOYEMENT.

ALL OTHER FORMS OF EMPLOYMENT ARE PROHIBITED AND WORKERS UNDER SUCH ARRANGEMENTS ARE DEEMED REGULAR EMPLOYEES RECKONED FROM THE FIRST DAY OF EMPLOYMENT.”

SECTION 6. Article 296[281] of the Labor Code, as amended, is hereby amended to read as follows:

“ARTICLE 296 [281]. PROBATIONARY EMPLOYMENT. PROBATIONARY EMPLOYMENT SHALL NOT EXCEED SIX (6) MONTHS FROM THE FIRST DAY OF SERVICE REGARDLESS OF THE NATURE OF WORK TO BE PERFORMED.

THE RIGHTS, TERMS AND CONDITIONS OF EMPLOYMENT OF PROBATIONARY EMPLOYEE WHICH SHALL NOT BE LOWER THAN THE MINIMUM STANDARDS SET BY LAWS OR REGULATIONS. THE JOB DESCRIPTION AND QUALIFICATION STANDARDS TO QUALIFY FOR REGULAR EMPLOYMENT SHALL BE IN A WRITTEN CONTRACT AND MADE KNOWN BY THE EMPLOYER TO THE EMPLOYEE AT THE TIME OF HIS/HER ENGAGEMENT.

THE SERVICES OF A PROBATIONARY EMPLOYEE MAY BE TERMINATED FOR JUST AND AUTHORIZED CAUSE UNDER ARTICLES 282 AND 283 OF THE LABOR CODE, AS AMENDED, OR WHEN HE/SHE FAILS TO QUALIFY AS A REGULAR EMPLOYEE.

THE PROBATIONARY EMPLOYEE SHALL AUTOMATICALLY BECOME A REGULAR EMPLOYEE AFTER MEETING THE STANDARDS STIPULATED IN THE WRITTEN CONTRACT OF PROBATIONARY EMPLOYMENT OR THROUGH REPEATED ENGAGEMENT OF THE SAME EMPLOYEE AFTER THE EXPIRATION OF THE PROBATIONARY EMPLOYMENT."

SECTION 7. Article 303 [288] of the Labor Code, as amended, is hereby amended to read as follows:

"Article 303 [288]. Penalties. Except as otherwise provided in this Code, or unless the acts complained of hinge on a question of interpretation or implementation of ambiguous provisions of an existing collective bargaining agreement, any violation of the provisions of this Code declared to be unlawful or penal in nature shall be punished with a fine of **NOT LESS THAN FIFTY THOUSAND PESOS (PHP50,000.00) NOR MORE THAN FIVE MILLION PESOS (PHP5,000,000.00)**, or imprisonment of not less than **SIX MONTHS AND ONE DAY NOR MORE THAN TWELVE YEARS**, or both such fine and imprisonment at the discretion of the court.

MOREOVER, A CONTRACTING EMPLOYER AND THE CONTRACTOR OR SUBCONTRACTOR SHALL BE SOLIDARILY LIABLE TO INDEMNIFY EACH EMPLOYEE WITH NO LESS THAN FIFTY THOUSAND PESOS (PHP50,000.00) WITHOUT PREJUDICE TO OTHER MONETARY AWARDS TO WHICH SUCH EMPLOYEE MAY BE ENTITLED SUCH AS BACKWAGES, MONETARY CLAIMS AND BENEFITS UNDER AN APPLICABLE COLLECTIVE BARGAINING AGREEMENT OR COMPANY POLICY, WHETHER WRITTEN OR OTHERWISE.

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

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

SECTION 8. IMPLEMENTING RULES AND REGULATIONS. The Secretary of Labor and Employment shall promulgate the necessary implementing rules and regulations within one hundred and twenty (120) days from the effectivity of this Act.

SECTION 9. REPEALING CLAUSE. Articles 107, 108, and 109 of the Labor Code are hereby repealed. All other laws, decrees, rules, and regulations or parts thereof, which are contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 10. SEPARABILITY CLAUSE. If any provision of this law or the application thereof to any person or circumstance, is held invalid, the remainder of this law, or the application of such provision or part to other persons or circumstances, shall not be affected thereby.

SECTION 11. EFFECTIVITY CLAUSE. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,