

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



'22 JUL -7 P3:18

SENATE

S.B. No. 145

RECEIVED BY: _____

INTRODUCED BY SENATOR RISA HONTIVEROS

**AN ACT
AGAINST THE PRACTICE OF "ENDO" AND CONTRACTING, AMENDING FOR
THIS PURPOSE ARTICLES 106 TO 109, 294 TO 296 OF AND ADDING A NEW
PROVISION TO PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS THE
LABOR CODE OF THE PHILIPPINES, AS AMENDED**

EXPLANATORY NOTE

The workers' Constitutional right to security of tenure has been rendered illusory by the prevalent abuse of non-regular work arrangements such as fixed term employment and contracting. Workers are forced to suffer poor working conditions and are unable to exercise their Constitutional right of self-organization, collective bargaining and negotiations, and their right to concerted activities including the right to strike.

Through legislation, the abuse of workers can stop by prohibiting abusive practices such as fixed term employment and contracting arrangements. The State should promote direct, regular employment for all. This way, the life of the individual worker will be improved, the workers' family will also be uplifted, and the nation's economy will also benefit.

The present bill has the following features designed to achieve this:

- Establishes a prohibition against contracting or subcontracting, except where a determination has been made by the National Tripartite Industrial Peace Council (NTIPC) that a specific activity may be legitimately contracted or subcontracted out;
- Imposes solidary liability on the employer for violations committed by the contractor or sub-contractor;
- Prohibits fixed-term employment contracts;

- Requires that all employees, except those under valid written probationary contracts, are deemed regular, including project and seasonal employees;
- Imposes penalties in the form of fine and imprisonment for violations

The passage of this bill is earnestly sought.


RISA HONTIVEROS
Senator

)
)
)



'22 JUL -7 P3:18

SENATE

S.B. No. 145

RECEIVED BY:

INTRODUCED BY SENATOR RISA HONTIVEROS

**AN ACT
AGAINST THE PRACTICE OF "ENDO" AND CONTRACTING, AMENDING FOR
THIS PURPOSE ARTICLES 106 TO 109, 294 TO 296 OF AND ADDING A NEW
PROVISION TO PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS THE
LABOR CODE OF THE PHILIPPINES, AS AMENDED**

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

1 SECTION 1. *Short Title.* – This Act shall be known as the "Anti-ENDO and
2 Contracting Law".

3 Sec. 2. Article 106 is hereby deleted and replaced as follows:

4 **"ART. 106. Prohibition Against Contracting or Subcontracting** - CONTRACTING,
5 WHERE A PERSON OR ENTITY FARMS OUT THE PERFORMANCE OF ITS BUSINESS OR
6 ANY PART THEREOF TO ANOTHER, IS HEREBY STRICTLY PROHIBITED EXCEPT AS
7 PROVIDED IN THE FOLLOWING PARAGRAPH.

8 THE SECRETARY OF LABOR AND EMPLOYMENT MAY, BASED ON THE UNANIMOUS
9 RECOMMENDATION OF THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL
10 (NTIPC) UNDER ART. 290 (C) OF THE LABOR CODE, AS AMENDED, DETERMINE BY
11 APPROPRIATE REGULATIONS SPECIFIC ACTIVITIES WHICH MAY BE CONTRACTED OUT.
12 NATURAL OR JURIDICAL PERSONS ENGAGED IN ANY ARRANGEMENT ACTING AS
13 PRINCIPALS IN VIOLATION OF THE PROHIBITION AGAINST CONTRACTING OR
14 SUBCONTRACTING SHALL AUTOMATICALLY BE CONSIDERED THE WORKER'S DIRECT
15 EMPLOYER AND THE LATTER SHALL BE DEEMED AS DIRECT EMPLOYEES FOR ALL
16 PURPOSES. NATURAL OR JURIDICAL PERSONS ACTING AS CONTRACTORS IN
17 VIOLATION OF THE PROHIBITION AGAINST CONTRACTING OR SUBCONTRACTING
18 SHALL BE CONSIDERED MERELY AS AN AGENT OF THE EMPLOYER."

