

**THE LABOR SERVICE COOPERATIVES:
What do the members need to know?**

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Overview

- I. The Provisions under the Labor Code and DO 174
- II. Common Misconceptions

Provisions of the Labor Code

Article 295. (280) *Regular and casual employment.* The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements 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. 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.

Provisions of the Labor Code

Article 296. (281) Probationary employment. Probationary employment shall not exceed six 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 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.

Classification of Employees

1. Regular
2. Casual
3. Probationary
4. Seasonal
5. Fixed/project

Provisions of the Labor Code

Article 106. *Contractor or sub-contractor.* 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 sub-contractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or sub-contractor 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 sub-contractor 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.

Provisions of the Labor Code

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 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.

Provisions of the Labor 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.

Salient Features of DO 174

- 1) Reaffirms the Constitutional and statutory right to security of tenure of workers;
- 2) Applies to all parties in an arrangement where employer-employee relationship exists;
- 3) Absolutely prohibits labor-only contracting, and specifies other illicit forms of employment arrangements;
- 4) Allows only permissible contracting and subcontracting as defined;
- 5) Re-enforces the rights of workers to labor standards, self-organization, collective bargaining and security of tenure; and
- 6) Requires mandatory registration of contractors and subcontractors and provides clear procedures for cancellation of registration.

Salient Features of DO 174

• In particular, the new DOLE Department Order on Contracting and Subcontracting prohibits the following:

- 1. Labor-only Contracting;
- 2. When the principal farms out work to a "Cabo";
- 3. Contracting out of job or work through an in-house agency;
- 4. Contracting out of job or work through an in-house cooperative which merely
- 5. supplies workers to the principal;
- 6. Contracting out of a job or work by reason of a strike or lockout whether actual or imminent;

Salient Features of DO 174

- 7. 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;
- 8. Requiring the contractor's/subcontractor's employees to perform functions which are currently being performed by the regular employees of the principal;
- 9. 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;

Salient Features of DO 174

- 10.Repeated hiring by the contractor/subcontractor of employees under an employment contract of short duration;
- 11.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;
- 12.Such other practices, schemes or employment arrangements designed to circumvent the right of workers to security of tenure.
- The new DOLE Department Order on Contracting and Subcontracting also shortens the validity of the certificate of registration of contractors and subcontractors from three (3) years to two (2) years. It likewise increases the registration fee from P25,000.00 to P100,000.00. *

Common Misconceptions

1. Contractualization

2. 5-5-5

3. Endo

Legal Requirements

1. Cooperative Development Authority (RA 6939)
2. Philippine Cooperative Code (RA 9520)
3. IRR
4. Department of Labor and Employment
5. Labor Code of the Philippines (PD 442, as amended)
6. DO 174

Thank you!