

Contractualization: Will it ever end?

Maria Catalina M. Tolentino*

Abstract

This paper begins by presenting employment trends and proceeds to a discussion of relevant laws in the Philippine Labor Code. This paper discusses contractualization and non-standard employment that, since the advent of globalization, have become the trend, putting into doubt the gains of a globalized economy. The major issues addressed by this paper are sustainability of employment and regulating contractual arrangements. The state, as a principal actor in a tripartite industrial relations system, intervenes to mediate between the conflicting interests of labor and management to create balance among the actors. The Duterte administration has enforced stringent measures to reduce, if not end, short-term contractual work. The review of the Department of Labor and Employment (DOLE) Department Order (DO) 18-A, inspection of establishments practicing “endo” and the enforcement of DO 174 are important steps being undertaken.

* Assistant Professor and College Secretary of the University of the Philippines School of Labor and Industrial Relations (UP SOLAIR). This is a revised version of the paper presented in the Comparative Labor Policies Seminar of the Japan Institute for Labor Policy and Training held in Tokyo on March 27-29, 2017. The author would like to thank Dr. Bach Macaraya, SOLAIR Professorial Lecturer and President of the International Society for Labour and Social Security Law Philippine Chapter, for his comments. The author also acknowledges Ms. Joyce Maxine Manansala for providing data on labor policies.

Background: Employment and unemployment trends

Employment rate in January 2016 was estimated at 94.2 percent by the Philippine Statistics Authority (PSA). Employment was highest among the age cohorts 25-34 and 35-44. Among these age cohorts are those who have reached or finished college, have undergone training and skills development and have acquired work experience, thus, have greater opportunities for work.

Unemployment was highest among the 15-24 year olds. This age group comprises young people who reached high school or college level. Studies show that on the average, high school graduates took three years to find work while college graduates took about a year to be employed. Those who could not find work joined the informal sector, worked part time or remained unemployed. An Asian Development Bank (ADB) report stated that one in four young people was neither working nor pursuing education or training. On the demand-side, this indicates a large gap between the number of new entrants into the labor force and available jobs.

Unemployment was also high in age cohort 25-34. This can be attributed to the following factors: short employment contracts, high attrition rate, or perhaps low job satisfaction and thus, are, compelled to quit jobs. The ADB report, in fact, cited a mismatch of education and skills required in the labor market (Tolentino, 2017).

Where are the Filipinos employed?

Many Filipinos find work in the agriculture sector, services and manufacturing. In recent years, more were being employed in the business process outsourcing (BPO) and tourism sectors. The government has been vigilant in the growth of BPOs and tourism. In the past six years, almost 80 percent of new jobs have been generated by the service sector, particularly BPO, tourism and retail trade combined.¹ In the BPO industry, the most common outsourced services include the operations of human resources departments, telephone call centers, research needs,

¹ "ADB: Youth unemployment a 'policy challenge' for gov't" in <http://cnnphilippines.com/business/2016/03/30/ADB-Youth-unemployment-policy-challenge-govt.html>

accounting services and transcriptions. In 2010, the BPO industry reached the US\$9 billion revenue target and employed about 530,000 full-time employees. The US remains the primary source for outsourcing activities. Another significant industry is tourism. From 2004 to 2009, the average shares of tourism in the gross domestic product and in total employment were 6.12 percent and 9.68 percent, respectively. Visitor arrivals grew from two million in 2004 to three million in 2009, based on figures from the Philippine Development Plan 2011-2016.² The threat of terrorism has not weakened the industry.

Contractual employment and non-standard employment

Yes, there are jobs in the Philippines but the next concern of this paper is: what type of work arrangements do Filipinos engage in?

Many employment arrangements in the country, as in many parts of the world, are generally described as contractual with the following characteristics: short-term, seasonal or renewable. These work arrangements can also be informal or non-standard. In all of these, workers lack security of tenure and social protection. Another emerging trend is peer-to-peer work transactions (Steinmetz, 2016), a non-standard form of employment. These are on-demand delivery of services offered by independent contractors (acting as middlemen using a software) between workers and individual clients. The contractors call themselves platforms. An example is Grab, a ride application company that operates a software allowing drivers and passengers to connect. In this arrangement, the company does not hire drivers as employees, maintain no cars and does away with employer-employee relationship. Employers are spared from granting salaries, social security benefits and impose no control over the workers.

In these times, despite hard work and long years of service, to find regular employment is a rarity, a privilege or simply luck.

² *Ibid.*

Labor policy on contractual employment and regularization

Given the aforementioned work conditions, the Philippines is besieged with challenges to uplift the lives of workers and maintain industrial peace. There were 1.3 million non-regular workers in 2014, according to the PSA. Many of these workers struggled for job security. To cite a specific case, in May 2016, about 460 workers of a rope-making factory in Laguna went on strike after their plea to be regularized was not granted. The strike happened after the parties failed to reach a Collective Bargaining Agreement. Management promised new workers regularization after 10 months but were made to sign 5-month contracts that were renewable (Cinco, 2016).