19 Sec. 3. Articles 107 is hereby deleted and replaced to read as follows:

20 **ART. 107. CONDITIONS ON CONTRACTING.** – CONTRACTING ALLOWED UNDER
21 THE PRECEDING ARTICLE SHALL BE DONE ONLY IF THE NATURAL OR JURIDICAL

1 PERSON ACTING AS CONTRACTOR OBTAINS A LICENSE FROM THE DEPARTMENT OF
2 LABOR AND EMPLOYMENT AND ONLY IF IT PERFORMS A JOB, WORK OR SERVICE
3 IDENTIFIED BY THE SECRETARY OF LABOR AND EMPLOYMENT, BASED ON THE
4 UNANIMOUS RECOMMENDATION OF THE NATIONAL TRIPARTITE INDUSTRIAL PEACE
5 COUNCIL (NTIPC) UNDER ART. 290 (C) OF THE LABOR CODE.

6 SUCH LICENSE SHALL BE ISSUED AND MAINTAINED ONLY IF THE APPLICANT FULFILLS
7 ALL OF THE FOLLOWING:

8 (A) HAS A PAID-UP CAPITAL OR NET WORTH OF AT LEAST FIFTY MILLION PESOS
9 (P50,000,000.00), WHICH MAY BE INCREASED BY THE SECRETARY OF LABOR AND
10 EMPLOYMENT AS DEEMED APPROPRIATE THROUGH TRIPARTITE CONSULTATION;

11 (B) HAS A CORE OF REGULAR EMPLOYEES CONSISTING OF COMPETENT
12 PROFESSIONALS OR SKILLED WORKERS ESPECIALLY TRAINED TO PERFORM THE JOB,
13 WORK OR SERVICE TO BE CONTRACTED OUT;

14 (C) HAS INVESTMENT IN THE FORM OF EQUIPMENT, MACHINERIES OR TOOLS
15 WHICH ARE REASONABLY NECESSARY TO PERFORM OR COMPLETE THE JOB, WORK,
16 OR SERVICE TO BE CONTRACTED OUT;

17 (D) EXERCISES EXCLUSIVE CONTROL OVER THE PERFORMANCE AND
18 COMPLETION OF THE JOB, WORK, OR SERVICE CONTRACTED OUT;

19 (E) OBTAINS CERTIFICATION OF COMPLIANCE WITH LABOR AND SOCIAL
20 WELFARE LAWS INCLUDING PROOF OF PAYMENT OF SOCIAL SECURITY, PHILIPPINE
21 HEALTH INSURANCE CORPORATION, AND HOME DEVELOPMENT MUTUAL FUND (PAG-
22 IBIG) CONTRIBUTIONS; AND

23 (F) PAYS A LICENSE FEE, WHICH SHALL NOT BE LOWER THAN FIVE HUNDRED
24 THOUSAND PESOS (P500,000.00).

25 THE LICENSE SHALL BE VALID FOR A PERIOD OF ONE (1) YEAR AND MAY BE RENEWED
26 UPON COMPLIANCE WITH THE REQUIREMENTS PRESCRIBED ABOVE AND OTHER
27 REQUIREMENTS AS MAY BE DETERMINED BY THE DEPARTMENT OF LABOR AND
28 EMPLOYMENT PROVIDED THAT THE JOB, WORK, OR SERVICE TO BE PERFORMED
29 CONTINUES TO BE DETERMINED BY THE SECRETARY OF LABOR AND EMPLOYMENT AS
30 VALID FOR CONTRACTING BASED ON THE UNANIMOUS RECOMMENDATION OF THE
31 NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL (NTIPC).

