

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL No. 5379

**INTRODUCED BY CWS PARTY-LIST REPRESENTATIVE ROMEO
S. MOMO, SR.**

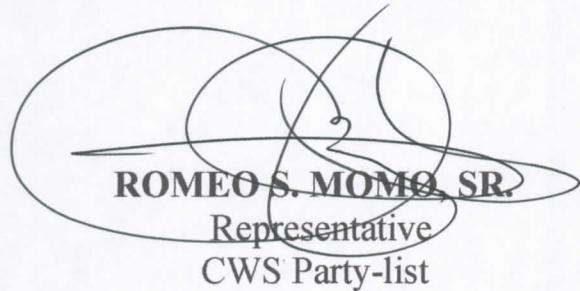
EXPLANATORY NOTE

Section 3, Article XIII of the Constitution explicitly provides that “the State shall afford full protection to labor, local and overseas, organized and unorganized and promote full employment opportunities for all.”

In pursuance of this expressed Constitutional mandate, Congress has the bounden duty to enact legislative measures that will protect and promote the welfare and safety of the people in the labor sector, especially the neglected and demeaned construction workers.

The bill therefore seeks to provide for a magna carta for all construction workers in order to protect their rights to a just and sufficient living wage, to self-organization and collective bargaining, security of tenure, and just and humane conditions of work. Non-compliance with this mandate will be penalized accordingly.

In view of the foregoing reasons, the approval of this important piece of legislation is earnestly sought.



ROMEO S. MOMO, SR.
Representative
CWS Party-list

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AN ACT
PROVIDING FOR A MAGNA CARTA FOR ALL WORKERS IN THE
CONSTRUCTION INDUSTRY

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 **MAGNA CARTA FOR ALL WORKERS IN THE CONSTRUCTION INDUSTRY.**

SEC. 2. *Declaration of Policy.* - The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The state shall ensure the rights of construction workers to livable and sufficient salary, to self-organization and collective bargaining, security of tenure, and just and humane conditions of work.

SEC. 3. *Coverage.* - This Act shall apply to all operations and undertakings in the construction industry and its subdivisions, namely; general building construction, general engineering construction and special trade construction, based on the classification code of the Philippine Construction Accreditation Board of the Construction Industry Authority of the Philippines; to companies and entities involved in demolition works; and to those falling

within the construction industry as determined by the Secretary of Labor and Employment.

SECTION 4. Employment Status

4.1 Classification of employees. – The employees in the construction industry are generally categorized as:

- a) project employee; and
- b) non-project employees.

Project employees are those employed in connection with a particular construction project or phase thereof and whose employment is co-terminus with each project or phase of the project to which they are assigned.

Non-project employees, on the other hand, are those employed without reference to any particular construction project or phase of a project.

4.2 Indicators of project employment. – Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.

- (a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.
- (b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.
- (c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.
- (d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.
- (e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions.
- (f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

4.3 Project completion and rehiring of workers. –

(a) The employees of a particular project are not separated from work at the same time. Some phases of the project are completed ahead of others. For this reason, the completion of a phase of the project is considered the completion of the project for an employee employed in such phase. Meanwhile, those employed in a particular phase of a construction project are also not separated at the same time. Normally, less and less employees are required as the phase draws closer to completion.

(b) Upon completion of the project or a phase thereof, the project employee may be rehired for another undertaking provided, however, that such rehiring conforms with the provisions of all applicable laws. In such case, the last day of service with the employer in the preceding project should be indicated in the employment.

4.4 Types of non-project employees. – Generally there are three (3) types of non-project employees: first, probationary employees; second, regular employees; and third, casual employees.

(a) **Probationary employees** are those who, upon the completion of the probationary period, are entitled to regularization. Upon their engagement, probationary employee should be informed of the reasonable standards under which they will qualify as regular employees.

(b) **Regular employees** are those appointed as such or those who have completed the probationary period or those appointed to fill up regular positions vacated as a result of death, retirement, resignation or termination of employment of the regular holders thereof.

(c) **Casual employees** are those employed to perform work not related to the main line of business of the Employer. Casual employees who are employed for at least one year, whether continuous or broken, shall be considered regular with respect to the activity in which they are employed and their employment shall continue for as long as such activity exists, unless the employment is terminated sooner by the employer for a just or authorized cause, or voluntarily by the employee.

