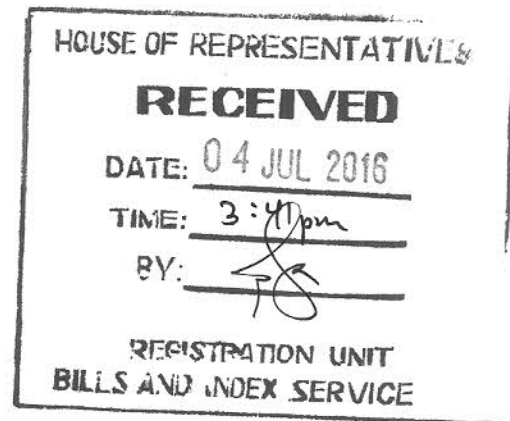


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila
SEVENTEENTH CONGRESS
First Regular Session

H.B. No. **916**



Introduced by Representative Herminio Harry L. Roque, Jr.

THE ANTI-EDO ACT

EXPLANATORY NOTE

This proposed Bill give fixed-term employees (contractual employees) the right in principle not to be treated less favorably than permanent employees of the same employer doing similar work. The right, which is exercisable by complaint to the National Labor relations Commission, applies where the less favorable treatment is on the ground that the employee is fixed-term and is not justified on objective grounds.

This proposed Bill make provision about what constitutes objective justification.

This Bill also provide that where a fixed-term employee who has been continuously employed on fixed-term contracts for four years or more is re-engaged on a fixed-term contract without his continuity being broken, the new contract has effect under the law as a permanent contract unless the renewal on a fixed-term basis was objectively justified.

This proposed law seeks to remove discrimination in statutory rights between fixed-term employees (or certain types of fixed-term employees) and permanent employees.

This Bill implements the Constitutional right of the people to security of tenure.


REP. HERMINIO HARRY L. ROQUE, JR.

HOUSE OF REPRESENTATIVES
H.B. No. 916

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THE ANTI-EDO ACT

CITATION, COMMENCEMENT AND INTERPRETATION

1. —(1) These Regulations may be cited as the Fixed-term Employees
(Prevention of Less Favorable Treatment) of 2016

(2) In these Regulations— “employer”, in relation to any employee, means
the person by whom the employee is (or, where the employment has ceased, was)
employed;

“fixed-term contract” means a contract of employment that, under its
provisions determining how it will terminate in the normal course, will terminate—

- a) on the expiry of a specific term,
- b) on the completion of a particular task, or
- c) on the occurrence or non-occurrence of any other specific event other than
the attainment by the employee of any normal and bona fide retiring age in
the establishment for an employee holding the position held by him,

and any reference to “fixed-term” shall be construed accordingly;
“fixed-term employee” means an employee who is employed under a fixed-
term contract;

“permanent employee” means an employee who is not employed
under a fixed-term contract, and any reference to “permanent employment”
shall be construed accordingly;

“pro rata principle” means that where a comparable permanent
employee receives or is entitled to pay or any other benefit, a fixed-term
employee is to receive or be entitled to such proportion of that pay or other
benefit as is reasonable in the circumstances having regard to the length of his
contract of employment and to the terms on which the pay or other benefit is
offered;

1 “renewal” includes extension and references to renewing a contract
2 shall be construed accordingly;
3

4 **COMPARABLE EMPLOYEES**

5 2.—(1) For the purposes of these Regulations, an employee is a comparable
6 permanent employee in relation to a fixed-term employee if, at the time when the
7 treatment that is alleged to be less favorable to the fixed-term employee takes place,

8 a) both employees are —

9 (i) employed by the same employer, and

10 (ii) engaged in the same or broadly similar work having regard, where
11 relevant, to whether they have a similar level of qualification and skills;
12 and

13 (ii) the permanent employee works or is based at the same
14 establishment as the fixed-term employee or, where there is no
15 comparable permanent employee working or based at that
16 establishment who satisfies the requirements of sub-paragraph
17 (a), works or is based at a different establishment and satisfies
18 those requirements.

19 (2) For the purposes of paragraph (1), an employee is not a comparable
20 permanent employee if his employment has ceased.
21

22 **LESS FAVOURABLE TREATMENT OF FIXED-TERM EMPLOYEES**

23 3.— (1) A fixed-term employee has the right not to be treated by his employer
24 less favorably than the employer treats a comparable permanent employee —

25 a) as regards the terms of his contract; or

26 b) by being subjected to any other detriment by any act, or deliberate
27 failure to act, of his employer.

28 (2) Subject to paragraphs (3) and (4), the right conferred by paragraph (1)
29 includes in particular the right of the fixed-term employee in question not to be
30 treated less favorably than the employer treats a comparable permanent employee in
31 relation to —

32 a) any period of service qualification relating to any particular condition
33 of service,

34 b) the opportunity to receive training, or

35 c) the opportunity to secure any permanent position in the establishment.