32 IN ALL CASES, THE JOB CONTRACTOR SHALL DEMONSTRATE THAT IT HAS FINANCIAL
33 CAPACITY TO CARRY ON ITS BUSINESS BASED ON FACTORS SUCH AS, BUT NOT
34 LIMITED, TO THE NUMBER OF ITS EMPLOYEES AND THE NATURE OF ITS BUSINESS.

35 ANY LEGITIMATE LABOR ORGANIZATION SHALL HAVE ACCESS TO COPIES OF LICENSES
36 ISSUED TO JOB CONTRACTORS AND ANY AND ALL SUBMISSIONS MADE IN

1 CONNECTION WITH SUCH LICENSE.

2 FOR THIS PURPOSE, THE SECRETARY OF LABOR AND EMPLOYMENT, IN CONSULTATION
3 WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL (NTIPC), SHALL ISSUE
4 THE APPROPRIATE REGULATIONS FOR THE LICENSING, RENEWAL, SUSPENSION, AND
5 REVOCATION OF LICENSES OF CONTRACTORS.

6 IN NO CASE SHALL PRIVATE RECRUITMENT AND PLACEMENT AGENCIES (PRPA) OR
7 PRIVATE EMPLOYMENT AGENCIES (PEA) UNDER ARTICLE 25 OF THE LABOR CODE, AS
8 AMENDED, BE ALLOWED TO ENGAGE IN CONTRACTING."

9 Sec. 4. Articles 108 of the Labor Code is hereby deleted.

10 Sec. 5. Article 294 of the Labor Code is hereby amended as follows:

11 **"ART. 294. Security of Tenure.** – [In case or regular employment, the employer shall
12 not terminate] [t]The services of an employee, IRRESPECTIVE OF EMPLOYMENT STATUS
13 OR POSITION, SHALL NOT BE TERMINATED except for a just cause or when authorized
14 by this Title. An employee who is unjustly dismissed from work shall be entitled to
15 reinstatement without loss of seniority rights and other privileges and to his/HER full
16 backwages, inclusive of allowances, and to his/HER other benefits or their monetary
17 equivalent computed from the time his/HER compensation was withheld from him/HER
18 up to the time of his/HER actual reinstatement.

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

21 Sec. 6. Article 295 is hereby deleted and replaced to read as follows:

22 **"ARTICLE 295. STATUS OF EMPLOYMENT.** – EXCEPT THOSE UNDER VALID
23 WRITTEN PROBATIONARY CONTRACTS, ALL EMPLOYEES ARE DEEMED REGULAR
24 INCLUDING PROJECT AND SEASONAL EMPLOYEES, AND SHALL, IN CASE OF RANK-AND-
25 FILE OR SUPERVISORS, BE TREATED AS PART OF THE APPROPRIATE BARGAINING UNIT
26 FOR PURPOSES OF THE EXERCISE OF THE CONSTITUTIONAL RIGHT TO SELF-
27 ORGANISATION AND COLLECTIVE BARGAINING, AND SHALL BE ENTITLED TO ALL THE
28 BENEFITS UNDER THE EXISTING CBA, IF ANY.

29 PROJECT AND SEASONAL EMPLOYEES ARE REGULAR FOR THE DURATION OF THE
30 PROJECT OR SEASON, AS THE CASE MAY BE. FOR THIS PURPOSE, PROJECT
31 EMPLOYMENT IS EMPLOYMENT IN AN EXISTING PROJECT OR UNDERTAKING THE
32 COMPLETION OR TERMINATION OF WHICH HAS BEEN DETERMINED AND MADE
33 KNOWN TO THE EMPLOYEE AT THE TIME OF THE ENGAGEMENT. SEASONAL
34 EMPLOYMENT IS BASED ON THE EXISTENCE OF A SEASON IN AGRICULTURAL WORK
35 AS DETERMINED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT AND BASED ON
36 THE UNANIMOUS RECOMMENDATION OF THE NATIONAL TRIPARTITE INDUSTRIAL

1 PEACE COUNCIL (NTIPC). WORKERS UNDER PROJECT AND SEASONAL EMPLOYMENT
2 ARE ENTITLED TO THE RIGHT OF FIRST REFUSAL TO THE TASK, WORK, OR PROJECT
3 WHICH IS THE SUBJECT MATTER OF THEIR EMPLOYMENT.