4.5 Contracting and subcontracting. – The practice of contracting out certain phases of a construction project is recognized by law, particularly wage legislations and wage orders, and by industry practices. The Labor Code and its Implementing Regulations, specifically Department Order No. 174, s. 2017, allow the contracting out of jobs under certain conditions. Where such job contracting is permissible, the construction workers are generally considered as employees of the contractor or sub-contractor, as the case may be, subject Art. 109 of the Labor Code, as amended.

SECTION 5. Conditions of Employment

5.1 Security of tenure. Project employees who have become regular shall enjoy security of tenure in their employment as provided under Article 280 of the Labor Code, as amended. Where their services are terminated for a cause/causes, they are not by law entitled to separation pay. The just causes for terminating employment are enumerated under Article 282 of the Code. Where the services of regular employees are terminated for any of the authorized causes under Article 283, as distinguished from just causes, they are entitled to separation pay.

5.2 Project employees not entitled to separation pay. – The project employees contemplated by paragraph 5.1 hereof are not by law entitled to separation pay if their services are terminated as a result of the completion of the project or any phase thereof in which they are employed. Likewise, project employees whose services are terminated because they have no more to do or their services are no longer needed in the particular phase of the project are not by law entitled to separation pay.

5.3 Project employees entitled to separation pay. – Project employees whose aggregate period of continuous employment in a construction company is at least one year shall be considered regular employees, in the absence of a “day certain” agreed upon by the parties for the termination of their relationship. Project employees who have become regular shall be entitled to separation pay.

A “day” as used herein, is understood to be that which must necessarily come, although it may not be known exactly when. This means that where the final completion of project or phase thereof is in fact determinable and the expected completion is made known to the employee, such project employee may not be considered regular, notwithstanding the one-year duration of two or more employments in the same projects or phase of the project.

The completion of the project or any phase thereof is determined on the date originally agreed upon or the date indicated on the contract or, if the same is extended, the date of termination of project extension.

If the project or the phase of the project the employee is working on has not yet been completed and his services are terminated without just cause or authorized cause and there is no showing that this services are unsatisfactory, the project employee is entitled to reinstatement with backwages to his former position or substantially equivalent position. If the reinstatement is no longer possible, the employee is entitled to his salaries for the unexpired portion of the agreement.

5.4 Completion of the project. – Project employees who are separated from work as a result of the completion of the project or a phase thereof in which they are employed **are entitled to the pro-rata completion bonus**. The pro-rata completion bonus may be based on the industry practice which is at least the employee's one-half (1/2) month salary for every 12 months of service and may be put into effect for any project bid (in case of bid projects) tender submitted (in case of negotiated projects) thirty (30) days from the date of effectivity of this Act.

5.5 Statutory benefits. – During the period of their employment, the construction employees whether project or non-project shall enjoy all the benefits due to them under the law, both monetary and non-monetary.

5.6 Payment by results. – Where the payment for work or services rendered is by results, e.g., piece rate or "pakiao", the rate shall be determined on the basis of not less than the minimum wage applicable in the region where the construction project is located. The minimum wage rates of workers who are paid by results may be determined by the appropriate DOLE Regional Office on its initiative or upon request of interested parties.

SECTION 6. Preventive Suspension - Subject to Article 277 (b) of the Code, project and non-project employees may be preventively suspended if their continued employment poses a serious and imminent threat to the life or property of the employer or of their co-workers. No preventive suspension, however, shall last longer than fifteen (15) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of

extension, he pays the wages and other benefits due to the worker. The employer shall designate a day, time and place within the period of preventive suspension, with notice of the employee, to hold a fact-finding investigation, to enable the suspended employee to be heard and be assisted by his counsel or representative, if he so desires, of the charge and against him and thereby exonerate the employee, or upon the employee's failure to vindicate himself, to find the employee guilty and thereby, to terminate his employment. Such termination shall not prejudice the right of the employee to question the severance of the relationship in the appropriate forum.

SECTION 7. Self-Organization and Collective Bargaining - In recognition of the right of employees to self-organization and collective bargaining, this Act hereby encourages the formation of "trade" unions in the construction industry, provided that the formation or activities of a recognized trade unions will not prejudice existing bargaining units, subject to existing laws. As used herein, trade unions refer to a combination or workers of the same trade or of several allied trades, for purpose of securing by united action the most favorable conditions regarding wages, hours of labor and other terms and conditions of employment for its members.

SECTION 8. Liabilities/Responsibilities of the Employer and the Workers.