36 (3) The right conferred by paragraph (1) applies only if —

1 a) the treatment is on the ground that the employee is a fixed-term
2 employee, and

3 b) the treatment is not justified on objective grounds.
4

5 (5) In determining whether a fixed-term employee has been treated less
6 favorably than a comparable permanent employee, the pro rata principle shall be
7 applied unless it is inappropriate.
8

9 (6) In order to ensure that an employee is able to exercise the right conferred
10 by paragraph (1) as described in paragraph (2)(c) the employee has the right to be
11 informed by his employer of available vacancies in the establishment.
12

13 (7) For the purposes of paragraph (6) an employee is "informed by his
14 employer" only if the vacancy is contained in an advertisement which the employee
15 has a reasonable opportunity of reading in the course of his employment or the
16 employee is given reasonable notification of the vacancy in some other way.
17

18 **OBJECTIVE JUSTIFICATION**

19
20 4.—(1) Where a fixed-term employee is treated by his employer less favorably
21 than the employer treats a comparable permanent employee as regards any term of
22 his contract, the treatment in question shall be regarded for the purposes of
23 regulation 3(3)(b) as justified on objective grounds if the terms of the fixed-term
24 employee's contract of employment, taken as a whole, are at least as favorable as the
25 terms of the comparable permanent employee's contract of employment.
26

27 28 **RIGHT TO RECEIVE A WRITTEN STATEMENT OF REASONS FOR LESS** 29 **FAVOURABLE TREATMENT**

30
31 5.—(1) If an employee who considers that his employer may have treated him
32 in a manner which infringes a right conferred on him by regulation 3 requests in
33 writing from his employer a written statement giving particulars of the reasons for
34 the treatment, the employee is entitled to be provided with such a statement within
35 twenty-one days of his request.

36 (2) A written statement under this regulation is admissible as evidence in
37 any proceedings under these law.

1 (3) If it appears to the tribunal in any proceedings under these
2 Regulations—

- 3 a) that the employer deliberately, and without reasonable excuse, omitted
4 to provide a written statement, or
5 b) that the written statement is evasive or equivocal, it may draw any
6 inference which it considers it just and equitable to draw, including an
7 inference that the employer has infringed the right in question.
8

9 (4) This regulation does not apply where the treatment in question consists of
10 the dismissal of an employee, and the employee is entitled to a written statement of
11 reasons for his dismissal .

12
13 **UNFAIR DISMISSAL AND THE RIGHT NOT TO BE SUBJECTED TO**
14 **DETRIMENT**
15

16 6.—(1) An employee who is dismissed shall be regarded as unfairly dismissed
17 if the reason (or, if more than one, the principal reason) for the dismissal is a reason
18 specified in paragraph (3).

19 (2) An employee has the right not to be subjected to any detriment by any act,
20 or any deliberate failure to act, of his employer done on a ground specified in
21 paragraph (3).

22 (3) The reasons or, as the case may be, grounds are—

- 23 (i) that the employee—brought proceedings against the employer
24 under this law;
25 (ii) requested from his employer a written statement under regulation 5
26 or regulation 9;
27 (iii) gave evidence or information in connection with such
28 proceedings brought by any employee;
29 (iv) otherwise did anything under these Regulations in relation to
30 the employer or any other person;
31 (v) alleged that the employer had infringed these Regulations;
32 (vi) refused (or proposed to refuse) to forgo a right conferred on him
33 by these Regulations;

- 1 (vii) declined to sign a workforce agreement for the purposes of
2 these Regulations, or
- 3 (viii) being – a representative of members of the workforce for the
4 purposes of Schedule 1, or
- 5 a) a candidate in an election in which any person elected will, on
6 being elected, become such a representative, performed (or
7 proposed to perform) any functions or activities as such a
8 representative or candidate, or
- 9 b) that the employer believes or suspects that the employee has
10 done or intends to do any of the things mentioned in sub-
11 paragraph (a).

12 (4) Where the reason or principal reason for dismissal or, as the case may be,
13 ground for subjection to any act or deliberate failure to act, is that mentioned in
14 paragraph (3)(a)(v), or (b) so far as it relates thereto, neither paragraph (1) nor
15 paragraph (2) applies if the allegation made by the employee is false and not made
16 in good faith.

