



*More than jobs!
It's decent jobs.*

Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT

Department Order No. 174, Series of 2017



EMPLOYER



EMPLOYEE

**REGULAR EMPLOYEE
CASUAL EMPLOYEE
SEASONAL EMPLOYEE
PROJECT EMPLOYEE
PROBATIONARY EMPLOYEE**





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CONTRACTOR'S EMPLOYEES



EMPLOYEE



➤ CONTRACTING AND SUBCONTRACTING

(CONTRACTOR &
SUBCONTRACTOR)



Service
Agreement

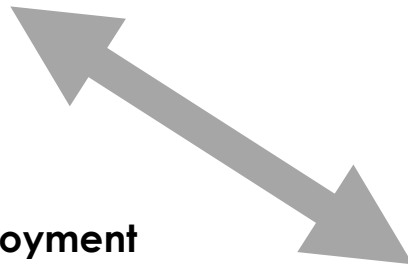


PRINCIPAL



COMPANY

Employment
Contract



WORKER



REGULAR EMPLOYEE
SEASONAL EMPLOYEE
PROJECT EMPLOYEE
CASUAL EMPLOYEE
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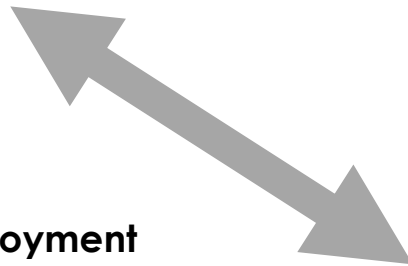


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ALL WORKERS HAVE THE RIGHT TO:

I.GENERAL LABOR STANDARDS, OCCUPATIONAL SAFETY AND HEALTH STANDARDS AND SOCIAL WELFARE BENEFITS

II.SECURITY OF TENURE AND DUE PROCESS

III.SELF-ORGANIZATION AND COLLECTIVE BARGAINING





Carlos Miguel Francisco, a native of Camarines Norte

In 2013, he worked at a speakers store under a 5-month contract in 2013.

When his contract ended, he found a job as a bagger at a large supermarket chain, again under a 5-month contract.

He found jobs as a promodizer at an appliances store and a canteen server.





National Action Plan

1 Strictly enforce compliance to Labor Standards

2 Review D.O 18-A

3 Pursue legislative agenda



National Action Plan



- **Five (5) Focus Group Discussion sessions.**
- **Three (3) area-wide Labor Summits.**
- **Seventeen (17) sectoral meetings.**
- **National Tripartite Industrial Peace Council meeting**

(1) Visayas-wide FGD on 9-10 September 2016 in Cebu City; (2) Luzon-wide FGD on 19-20 September 2016 in Angeles City, Pampanga; (3) National Capital Region FGD on 23-24 September 2016 in Pasay City, Metro Manila; (4) Mindanao-wide FGD on 26-27 September 2016 in Davao City; and (5) FGD with Academicians and Experts on 30 September 2016 in Quezon City, Metro Manila.

(1) Luzon on 17 October 2016 at the Occupational Safety and Health Center, Quezon City; (2) Mindanao on 11 November 2016 at the Apo View Hotel, Davao City; and (3) Visayas on 18 November 2016 at the Golden Prince Hotel, Cebu City.

7 high-level meetings, 5 labor sector dialogues, and 5 Tripartite Executive Committee meetings

NEW PROVISIONS

Reiterates the prohibition against LOC based on statutory definition and jurisprudence

Expands illicit forms of employment arrangements: 1) contracting out of work to an in-house cooperative: 2) requiring employees to become members of cooperative; and 3) other schemes, practices or arrangements designed to circumvent the worker's right to security of tenure

Removes the provision that employment contract is co-terminus with the service agreement



NEW PROVISIONS

- **In case of termination due to expiration of Service Agreement, failure of contractor to provide new employment to the employee within 3 months shall entitle the latter to payment of separation benefits**
- **Adds as ground for cancellation of registration violations of any provisions of the Labor Code**
- **Reduces the period within which Regional Directors shall resolve filed complaints from 10 days to 7 days**
- **Blacklists contractor whose registration has been cancelled including any of its officers to operate or apply for new registration as contractor under either the same or different name**