8.1 Requirements of labor and social legislations. –

(a) The construction company and the general contractor and/or subcontractor shall be responsible for the workers in its employ on matters of compliance with the requirements of existing laws and regulations on hours of work, wages, wage-related benefits, health, safety and social welfare benefits including submission to the DOLE-Regional Office of Work Accident/Illness Report, Monthly Report on Employees Terminations/Dismissals/Suspensions and other reports. The prime/general contractor shall exercise sound judgement and discretion in contracting out projects to ensure compliance with labor standards.

(b) Project and non-project employees shall observe the requirements of labor and social legislations and reasonable company rules and regulations on matters pertaining to their obligations.

8.2 Implementation of Safety and Health Standards. – The Department of Labor and Employment through its Regional Offices shall strictly enforce the Occupational Safety and Health Standards, as provided for by R.A. 11058 (**An Act Strengthening Compliance with Occupational Safety and Health Standards and Providing Penalties Thereof**) and DOLE Department Order 198, series of 2018 (**Implementing Rules and Regulations of R.A. 11058**). The Bureau of Working Conditions, the Department may issue a code of practice on Occupational Safety and Health for the construction industry.

SEC 9. Wage Increases. – As regards wage increases, whether mandated or agreed upon by the parties, the prescribed increase in the wage rates of the workers in construction projects shall be borne by the principals or clients of the construction contractors and the contracts shall be deemed amended accordingly. The wage rates of projects employees shall depend on the skills or level of competence of such project employees as determined by the Department of Labor and Employment's NMYC Trade and Standards subscribed to by the Philippine Construction Industry, provided that the rates established shall not be lower than prescribed by the appropriate wage order and regulations. The liability in subsequent mandated rates of wage increases and/or allowances to construction workers shall be determined in accordance with the provisions of the applicable wage legislations or orders.

SEC. 10. Employer's Responsibility and Liability. – The employer, project owner, general contractor, contractor or subcontractor, if any, and any person who manages, controls or supervises the work being undertaken shall be jointly and solidarily liable for compliance with this Act.

SEC. 11. Visitorial Power of the Secretary of Labor and Employment. – Pursuant to Article 128 of the Labor Code of the Philippines, as amended, and other applicable laws, the Secretary of Labor and Employment or the Secretary's authorized representatives shall have the authority to enforce mandatory occupational safety and health standards in all establishments, and conduct, together with labor and employer representatives, an annual spot audit to ensure compliance with the provisions of this Act. The Secretary or the Secretary's duly authorized representatives can enter workplaces at any time of the day or night where work is being performed, to examine records and investigate facts, conditions or matters necessary to determine compliance with the provisions of this Act.

No person or entity shall obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor and Employment or the Secretary's duly authorized representatives, issued pursuant to the authority granted under Article 128 of the Labor Code of the Philippines, as amended, and no inferior court or entity shall issue a temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders.

The Secretary of Labor and Employment may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when noncompliance with law or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace.

The Secretary of Labor and Employment or the Secretary's duly authorized representatives shall inspect establishments and workplaces regardless of the size and nature of operation, and shall disallow self-inspection or any form of employer discretion-based compliance with occupational safety and health laws. However, chartered cities may be allowed to conduct industrial safety inspections of establishments within their jurisdiction in coordination with the DOLE: *Provided*, that they have adequate facilities and competent personnel for the purpose as determined by the DOLE and subject to national standards established by the latter.

SEC. 12. Employee's Compensation Claim. – A worker may file claims for compensation benefit arising out of work-related disability or death. Such claims shall be processed independently of the finding of fault, gross negligence or bad faith of the employer in a proceeding instituted for the purpose.

SEC 12. Employment Insurance. – A worker who is involuntarily separated from service or employment due to a violation of this Act shall be entitled to a monthly cash support equivalent to the existing monthly minimum wage for a maximum of six (6) months: *Provided*, That the worker has at least six (6) months of contribution prior to the involuntary separation. For this purpose, the Social Security System (SSS) shall promulgate the appropriate rules and regulations.

SEC. 32. Implementing Rules and Regulations. – The DOLE, in coordination with agencies concerned, shall formulate its rules and regulations

within ninety (90) days after the effectivity of this Act.

SEC. 33. *Separability Clause.* – If any part, section or provision of this Act shall be held invalid or unconstitutional, the other provisions not affected by such declaration shall remain in full force and effect.

SEC. 34. *Repealing Clause.* – All laws, acts, decrees, executive orders, rules and regulations or other issuances or parts thereof which are inconsistent with this Act are hereby modified or repealed.

SEC. 35. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.