17 18 19 **COMPLAINTS TO National Labor Relations Commission**

20
21 7. – (1) An employee may present a complaint to the National Labor Relations
22 Commission that his employer has infringed a right conferred on him by this law
23

24 (2) Subject to paragraph (3), the National Labor Relations Commission
25 shall not consider a complaint under this regulation unless it is presented before the
26 end of the period of three months beginning –

- 27 a) in the case of an alleged infringement of a right conferred by regulation
28 3(1) or 6(2), with the date of the less favourable treatment or detriment
29 to which the complaint relates or, where an act or failure to act is part
30 of a series of similar acts or failures comprising the less favourable
31 treatment or detriment, the last of them;
- 32 b) in the case of an alleged infringement of the right conferred by
33 regulation 3(6), with the date, or if more than one the last date, on
34 which other individuals, whether or not employees of the employer,
35 were informed of the vacancy.
- 36
37

1 (3) A tribunal may consider any such complaint which is out of time if, in all
2 the circumstances of the case, it considers that it is just and equitable to do so.

3
4 (4) For the purposes of calculating the date of the less favourable treatment or
5 detriment under paragraph (2)(a) —

6 a) where a term in a contract is less favourable, that treatment shall be
7 treated, subject to paragraph (b), as taking place on each day of the
8 period during which the term is less favourable;

9 b) a deliberate failure to act contrary to regulation 3 or 6(2) shall be
10 treated as done when it was decided on.

11
12 (5) In the absence of evidence establishing the contrary, a person shall be
13 taken for the purposes of paragraph (4)(b) to decide not to act —

14 a) when he does an act inconsistent with doing the failed act; or

15 b) if he has done no such inconsistent act, when the period expires within which
16 he might reasonably have been expected to have done the failed act if it was
17 to be done.

18
19 (6) Where an employee presents a complaint under this regulation in relation
20 to a right conferred on him by regulation 3 or 6(2) it is for the employer to identify
21 the ground for the less favourable treatment or detriment.

22
23 (7) Where an employment tribunal finds that a complaint presented to it
24 under this regulation is well founded, it shall take such of the following steps as it
25 considers just and equitable —

26 a) making a declaration as to the rights of the complainant and the employer in
27 relation to the matters to which the complaint relates;

28 b) ordering the employer to pay compensation to the complainant;

29 c) recommending that the employer take, within a specified period, action
30 appearing to the tribunal to be reasonable, in all the circumstances of the case,
31 for the purpose of obviating or reducing the adverse effect on the complainant
32 of any matter to which the complaint relates.

33
34 (8) Where a tribunal orders compensation under paragraph (7)(b), the amount
35 of the compensation awarded shall be such as the tribunal considers just and
36 equitable in all the circumstances having regard to —

37 a) the infringement to which the complaint relates, and

38 b) any loss which is attributable to the infringement.

1 (9) The loss shall be taken to include—

- 2 a) any expenses reasonably incurred by the complainant in consequence of the
3 infringement, and
4 b) loss of any benefit which he might reasonably be expected to have had but for
5 the infringement.

6
7 (10) Compensation in respect of treating an employee in a manner which
8 infringes the right conferred on him by regulation 3 shall not include compensation
9 for injury to feelings.

10
11 (11) In ascertaining the loss the tribunal shall apply the same rule concerning
12 the duty of a person to mitigate his loss as applies to damages recoverable under
13 the common law of England and Wales or (as the case may be) the law of Scotland.

14
15 (12) Where the tribunal finds that the act, or failure to act, to which the
16 complaint relates was to any extent caused or contributed to by action of the
17 complainant, it shall reduce the amount of the compensation by such proportion as it
18 considers just and equitable having regard to that finding.

19
20 (13) If the employer fails, without reasonable justification, to comply with a
21 recommendation made by an employment tribunal under paragraph (7)(c) the
22 tribunal may, if it thinks it just and equitable to do so—

- 23 a) increase the amount of compensation required to be paid to the complainant
24 in respect of the complaint, where an order was made under paragraph (7)(b);
25 or
26 b) make an order under paragraph (7)(b).

27
28 **SUCCESSIVE FIXED-TERM CONTRACTS**

29
30 8.—(1) This regulation applies where—

- 31 a) an employee is employed under a contract purporting to be a fixed-
32 term contract, and
33 b) the contract mentioned in sub-paragraph (a) has previously been
34 renewed, or the employee has previously been employed on a fixed-
35 term contract before the start of the contract mentioned in sub-
36 paragraph (a).

37
38 (2) Where this regulation applies then, with effect from the date specified
39 in paragraph (3), the provision of the contract mentioned in paragraph (1)(a) that

1 restricts the duration of the contract shall be of no effect, and the employee shall
2 be a permanent employee, if –

- 3 a) the employee has been continuously employed under the contract
4 mentioned in paragraph 1(a), or under that contract taken with a
5 previous fixed-term contract, for a period of four years or more, and
- 6 b) the employment of the employee under a fixed-term contract was not
7 justified on objective grounds –
 - 8 (i) where the contract mentioned in paragraph (1)(a) has been renewed, at
9 the time when it was last renewed;
 - 10 (ii) where that contract has not been renewed, at the time when it was
11 entered into.