NEW PROVISIONS

- **Increases the substantial capital requirement from P 3M to P 5M**
- **Increases registration fee from P 25,000.00 to P 100,000.00**
- **Shortens the validity of the certificate of registration of contractors from 3 years to 2 years**



1

Prohibits labor-only contracting, and specifies other illicit forms of employment arrangements

Department Order 174-17

Section 5. Absolute Prohibition against Labor-only Contracting. Labor-only contracting, which is totally prohibited, refers to an arrangement where:

- a. (i) The contractor or subcontractor does not have substantial capital; or
- (ii) The contractor or subcontractor does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others; and
- (iii) The contractor's or subcontractor's employees recruited and placed are performing activities which are directly related to the main business operation of the principal; or
- b. The contractor or subcontractor does not exercise the right to control over the

Department Order 18-A

Section 6. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor only contracting shall refer to an arrangement where:

- (a) The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; or
- (b) The contractor does not exercise the right to

***LABOR-ONLY CONTRACTING
OR SUBCONTRACTING IS
PROHIBITED.***



LABOR-ONLY CONTRACTING (DO NO. 174)

Section 5. Absolute Prohibition against Labor-only Contracting. Labor-only contracting, which is totally prohibited, refers to an arrangement where:

- a)
 - i. The contractor or subcontractor does not have substantial capital, or
 - ii. The contractor or subcontractor does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others,and
 - iii. The contractor's or subcontractor's employees recruited and placed are performing activities which are directly related to the main business operation of the principal;or
- b) The contractor or subcontractor does not exercise the right to control over the performance of the work of the employee.



LABOR-ONLY CONTRACTING (Omnibus Rules)

SECTION 9, Rule VII, Book III. Labor-only contracting. — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.



LABOR-ONLY CONTRACTING (DO NO. 10)

(f) "*Labor-only contracting*" prohibited under this Rule is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal and the following elements are present:

- The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and
- The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.



LABOR-ONLY CONTRACTING (DO NO. 18-02)

Section 5. Prohibition against labor-only contracting. - Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

- (i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
- (ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.



LABOR-ONLY CONTRACTING (DO NO. 18-A)

Section 6. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor only contracting shall refer to an arrangement where:

- The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; or
- The contractor does not exercise the right to control over the performance of the work of the employee.



LABOR-ONLY CONTRACTING (SC RULING)

Case	Third Party	Capital/Investment	Workers Deployed	LOC
Neri vs. NLRC, July 23, 1993	Building Care Corporation	P1,000,000.00 fully paid up capital	Radio/Telex operator & janitor	No
Philippine Fuji Xerox Corporation vs. NLRC, March 5, 1996	Skillpower Inc.	Assets exceeding P5,000,000.00 possessing at least 29 typewriters, office equipment, and service vehicles.	Machine operator	Yes
Vinoya vs. NLRC, February 2, 2000	Peninsula Manpower Company Inc.	P75,000 paid up capital	Sales representative	Yes
SMC vs. MAERC, July 10, 2003	Maerc Integrated Services Inc.	Building, tools and equipment amounting to more than P4M	Washing & Segregating Empty Bottles workers	Yes
DOLE vs. Esteva	Cannery Multi-Purpose	P6,600 paid up	Processing	Yes



LABOR-ONLY CONTRACTING (SC RULING)

Case	Third Party	Capital/Investmen †	Workers Deployed	LOC
Sasan vs. NLRC October 17, 2008	Helpmate, Inc.	P20,939,935.72	Janitors and Messengers	No
Coca Cola vs. Agito, February 13, 2009	Interserve Management and Manpower Resources, Inc.	Service vehicles and equipment valued at P510,000 and P200,000	Salesmen	Yes
Aliviado vs. Proctor & Gamble, March 9, 2010	Promm-Gem, Inc. Sales and Promotions Services	Promm-Gem – P500,000 paid up capital, assets worth P1,151,937.60, three registered vehicles, markers, tapes, liners and cutters; SAPS - P31, 250 paid up capital	Merchandisers	No Yes
Norkis Trading vs. Buena Vista	Panaghiusa sa Kauswagan Multi-Purpose Cooperative	Machineries and equipment worth P344,273.02	Welders and operators	Yes



