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

SECTION 1. Short Title. This Act shall be known as the “Security of Tenure Act.”

SEC. 2. Article 106 of Presidential Decree No. 442, as amended, otherwise known as the “Labor Code of the Philippines”, is hereby amended to read as follows:

“ARTICLE 106. 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 AND OTHER LAWS.

“In the event that the contractor [or subcontractor] fails to pay the wages, ALLOWANCES AND BENEFITS of his employees in accordance with this Code AND OTHER LAWS, the employer shall be jointly and severally liable with [his] THE 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], AFTER CONSULTATION
WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL, SHALL 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] THE SECRETARY may make appropriate distinctions
between labor-only contracting, WHICH IS HEREBY PROHIBITED, and
LEGITIMATE job contracting, WHICH IS HEREBY PERMITTED IN
ACCORDANCE WITH THIS CODE, as well as differentiations AND
RESTRICTIONS within these types of contracting and THE [determine]
DETERMINATION OF 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] OR HAS
NO CONTROL OVER THE WORKERS’ METHODS AND MEANS OF
ACCOMPLISHING THEIR WORK OR the workers recruited and placed by
such person are performing activities which are directly related AND
NECESSARY 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.”

SEC. 3. A new article, Article 106-A, is hereby inserted after Article 106 of the same
decree, to read as follows:

“ART. 106-A. LICENSING OF JOB CONTRACTORS. - ALL PERSONS OR
ENTITIES DOING BUSINESS AS JOB CONTRACTORS SHALL OBTAIN A
LICENSE FROM THE DEPARTMENT OF LABOR AND EMPLOYMENT
THROUGH ITS REGIONAL OFFICES. THE TERM ‘JOB CONTRACTOR’ REFERS
TO A SOLE PROPRIETORSHIP, CORPORATION, PARTNERSHIP,
ASSOCIATION, COOPERATIVE OR ANY OTHER ORGANIZATION THAT
PERFORMS A SPECIFIC WORK, JOB OR SERVICE FOR A PRINCIPAL
EMPLOYER. THE TERM ‘PRINCIPAL EMPLOYER’ REFERS TO THE PERSON OR
ENTITY, INCLUDING THE GOVERNMENT THAT CONTRACTS OUT A SPECIFIC
WORK, JOB OR SERVICE.

THE LICENSE SHALL BE ISSUED TO QUALIFIED JOB CONTRACTORS UPON
COMPLIANCE WITH THE FOLLOWING REQUIREMENTS:

(A) REPRESENT AN INDEPENDENT BUSINESS, SEPARATE AND DISTINCT
FROM THE PRINCIPAL EMPLOYER;

(B) HAVE PAID-UP CAPITAL OR CAPITALIZATION OF AT LEAST FIVE MILLION
PESOS (P5,000,000.00) WHICH MAY BE INCREASED AS DEEMED
APPRIATE THROUGH TRIPARTITE CONSULTATION EVERY THREE (3) YEARS;

(C) EXECUTION OF AN UNDERTAKING OF FINANCIAL CAPACITY, AND COMPLIANCE WITH ALL LABOR LAWS AND REGULATIONS;

(D) HAVE SUFFICIENT KNOWLEDGE, EXPERIENCE, SKILLS OR COMPETENCE IN THE FIELD OF THE CONTRACTED JOB, WORK OR SERVICE;

(E) EMPLOY REGULAR EMPLOYEES AND POSSESS EQUIPMENT, MACHINERIES OR TOOLS NECESSARY TO PERFORM OR COMPLETE THE JOB, WORK OR SERVICE CONTRACTED OUT;

(F) HAVE CONTROL OVER THE PERFORMANCE AND COMPLETION OF THE CONTRACTED JOB, WORK OR SERVICE; AND

(G) PAYMENT OF A LICENSE FEE OF ONE HUNDRED THOUSAND PESOS (P100,000.00) WHICH MAY BE INCREASED AS DEEMED APPROPRIATE THROUGH TRIPARTITE CONSULTATION.