12
13 (3) The date referred to in paragraph (2) is whichever is the later of –

- 14 a) the date on which the contract mentioned in paragraph (1)(a) was
15 entered into or last renewed, and
- 16 b) the date on which the employee acquired four years' continuous
17 employment.

18
19 (4) For the purposes of this regulation Chapter 1 of Part 14 of the 1996
20 Act shall apply in determining whether an employee has been continuously
21 employed, and any period of continuous employment falling before the 10th July
22 2002 shall be disregarded.

23
24 (5) A collective agreement or a workforce agreement may modify the
25 application of paragraphs (1) to (3) of this regulation in relation to any employee or
26 specified description of employees, by substituting for the provisions of paragraph
27 (2) or paragraph (3), or for the provisions of both of those paragraphs, one or more
28 different provisions which, in order to prevent abuse arising from the use of
29 successive fixed-term contracts, specify one or more of the following –

- 30 a) the maximum total period for which the employee or employees of that
31 description may be continuously employed on a fixed-term contract or
32 on successive fixed-term contracts;
- 33 b) the maximum number of successive fixed-term contracts and renewals
34 of such contracts under which the employee or employees of that
35 description may be employed; or
- 36 c) objective grounds justifying the renewal of fixed-term contracts, or the
37 engagement of the employee or employees of that description under
38 successive fixed-term contracts, and those provisions shall have effect
39 in relation to that employee or an employee of that description as if
40 they were contained in paragraphs (2) and (3).

RIGHT TO RECEIVE WRITTEN STATEMENT OF VARIATION

9.—(1) If an employee who considers that, by virtue of regulation 8, he is a permanent employee requests in writing from his employer a written statement confirming that his contract is no longer fixed-term or that he is now a permanent employee, he is entitled to be provided, within twenty-one days of his request, with either—

- a) such a statement, or
- b) a statement giving reasons why his contract remains fixed-term.

(2) If the reasons stated under paragraph (1)(b) include an assertion that there were objective grounds for the engagement of the employee under a fixed-term contract, or the renewal of such a contract, the statement shall include a statement of those grounds.

(3) A written statement under this regulation is admissible as evidence in any proceedings before a court, an employment tribunal and the Commissioners of the Inland Revenue.

(4) If it appears to the court or tribunal in any proceedings—

- a) that the employer deliberately, and without reasonable excuse, omitted to provide a written statement, or
- b) that the written statement is evasive or equivocal, it may draw any inference which it considers it just and equitable to draw.

(5) An employee who considers that, by virtue of regulation 8, he is a permanent employee may present an application to an employment tribunal for a declaration to that effect.

(6) No application may be made under paragraph (5) unless—

- a) the employee in question has previously requested a statement under paragraph (1) and the employer has either failed to provide a statement or given a statement of reasons under paragraph (1)(b), and
- b) the employee is at the time the application is made employed by the employer.

1 **LIABILITY OF EMPLOYERS AND PRINCIPALS**

2
3 12.—(1) Anything done by a person in the course of his employment shall be
4 treated for the purposes of these Regulations as also done by his employer, whether
5 or not it was done with the employer's knowledge or approval.
6

7 (2) Anything done by a person as agent for the employer with the authority of
8 the employer shall be treated for the purposes of these Regulations as also done by
9 the employer.
10

11 (3) In proceedings under these Regulations against any person in respect of an
12 act alleged to have been done by an employee of his, it shall be a defence for that
13 person to prove that he took such steps as were reasonably practicable to prevent the
14 employee from —

- 15 a) doing that act, or
16 b) doing, in the course of his employment, acts of that description.
17

18 **AGENCY WORKERS**

19
20 19.—(1) These Regulations shall not have effect in relation to employment
21 under a fixed-term contract where the employee is an agency worker.
22

23 (2) In this regulation "agency worker" means any person who is supplied by
24 an employment business to do work for another person under a contract or other
25 arrangements made between the employment business and the other person.
26

27 (3) In this regulation "employment business" means the business (whether or
28 not carried on with a view to profit and whether or not carried on in conjunction
29 with any other business) of supplying persons in the employment of the person
30 carrying on the business, to act for, and under the control of, other persons in any
31 capacity.
32

33 Penal Clause- Any person, corporation, partnership that violates any and all
34 provisions of this at shall be punished with a penalty ranging from 6 years and 1 day
35 up to 12 years of imprisonment, and liable to pay a fine of not less than 500,000.00
36 pesos.

37 Approved,

38 