When Rodrigo Duterte campaigned for president in the 2016 May elections, one of his promises was to put an end to contractualization. Many thought it was only a promise that would be forgotten after winning the presidency but within a few months after taking his oath, the new President issued a warning to businessmen practicing “endo” (end of contract), a colloquial term for illegal contractualization. It can mean a contract of five months or less, either renewable or non-renewable. Duterte instructed Department of Labor (DOLE) Secretary Silvestro Bello III to inspect every business establishment in the country (Ramos & Santos, 2016). A closure of business will be ordered if violations were found.

Thereafter, the DOLE launched a more rigid inspection and discovered violations of labor standards in their efforts of checking business establishments still practising ‘endo’. DOLE officers first meet and consult with employers to encourage them to voluntarily regularize workers. Then, a sustained inspection of establishments, principals and contractors practicing ‘endo’ (Geronimo, 2016) is conducted.

According to news reports quoting the DOLE, around 10,352 workers had been regularized by 195 employers since the start of the Duterte administration. Government agencies such as the Philhealth have also started to convert some “job order” employees into regular employees. Job order is defined by the Civil Service Commission as the following:

Lump sum work or services such as janitorial, security, or consultancy where no employer- employee relationship exists

between the individual and the government.

Piece work or intermittent job of short duration not exceeding six months and pay is on a daily basis.

However, the figures mentioned above are unconfirmed newspaper reports. Bello added that the department targets to decrease 'endo' contractualization practices by 50 percent by the end of 2016 and fully abolish it by 2017 (Geronimo, 2016). But the total ban on contractualization would seem as not feasible as several sectors such as the construction industry are project-based and seasonal (Medenilla, 2016).

Furthermore, jurisprudence recognizes the exercise of "management prerogative" stating that managerial employees are "vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees." Management prerogative is that broad freedom "to regulate, according to its own discretion and judgment, all aspects of employment...This right is tempered only by these limitations: that it must be exercised in good faith and with due regard to the rights of the employees."³ In effect, this management prerogative gives more authority to management to end contracts of workers deemed unfit.

Labor groups continue to urge DOLE to fully eliminate the practice of contractualization by removing Articles 106-109 of the Labor Code completely (Geronimo, 2016) and amend related laws. Employees performing core functions and have served for a long number of years should be regularized.

What are the implications of regularizing workers?

Regularizing workers will result to an increase in the labor cost within the range of PhP200-500 per month to cover mandated premiums for Social Security, Philhealth and Housing Development Mutual Fund. Additional mandated benefits are the Service Incentive Leave of at least 5 days convertible to cash and the 13th month pay. Any increase in wages and benefits could translate to millions of pesos in expenses to the corporation, especially if it employs hundreds of employees. Small enterprises will be most affected by the labor cost adjustment.

³ <http://www.laborlaw.ph/589/management-prerogative/>

Labor laws on regular and contractual employment

Philippine Labor Code Article 280 defines regular employment as the provision of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties; employment is categorized as regular where the employee has been engaged to perform activities which are necessary or desirable in the business of the employer (Azucena Jr. 2012)

In this definition, the terms “necessary” and/or “desirable” are crucial. These days, companies, in assessing their organizational and human resource management functions, segregate their functions between core and non-core or between primary and secondary. The emerging trend is that the list of “necessary” or “desirable” is getting shorter while the list of non-core is longer. Non-core include the following: recruitment, trainings, payroll, janitorial, maintenance, messengerial, delivery, driving and security. All of these non-core are now being outsourced, resulting to more employees falling under the category of contractual or employees of third party service providers.

Under existing laws, the Philippines does not totally prohibit contractualization but rather regulates it through the formulation of DOLE department orders. Philippine Labor Code (PLC) Articles 106-109 define the obligations of contractor or subcontractor, assuring the wages and protection of the worker:

- When an employer (principal company) enters into a contract with another person to do work (contractor), the employee of the contractor (and of the latter’s subcontractor, if any) shall be paid wages... If the contractor or subcontractor fails to pay the wages of his employees, the employer shall be jointly liable with his contractor or subcontractor to such employees.
- “Labor-only” contracting is defined as the person supplying workers to an employer. The labor only contractor does not have substantial capital in the form of equipment and work premises. Recruited workers perform activities directly related to the business of the principal employer. In such cases, the

labor only contractor is merely an agent of the principal employer and is responsible for the workers.

- Except where the employment has been fixed for a specific project, the completion 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.

To implement the aforementioned PLC articles, DOLE Department Order (DO) 18-A was issued in 2011 covering all enterprises engaging in contracting or subcontracting, also referred to as third party service providers. According to DOLE officials, the DO requires enterprises to fully comply with minimum wages and general labor standards, including payment of social security premiums, security of tenure, self-organization, collective bargaining and the right to strike.