4 ALL OTHER FORMS OF DISCONTINUOUS EMPLOYMENT ARE PROHIBITED. CLAUSES IN
5 EMPLOYMENT CONTRACTS PROVIDING FOR A FIXED TERM OR DEFINITE PERIOD OF
6 EMPLOYMENT ARE VOID FOR BEING CONTRARY TO PUBLIC POLICY. WORKERS UNDER
7 SUCH ARRANGEMENTS ARE DEEMED REGULAR EMPLOYEES RECKONED FROM THE
8 FIRST DAY OF EMPLOYMENT AND SHALL, IN CASE OF RANK-AND-FILE OR
9 SUPERVISORS, BE TREATED AS PART OF THE APPROPRIATE BARGAINING UNIT FOR
10 PURPOSES OF THE EXERCISE OF THE CONSTITUTIONAL RIGHT TO SELF-
11 ORGANISATION AND COLLECTIVE BARGAINING, AND SHALL BE ENTITLED TO ALL THE
12 BENEFITS UNDER THE EXISTING CBA, IF ANY.

13 FOR THE AVOIDANCE OF DOUBT, AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS
14 WHEN THE WORKER IS ENGAGED TO RENDER WORK OR SERVICE UNDER THE
15 CONTROL OR SUPERVISION OF THE EMPLOYER, NOT ONLY AS TO THE END TO BE
16 ACHIEVED, BUT ALSO THE MANNER, MEANS AND METHOD IN REACHING THE END.”

17 Sec. 7. Article 296 is hereby amended to read as follows:

18 **“Art. 296. Probationary employment.** – Probationary employment shall not exceed
19 six (6) months from the [date the employee started working, unless it is covered by an
20 apprenticeship agreement stipulating a longer period. The services of an employee who
21 has been engaged on a probationary basis may be terminated for a just cause or when
22 he fails to qualify as a regular employee in accordance with reasonable standards made
23 known by the employer to the employee at the time of his engagement. An employee
24 who is allowed to work after a probationary period shall be considered a regular
25 employee.] FIRST DAY OF SERVICE REGARDLESS OF THE NATURE OF WORK TO BE
26 PERFORMED PROVIDED THAT, THE PROBATIONARY PERIOD OF SCHOOL TEACHING
27 PERSONNEL IN PRIMARY AND SECONDARY EDUCATION SHALL NOT EXCEED ONE (1)
28 ACADEMIC YEAR AND THE PROBATIONARY PERIOD OF SCHOOL TEACHING
29 PERSONNEL IN HIGHER EDUCATION SHALL NOT EXCEED ONE (1) SEMESTER.

30 The services of an employee who has been engaged on a probationary basis may be
31 terminated for a just cause or when he fails to qualify as a regular employee in
32 accordance with reasonable standards WHICH SHALL BE made known by the employer
33 to the employee IN WRITING at the time of his engagement. An employee who is
34 allowed to work after a probationary period shall be considered a regular employee.

35 EXCEPT WHEN THE TERMINATION IS FOR JUST CAUSE, A PROBATIONARY EMPLOYEE
36 WHO HAS RENDERED AT LEAST ONE (1) MONTH OF SERVICE IS ENTITLED TO A

1 TERMINATION PAY OF ONE-HALF (1/2) MONTH SALARY.”

2 Sec. 8. Insert a new Article 303-A to read as follows:

3 **“ARTICLE 303-A. PENALTIES.** – (A) THE DEPARTMENT OF LABOR AND EMPLOYMENT
4 SHALL IMPOSE THE FOLLOWING PENALTIES:

5 1. FOR EVERY PERSON OR ENTITY ENGAGED IN ANY ACTIVITY IN VIOLATION OF
6 THE PROHIBITION AGAINST CONTRACTING OR SUBCONTRACTING, A FINE OF
7 AT LEAST FIFTY THOUSAND PESOS (PHP 50,000.00) ASSESSED PER EMPLOYEE
8 ENGAGED UNDER A PROHIBITED CONTRACTING ARRANGEMENT.

