

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Constitution Hills, Quezon City

EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3267



Introduced by Honorable Mark O. Go

EXPLANATORY NOTE

The Constitution provides that the State shall afford full protection to labor, local and overseas, organized and unorganized, and to promote full employment and equality of employment opportunities for all.

Cases of violation on the prohibition on labor-only contracting and what is commonly tagged as "5-5-5" or "endo" still exist within the ranks of the labor sector. Circumvention of the prohibition on labor-only contracting were committed despite the provisions of the Labor Code and its implementing rules, DOLE Department Order 18-A and Department Order 174. The situation, however, has been slightly addressed by the Department of Labor with its order for the regularization of employees in some firms.

The practices perpetuated by some contractors have developed a misconception and imputed a bad reputation on the whole manpower service industry as violator of workers' rights characterized by non-payment of proper wages, benefits and other incentives, and the execution of 5-month end of contract or "ENDO".

According to Philippine Statistics Authority (PSA), based on the 2015/2016 Integrated Survey on Labor and Employment (ISLE), 54.7 percent of firms or around 17,094 firms of the 31,277 establishments nationwide with at least 20 workers have hired agency workers under service agreements or contracts. Around 691,341 employees or 13.6 percent of the 5.076 million employed workers in June 2016 were agency workers. Most of the agency hired workers came from the manufacturing sector with 691,341 or 13.6% of the total 5.076 million persons engaged by the establishments in June 30, 2016.

In 2016, there is an estimate of 2,000,000 contractor's employees that covered those contractual workers who are employed under legitimate contractors registered with the Department of Labor and Employmen (DOLE). As per DOLE records, only 1,358 contractors have managed to comply with the requirements of DO 174 as of March 2018.

A study by the Boston Consulting Group reveals that service contracting has helped 61 million workers gain access to the international labor market. Service contracting is a worldwide trend.

The guiding principle of D.O.18-A provides: "Contracting and subcontracting arrangement are expressly allowed by law and are subject to regulations for the promotion of employment and the observance of the rights of workers to just and humane conditions of work, security of tenure, self-organization and collective bargaining."

It is the intent of this proposed measure to redefine and simplify job contracting and labor-only contracting under the term "outsourcing of work." Under this bill, outsourcing of work refers to the contracting out of work or service by an employer to a contractor or subcontractor whose employees perform functions and activities which are directly or indirectly related to the principal business of the employer.

This bill seeks to regulate outsourcing of work by providing conditions for its practice and penalties for any violation. It also seeks to resolve recurring problems in the practice of service contracting and to achieve a "win-win" situation for both the employees and employers, being essential components of a progressive economy, and as partners in attaining sustainable growth and development for the country.

This is an opportune time to do what is necessary and to make changes in the light of current global order that will be beneficial for our employees, employers, manpower service contracting industry and the economy.

Hence, immediate consideration and approval of this proposed measure is earnestly sought.



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AN ACT
REGULATING THE OUTSOURCING OF WORK AMENDING FOR THE
PURPOSE ARTICLE 106 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED,
OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES

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

Section 1. Article 106 of Presidential Decree No. 442, as amended, is hereby further amended to read as follows:

“Article 106. ***OUTSOURCING OF WORK TO A contractor or subcontractor.*** - Whenever an employer enters into a contract with another person for the performance of the former’s work, the employees of the contractor and of the latter’s subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

[The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.]

[There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.]

FOR PURPOSE OF THIS DECREE, "OUTSOURCING OF WORK" REFERS TO THE CONTRACTING OUT OF WORK OR SERVICE BY AN EMPLOYER TO A CONTRACTOR OR SUB-CONTRACTOR WHOSE EMPLOYEES PERFORM FUNCTIONS AND ACTIVITIES WHICH ARE DIRECTLY OR INDIRECTLY RELATED TO THE PRINCIPAL BUSINESS OF THE EMPLOYER.

Sec. 2. A new article to be denominated as Article 106-A is hereby inserted to read as follows:

ART. 106-A. *PERIOD OF CONTRACT.* - THE PERIOD OF CONTRACT FOR OUTSOURCING OF WORK SHALL NOT BE LESS THAN SIX (6) MONTHS AND MAY BE SUBJECT FOR RENEWAL. DURING THE PERIOD OF THE CONTRACT, AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN THE EMPLOYEES AND CONTRACTOR OR SUB-CONTRACTOR. IN THE EVENT OF NON-PAYMENT OF WAGES, THE OBLIGATION OF THE EMPLOYER AND THE CONTRACTOR OR SUB-CONTRACTOR, AS PROVIDED UNDER THE SECOND PARAGRAPH OF THIS ARTICLE SHALL BE FOLLOWED.