"THE LICENSE SHALL BE VALID FOR A PERIOD OF THREE (3) YEARS. NO LICENSE SHALL BE RENEWED UNLESS THE JOB CONTRACTOR SHALL DEMONSTRATE THAT IT HAS NET FINANCIAL CONTRACTING CAPACITY TO CARRY ON ITS BUSINESS BASED ON FACTORS SUCH AS THE NUMBER OF ITS EMPLOYEES AND THE NATURE OF ITS BUSINESS.

"A LICENSED JOB CONTRACTOR SHALL SUBMIT AN ANNUAL REPORT WHICH MUST INCLUDE, BUT NOT LIMITED TO, PROOF OF PAYMENT OF THE APPROPRIATE SOCIAL AND OTHER WELFARE BENEFITS TO ITS EMPLOYEES.

"CONTRACTORS OR SIMILAR ENTITIES WHO ENGAGE IN JOB CONTRACTING WITHOUT A LICENSE SHALL BE PENALIZED IN ACCORDANCE WITH THIS CODE."

SEC. 4. Article 294 of the same decree is hereby further amended to read as follows:

"ARTICLE 294. Security of tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. [An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.]"
"A DISMISSAL WITHOUT JUST OR AUTHORIZED CAUSE OR WITHOUT OBSERVANCE OF PROCEDURAL DUE PROCESS IS ILLEGAL. THE EMPLOYEE WHO IS FOUND ILLEGALLY DISMISSED BASED ON LACK OF JUST OR AUTHORIZED CAUSE IS ENTITLED TO IMMEDIATE REINSTATEMENT EVEN PENDING APPEAL AND WITHOUT LOSS OF SENIORITY RIGHTS AND BENEFITS, FULL BACKWAGES AND ACCRUED BENEFITS, AND REMUNERATIONS PROVIDED BY LAW, COMPANY POLICY OR COLLECTIVE BARGAINING AGREEMENT COMPUTED FROM THE TIME COMPENSATION WAS WITHHELD UP TO THE TIME OF ACTUAL REINSTATEMENT. AWARD OF BACKWAGES SHALL INCLUDE THE EMPLOYER'S SHARE OF CONTRIBUTIONS TO THE SOCIAL SECURITY SYSTEM (SSS), PHILIPPINE HEALTH INSURANCE CORPORATION (PHILHEALTH), AND HOME DEVELOPMENT MUTUAL FUND (PAGIBIG) WHICH SHALL BE REMITTED TOGETHER WITH THE EMPLOYEE'S SHARE TO THE AFORESAID AGENCIES FREE FROM INTEREST AND PENALTIES FOR LATE REMITTANCE. IN THE EVENT THAT THE EMPLOYEE IS GAINFULLY EMPLOYED DURING THE PENDENCY OF THE CASE FOR ILLEGAL DISMISSAL AND THE EMPLOYEE WAS ABLE TO CONTRIBUTE TO THE SSS, PHILHEALTH AND PAGIBIG FUND, AN AMOUNT NEEDED TO UPDATE HIS EMPLOYEE CONTRIBUTIONS SHALL BE DEDUCTED FROM HIS BACKWAGES. ACTUAL, MORAL, EXEMPLARY AND OTHER FORMS OF DAMAGES MAY ALSO BE AWARDED. AN EMPLOYEE WHOSE DISMISSAL IS DECLARED ILLEGAL BASED EXCLUSIVELY ON LACK OF PROCEDURAL DUE PROCESS IS ENTITLED TO REASONABLE NOMINAL DAMAGES AND COSTS OF SUIT. THE EMPLOYER SHALL HAVE THE BURDEN OF PROVING THAT THE TERMINATION IS WITH JUST CAUSE AND DUE PROCESS."