DO 174 was signed in March 2017 and superseded DO 18-A. The new DO defines permissible and non-permissible contracting and subcontracting. The law states that contracting or subcontracting is legitimate if the contractor is registered with DOLE and is engaged in an independent business, free from control of the principal company. Furthermore, the contractor has substantial capital and/or investment so that it does not engage in labor-only contracting. This means labor-only contracting is absolutely illegal. The net effect is that contractors and subcontractors will continue to operate. Labor leaders opined that DO 174 is not substantially different from DO 18-A, but only prohibits, in explicit terms, the following:

1. labor-only contracting or the “cabo” system;
2. contracting out work by reason of strike;
3. sign, as a precondition to 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;
4. repeated hiring of employees under an employment contract of short duration;

5. sign a contract that fixes 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.

Summary and conclusion

The Philippines must harness the potentials of its young population because this offers an opportunity to raise economic growth, but only if they are employed in productive jobs. Identified sunrise industries can possibly provide more jobs, especially for the young. The agribusiness segment, comprising more than 10 million working Filipinos, is another important sector that must be pump-primed.

After providing jobs, the next challenge is providing sustainable and decent employment.

The concept of sustainable employment is hinged on regularizing workers and reducing contractual work. However, data shows that there are laws regulating contractual work: PLC Articles 106-109, DO 174, Civil Service Commission resolution on hiring “job order” employees, and exercise of management prerogative. All of these laws legitimize contractual arrangements. Unless these laws are amended or repealed, contractualization will continue. What can possibly be reduced is the “endo” system or illegal contractualization. Enterprises that are not granted DO 174 certification will be considered illegal operators and can be subjected to sanctions or closure.

Beyond regularization of employment, the ultimate goal is inclusive growth and social security, encompassing all industries and work categories. Industrialists and economists are hopeful, noting that the “Philippines remains a bright spot in Asia with growth targets between 7-8 percent that are attainable”⁴ vis-à-vis the various sunrise industries and government development projects. Economist Bernardo Villegas advised that government give more attention to the improvement of the agribusiness segment and help the farmers, thereby reducing the rate of poverty among the poorest Filipinos.

⁴ <http://citem.gov.ph/industry-news-list/132-gdp-growth-may-hit-8-10-in-10-yrs-villegas>

References

Azucena Jr., C. A. *Everyone's Labor Code* (2012). Quezon City: Rex Printing Company, Inc.

CBSI Editorial Staff. (2007). *Labor Code of the Philippines and its amended Implementing rules and regulations: Compilation*. Quezon City: Central Books Supply, Inc.

Cinco, Maricar (2016, May 25). Contractual workers go on strike. *Philippine Daily Inquirer*

Geronimo, J. (4 October 2016). DOLE: 10,532 workers regularized so far under Duterte admin. Rappler from: <http://www.rappler.com/nation/148159-dole-regularized-workers-100-days-duterte-administration>. Accessed on October 1, 2016

Medenilla, S. (27 June 2016). Duterte won't totally ban contracting employees, only 'endo' scheme – Bello. *Manila Bulletin Online*. Accessed on October 1, 2016

Philippine Development Plan 2011-2016 in <http://www.neda.gov.ph/wp-content/uploads/2013/09/CHAPTER-3.pdf67-70>). Accessed on January 5, 2017

Ramos, M. & Santos, T. (5 August 2016). Digong: End 'endo', or I kill you. *Inquirer.net*. Retrieved from: <http://newsinfo.inquirer.net/803183/digong-end-endo-or-i-kill-you>, on October 1, 2016

Steinmetz, Katy. (2016 January 18). The way we work: a new poll reveals the size of the peer-to-peer revolution. *Time magazine*

Tolentino, MCM (2017 November-December). Philippine report on employment trends and policies: Can the Duterte administration end contractualization? *Japan Labor Issues*. Vol. 1 No. 3

<http://citem.gov.ph/industry-news-list/132-gdp-growth-may-hit-8-10-in-10-yrs-villegas>. Accessed on January 7, 2017

<http://cnnphilippines.com/business/2016/03/30/ADB-Youth-unemployment-policy-challenge-govt.html>. Accessed on January 7, 2017

<http://www.csc.gov.ph/>. Accessed on January 7, 2017

<http://www.laborlaw.ph/589/management-prerogative/>. Accessed on January 8, 2017

Appendix

Policies on Job Order and Probationary Employment

Defining Job Order in CSC Resolution No. 020790*

- a. Individual Contract of Services/ Job Order - refers to employment described as follows: The contract covers lump sum work or services such as janitorial, security, or consultancy where no employer- employee relationship exists between the individual and the government;
- b. The job order covers piece work or intermittent job of short duration not exceeding six months and pay is on a daily basis;
- c. The contract of services and job order are not covered by Civil Service law, rules and regulations, but covered by Commission on Audit (COA) rules;
- d. The employees involved in the contract or job order do not enjoy the benefits enjoyed by government employees, such as PERA, ACA and RATA. Services rendered thereunder are not considered as government service.