LABOR-ONLY CONTRACTING (SC RULING)

TOTALITY OF THE CIRCUMSTANCES

- the contractor is carrying on an independent business
- the nature and extent of the work
- the skill required
- the term and duration of the relationship
- the right to assign the performance of specified pieces of work
- the control and supervision of the workers
- the power of the employer with respect to the hiring, firing and payment of the workers of the contractor
- the control of the premises
- the duty to supply premises, tools, appliances, materials and labor
- the mode, manner and terms of payment.



2

Prohibits labor-only contracting, and specifies other illicit forms of employment arrangements

Department Order 174-17

Section 6. Other Illicit Forms of Employment Arrangements. In addition to Section 5 of these Rules, the following are hereby declared prohibited for being contrary to the law or public policy:

- c. **Contracting out of job or work through an in-house cooperative which merely supplies workers to the principal**
- g. **x x x or require the employee to become member of a cooperative.**
- j. **Such other practices, schemes or employment arrangements designed to circumvent the right of workers to security of tenure.**

Department Order 18-A

Section 7. Other Prohibitions. Notwithstanding Section 6 of these Rules, the following are hereby declared prohibited for being contrary to law or public policy:

- A. Contracting out of jobs, works or services when not done in good faith and not justified by the exigencies of the business such as the following:
 - (ii) Requiring them to sign, as a precondition to employment or continued employment xxx, or a quitclaim releasing the principal, contractor or from any liability as to payment of future claims.
- 10. Engaging or maintaining by the principal of subcontracted employees in excess of those provided for in the applicable

**PRACTICES, SCHEMES AND
ARRANGEMENTS WHICH ARE
CONTRARY TO LAW OR
PUBLIC POLICY ARE
PROHIBITED.**



PROHIBITED PRACTICES (DO NO. 174)

Section 6. Other Illicit Forms of Employment Arrangements. In addition to Section 5 of these Rules, the following are hereby declared prohibited for being contrary to the law or public policy:

- When the principal farms out work to a “Cabo”.
- Contracting out of job or work through an in-house agency.
- Contracting out of job or work through an in-house cooperative which merely supplies workers to the principal.



PROHIBITED PRACTICES (DO NO. 174)

- Contracting out of a job or work by reason of a strike or lockout whether actual or imminent.
- Contracting out of a job or work being performed by union members and such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization as provided in Article 259 of the Labor Code, as amended.
- Requiring the contractor's/subcontractor's employees to perform functions which are currently being performed by the regular employees of the principal.



PROHIBITED PRACTICES (DO NO. 174)

- Requiring the contractor's/subcontractor's employees to sign, as a precondition to employment or continued employment, an antedated resignation letter; a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal or contractor from liability as to payment of future claims; or require the employee to become member of a cooperative.
- Repeated hiring by the contractor/subcontractor of employees under an employment contract of short duration.



PROHIBITED PRACTICES (DO NO. 174)

- Requiring employees under a contracting/subcontracting arrangement to sign a contract fixing the period of employment to a term shorter than the term of the Service Agreement, unless the contract is divisible into phases for which substantially different skills are required and this is made known to the employee at the time of engagement.
- Such other practices, schemes or employment arrangements designed to circumvent the right of workers to security of tenure.



Strict implementation of the provisions of the Labor Code

- a) Appointment of additional Labor Laws Compliance Officers**
- b) Accreditation of labor and employers organization**
- c) Constitution of Regional Audit Team**
- d) Review of DO 131-B (LLCS)**



OPERATIONAL CONCERNS

EFFECTS OF DO 174, SERIES OF 2017

EXISTING CERTIFICATE OF REGISTRATION?

EXISTING SERVICE AGREEMENT?

EXISTING EMPLOYMENT CONTRACT?

PENDING LABOR STANDARDS CASES?



Thank you!