SEC. 5. Article 295 of the same decree is hereby further amended to read as follows:

"ART. 295. Regular and casual employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular [where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season]. NO EMPLOYMENT WITH A FIXED TERM OR DEFINITE PERIOD SHALL BE ALLOWED EXCEPT IN CASES OF OVERSEAS FILIPINO WORKERS; WORKERS ON PROBATION; RELIEVERS WHO ARE TEMPORARY REPLACEMENTS OF ABSENT REGULAR EMPLOYEES WHOSE ENGAGEMENTS SHALL NOT EXCEED SIX (6) MONTHS; PROJECT EMPLOYEES; AND SEASONAL WORKERS."
"RELIEVERS, PROJECT, AND SEASONAL EMPLOYEES SHALL ENJOY THE RIGHTS OF REGULAR EMPLOYEES FOR THE DURATION OF THE ENGAGEMENT, PROJECT OR SEASON, RESPECTIVELY.

"PROJECT EMPLOYMENT REFERS TO AN EXISTING PROJECT OR UNDERTAKING, THE NATURE OF WHICH IS TEMPORARY AND THE COMPLETION OR TERMINATION HAS BEEN DETERMINED AND MADE KNOWN TO THE EMPLOYEE AT THE TIME OF THE ENGAGEMENT. SEASONAL EMPLOYMENT IS BASED ON THE EXISTENCE OF A SEASON IN A TYPE OF WORK. A SEASON IS THAT ESTABLISHED PERIOD OF INCREASED WORK DEMAND INHERENT TO THE INDUSTRY AS DETERMINED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT IN CONSULTATION WITH THE NATIONAL TRIPARTITE INDUSTRIAL PEACE COUNCIL.

"FOR RELIEVER, PROJECT, AND SEASONAL EMPLOYMENT, WORKERS ARE CALLED TO WORK FROM TIME TO TIME AND TEMPORARILY LAID-OFF DURING THE COMPLETION OF THE ENGAGEMENT OR PROJECT, OR DURING OFF-SEASON BUT ARE IN THE WORK POOL ON LEAVE WITH OR WITHOUT PAY STATUS IN BETWEEN ENGAGEMENTS, PROJECTS OR SEASONS. RELIEVERS, PROJECT, AND SEASONAL WORKERS ARE ENTITLED TO THE RIGHT OF FIRST REFUSAL TO THE TASK, WORK OR PROJECT WHICH IS THE SUBJECT MATTER OF THE EMPLOYMENT. THEY SHALL ALSO ENJOY THE RIGHT OF FIRST REFUSAL IN THE HIRING FOR OPEN REGULAR POSITIONS.

"ALL OTHER FORMS OF DISCONTINUOUS EMPLOYMENT ARE PROHIBITED. CLAUSES IN EMPLOYMENT CONTRACTS PROVIDING FOR A FIXED TERM OR DEFINITE PERIOD OF EMPLOYMENT ARE VOID. WORKERS UNDER SUCH ARRANGEMENTS ARE DEEMED REGULAR EMPLOYEES RECKONED FROM THE FIRST DAY OF EMPLOYMENT.

"[An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.]

SEC. 6. Article 296 of the same decree is hereby further amended to read as follows:

"Art. 296. Probationary employment. - Probationary employment shall not exceed six (6) months from the date the employee started working[, unless it is covered by an apprenticeship agreement stipulating a longer period]. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or AUTHORIZED CAUSE OR when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the
time of his engagement. An employee who is allowed to work after a
probationary period shall be considered a regular employee.”

SEC. 7. A new article, Article 303-A, is hereby inserted after Article 303 of the same
decree to read as follows:

“ART. 303-A. ADMINISTRATIVE PENALTIES. – THE DEPARTMENT OF LABOR
AND EMPLOYMENT SHALL IMPOSE THE FOLLOWING:

“1. A FINE OF THIRTY THOUSAND PESOS (P30,000.00) ON A PERSON OR
ENTITY OPERATING AS A JOB CONTRACTOR WITHOUT A LICENSE, PROVIDED
THAT SAID PERSON OR ENTITY DOES NOT COMMIT ANY OTHER ACT
DESCRIBED AS LABOR-ONLY CONTRACTING UNDER ARTICLE 106 OF THIS
CODE;