9 2. FOR EVERY PERSON WHO OR ENTITY WHICH MISCLASSIFIES AN EMPLOYEE’S
10 STATUS OF EMPLOYMENT IN DEROGATION OF THE EMPLOYEE’S SECURITY OF
11 TENURE, A FINE OF AT LEAST FIFTY THOUSAND PESOS (PHP 50,000.00)
12 ASSESSED PER MISCLASSIFIED EMPLOYEE.

13 3. FOR EVERY PERSON OR ENTITY ENGAGED IN ANY ACTIVITY IN VIOLATION OF
14 THE PROHIBITION AGAINST FIXED TERM EMPLOYMENT, A FINE OF AT LEAST
15 ONE HUNDRED THOUSAND PESOS (PHP 100,000.00) ASSESSED PER EMPLOYEE
16 ENGAGED UNDER SUCH PROHIBITED ARRANGEMENTS.

17 4. FOR EVERY PERSON OR ENTITY ENGAGED IN ANY ACTIVITY IN VIOLATION OF
18 THE PROVISION ON PROBATIONARY EMPLOYMENT, A FINE OF AT LEAST ONE
19 HUNDRED THOUSAND PESOS (PHP 100,000.00) ASSESSED PER EMPLOYEE
20 ENGAGED UNDER SUCH PROHIBITED ARRANGEMENTS.

21 THESE PENALTIES SHALL BE IMPOSED WITHOUT PREJUDICE TO OTHER DAMAGES AND
22 PENALTIES THAT MAY BE IMPOSED UNDER THIS CODE AND OTHER LAWS AND
23 REGULATIONS.

24 (B) IMPRISONMENT OF NOT LESS THAN TWELVE (12) YEARS AND ONE (1) DAY BUT
25 NOT MORE THAN TWENTY (20) YEARS SHALL BE IMPOSED UPON ANY PERSON FOUND
26 GUILTY OF COMMITTING ANY OF THE FOLLOWING:

27 1. ENGAGING IN ANY ACTIVITY IN VIOLATION OF THE PROHIBITION
28 AGAINST CONTRACTING OR SUBCONTRACTING;

29 2. MISCLASSIFYING AN EMPLOYEE’S STATUS OF EMPLOYMENT IN
30 DEROGATION OF THE EMPLOYEE’S SECURITY OF TENURE;

31 3. VIOLATING THE PROVISION ON PROBATIONARY EMPLOYMENT;
32 OR

33 4. OTHER THAN THOSE ALLOWED IN ARTICLE 295 OF THIS CODE,
34 USING FIXED TERM EMPLOYMENT IN ENGAGING WORKERS.

1 IN ANY OF THE FOREGOING CASES IN PARAGRAPH (B), THE PENALTY OF LIFE
2 IMPRISONMENT SHALL BE IMPOSED IF THE ACT COMMITTED PERTAINS TO AT LEAST
3 THREE (3) WORKERS.

4 Sec. 9. *Separability Clause.* - If any provision or part hereof is held invalid or
5 unconstitutional, the remainder of the law or the provision not otherwise affected shall
6 remain valid.

7 Sec. 10. *Repealing Clause.* - All acts, executive orders, administrative orders,
8 proclamations, rules and regulations or parts thereof inconsistent with any of the
9 provisions of this Act are hereby repealed or modified accordingly.

10 Sec. 11. *Effectivity.* - This Act shall take effect fifteen (15) days after publication
11 in the Official Gazette or two (2) newspapers of general circulation.

Approved,