SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 1351

Introduced by Hon. Karlo Alexei B. Nograles and Hon. Jericho Jonas B. Nograles

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EXPLANATORY NOTE

To address the issue on blurring of employer-employee relationship and issues on circumvention of the law on security of tenure to numerous employment engagement such as probationary, project, fixed term, casual, seasonal, temporary, extra, among others, and resort to 5-5-5 work arrangements, this bill is being proposed to secure compliance with Constitutional and statutory guarantee on the right to security of tenure.
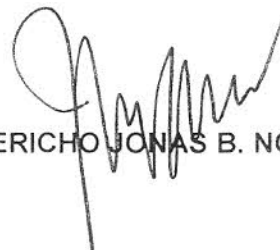
The bill proposes the following: 1) reiterating the right to security of tenure to the effect that all employees shall not be dismissed without cause and due process; 2) defining the criteria for the existence of employer-employee relationship; 3) classifying all employees as regular except those under probationary employment, or those under industry-specific work arrangement as may be determined by the Secretary of Labor and Employment through tripartite consultation; and 4) providing for probationary employment which shall not exceed six months.

The bill provides that repeated engagement of the same employee after the expiration of probationary employment or contract of employment in industry-specific work arrangement would render the employment regular.

Thus, the passage of this bill is earnestly sought.

KARLO ALEXEI B. NOGRALES

JERICHO JONAS B. NOGRALES

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An Act Defining and Classifying Employment Relationship Amending for this Purpose Articles 279, 280 and 281 of Presidential Degree No. 442, Otherwise known as the Labor Code of the Philippines, as amended

SECTION 1. Article 279 of the Labor Code, as amended, is hereby amended to read as follows:

"ARTICLE 279 [293]. SECURITY OF TENURE. – ALL EMPLOYEES IRRESPECTIVE OF EMPLOYMENT STATUS OR POSITION SHALL NOT BE DISMISSED WITHOUT CAUSE AND DUE PROCESS.

AN ILLEGALLY DISMISSED EMPLOYEE WHO IS DISMISSED WITHOUT CAUSE AND DUE PROCESS SHALL BE ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND BENEFITS, AND FULL BACKWAGES, ALLOWANCES, COMMISSION INCLUDING SSS, PHILHEALTH, PAG-IBIG AND ALL OTHER 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.

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

SECTION 2. Article 280 [294] of the Labor Code, as amended, is hereby amended to read as follows:

ARTICLE 280 [294]. 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 THE MANNER AND MEANS IN REACHING THE END.

PAYMENT OF REMUNERATION TO THE WORKER ALSO INDICATES THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP.

SECTION 3. Article 280 [294] of the Labor Code, as amended, is hereby amended to read as follows:

ARTICLE 280-A. STATUS OF EMPLOYMENT. - ALL EMPLOYEES ARE DEEMED REGULAR EXCEPT:

1. THOSE UNDER PROBATIONARY EMPLOYMENT WHICH SHALL NOT EXCEED SIX (6) MONTHS AND AS DEFINED IN ARTICLE 281 OF THIS ACT; OR
2. THOSE UNDER INDUSTRY-SPECIFIC WORK ARRANGEMENT AS MAY BE DETERMINED BY THE SECRETARY OF LABOR AND EMPLOYMENT THROUGH TRIPARTITE APPROVAL PROVIDED THAT THERE SHALL BE WRITTEN CONTRACT OF EMPLOYMENT WHICH MUST NOT BE LESS THAN SIX MONTHS BUT NOT MORE THAN ONE YEAR SPECIFYING THE RIGHTS, TERMS AND CONDITIONS OF EMPLOYMENT NOT LOWER THAN THE MINIMUM STANDARDS SET BY LAWS OR REGULATIONS.

ENGAGEMENT OF THE SAME EMPLOYEE AFTER THE EXPIRATION OF THE PROBATIONARY EMPLOYMENT OR CONTRACT OF EMPLOYMENT IN INDUSTRY-SPECIFIC WORK ARRANGEMENT WOULD RENDER THE EMPLOYMENT REGULAR.

SECTION 4. Article 281 of the Labor Code, as amended, is hereby amended to read as follows:

ARTICLE 281 {295}. 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.

SECTION 5. 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 6. Repealing Clause. - All laws, decrees, rules, and regulations or parts thereof, which are contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 7. Separability Provisions. 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 of circumstances, shall not be affected thereby.

SECTION 8. Effectivity. 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,