“2. A FINE ON A PERSON OR ENTITY OPERATING AS A JOB CONTRACTOR
WITHOUT A LICENSE AND ALSO COMMITS ANY OF THE ACTS DESCRIBED AS
LABOR-ONLY CONTRACTING UNDER ARTICLE 106 OF THIS CODE. SAID FINE
SHALL BE THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER EMPLOYEE
ENGAGED UNDER A LABOR-ONLY CONTRACTING ARRANGEMENT BUT NOT
TO EXCEED THE TOTAL AMOUNT OF FIVE MILLION PESOS (P5,000,000.00).
IN ADDITION, SAID PERSON OR ENTITY WHICH ENGAGED IN LABOR-ONLY
CONTRACTING SHALL BE BARRED FROM APPLYING FOR LICENSES IN THE
FUTURE. THIS DISQUALIFICATION SHALL EXTEND TO THE RESPONSIBLE
PARTNERS, DIRECTORS OR OFFICERS OF THE LIABLE PARTNERSHIP,
CORPORATION OR COOPERATIVE;

“3. A FINE ON A LICENSED JOB CONTRACTOR WHO COMMITS ANY OF THE
ACTS DESCRIBED AS LABOR-ONLY CONTRACTING UNDER ARTICLE 106 OF
THIS CODE. THE FINE SHALL BE THIRTY THOUSAND PESOS (P30,000.00)
ASSESSED PER EMPLOYEE ENGAGED UNDER A LABOR-ONLY CONTRACTING
ARRANGEMENT BUT NOT TO EXCEED THE TOTAL AMOUNT OF FIVE MILLION
PESOS (P5,000,000.00). IN ADDITION, THE LICENSEE SHALL HAVE ITS
OPERATION CLOSED ON THE PROJECT IN WHICH THE VIOLATION WAS
COMMITTED AND SHALL BE BARRED FROM APPLYING FOR LICENSES IN THE
FUTURE. ANY SUCCEEDING OFFENSE COMMITTED SHALL RESULT IN THE
TERMINATION OF OPERATIONS AND DISQUALIFICATION OF THE JOB
CONTRACTOR. THIS DISQUALIFICATION SHALL EXTEND TO THE
RESPONSIBLE PARTNERS, DIRECTORS OR OFFICERS OF THE LIABLE
PARTNERSHIP, CORPORATION OR COOPERATIVE;

“4. A FINE ON A PERSON OR ENTITY WHICH ENGAGES FIXED-TERM
EMPLOYEES IN VIOLATION OF ARTICLE 295 OF THIS CODE. THE FINE SHALL
BE THIRTY THOUSAND PESOS (P30,000.00) ASSESSED PER EMPLOYEE
ENGAGED UNDER THE PROHIBITED FIXED-TERM ARRANGEMENT BUT NOT
TO EXCEED THE TOTAL AMOUNT OF FIVE MILLION PESOS (P5,000,000.00).
THE ABOVE FINES SHALL BE IMPOSED JOINTLY AND SEVERALLY AGAINST
THE PRINCIPAL EMPLOYER, AND CONTRACTOR, MANPOWER AGENCY,
WORKERS’ COOPERATIVE OR ANY OTHER SIMILAR ENTITY OR THEIR
RESPONSIBLE PARTNERS, DIRECTORS OR OFFICERS ENGAGED IN THE
PROHIBITED ARRANGEMENTS DESCRIBED ABOVE. THE FINES SHALL BE
IMPOSED WITHOUT PREJUDICE TO OTHER DAMAGES THAT MAY BE
IMPOSED UNDER THIS CODE AND OTHER LAWS AND REGULATIONS.”

SEC. 8. Within sixty (60) days, the Secretary of Labor and Employment shall
promulgate the necessary rules and regulations to implement the provisions of this Act.

SEC. 9. If any part or provision of this Act is declared unconstitutional or invalid, the
remainder of this Act or the provisions not otherwise affected shall remain valid and
subsisting.

SEC. 10. All laws, presidential decrees, proclamations, executive orders, issuances,
rules and regulations or any part thereof inconsistent with the provisions of this Act are
hereby repealed, amended or modified accordingly.

SEC. 11. This Act shall take effect fifteen (15) days after its complete publication in
the Official Gazette or in a newspaper of national circulation.

Approved,