Sec. 3. A new article to be denominated as Article 106-B is hereby inserted to read as follows:

ART. 106-B. *CONDITIONS FOR OUTSOURCING OF WORK.* - OUTSOURCING OF WORK SHALL BE ALLOWED UNDER THE FOLLOWING CONDITIONS:

1. EMPLOYEES OF THE CONTRACTOR OR SUB-CONTRACTOR SHALL NOT EXCEED 20% OF THE TOTAL EMPLOYEES OF AN EMPLOYER OR COMPANY;
2. WITHIN THE PERIOD OF HIS CONTRACT, EMPLOYEES OF THE CONTRACTOR OR SUB-CONTRACTOR SHALL NOT BE TERMINATED WITHOUT JUST CAUSE AND DUE PROCESS, AS PROVIDED BY EXISTING LAWS;
3. FOR OUTSOURCING OF WORK, IN CASE OF NON-COMPLETION OF THE CONTRACT PERIOD DUE TO THE FAULT OF THE EMPLOYER, EMPLOYEES OF THE CONTRACTOR OR SUB-CONTRACTOR ARE ENTITLED TO RECEIVE SALARY UP TO THE LAST DAY OF THE CONTRACT;

4. AFTER COMPLETION OF THE WORK OR PROJECT, THE EMPLOYEES OF THE CONTRACTOR OR SUB-CONTRACTOR ARE ENTITLED TO RECEIVE A SEPARATION PAY EQUIVALENT TO NUMBER OF MONTHS OVER TWELVE MULTIPLIED BY THE MONTHLY SALARY (MOS./12 X MONTHLY SALARY);

IN THE EVENT OF A RE-ASSIGNMENT OF THE EMPLOYEES OF THE CONTRACTOR OR SUB-CONTRACTOR TO ANOTHER PROJECT OF THE SAME CONTRACTOR, ALL ASSIGNMENTS IN VARIOUS PROJECTS SHALL BE THE BASIS IN COMPUTING AND DETERMINING THE NUMBER OF YEARS OF SERVICE RENDERED BY THE EMPLOYEES.

5. THE EMPLOYEES OF THE CONTRACTOR OR SUB-CONTRACTOR ARE ENTITLED TO OTHER BENEFITS AND INCENTIVES PROVIDED BY EXISTING LAWS;
6. THE RIGHT TO ORGANIZE SHALL BE GUARANTEED BY THE CONTRACTOR OR SUB-CONTRACTOR; AND
7. THE CONTRACTOR OR SUBCONTRACTOR SHALL PROVIDE SKILLS AND COMPETENCY TRAINING FOR THE EMPLOYEES.

Sec. 4. A new article to be denominated as Article 106-C is hereby inserted to read as follows:

ART. 106-C. **REGISTRATION.** - TO ENSURE COMPLIANCE TO THE PROVISIONS OF THIS DECREE, THE CONTRACTOR OR SUB-CONTRACTOR ENGAGED IN OUTSOURCING OF WORK MUST BE REGISTERED WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT WHICH SHALL EXERCISE ITS VISITORIAL POWER IN THE WORKPLACE OF THE EMPLOYEES OF THE CONTRACTOR OR SUB-CONTRACTOR.”

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Sec. 5. Article 288 of the same Decree, as amended, is hereby further amended to be read as follows:

“Article 288. **Penalties.** - XXX

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A CONTRACTOR, SUBCONTRACTOR, OR EMPLOYER WHO IS GUILTY OF VIOLATING ARTICLE 106 OF THIS DECREE SHALL BE IMPOSED THE PENALTY OF FIFTY THOUSAND PESOS TO ONE MILLION PESOS TO BE DETERMINED BY THE COURT.

FOR THE SECOND OFFENSE, THE CONTRACTOR OR SUB-CONTRACTOR SHALL BE IMPOSED THE PENALTY OF ONE HUNDRED THOUSAND PESOS TO TWO MILLION PESOS TO BE DETERMINED BY THE COURT AND SHALL BE SUBJECTED TO THE REVOCATION OF LICENSE TO OPERATE AN OUTSOURCING BUSINESS.

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Sec. 6. Separability Clause. – Should any provision of this Act be subsequently declared not constitutional, such declaration shall not affect the validity or the legality of the other provisions.

Sec. 7. Repealing Clause. - All laws, decrees, executive orders, letters of implementations, rules and regulations or part or parts thereof inconsistent with any provision of this Act are hereby repealed, modified, superseded or amended accordingly.

Sec. 8. Effectivity. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspapers of general circulation, whichever comes earlier.

Approved,