



PRESS STATEMENT

Issuance of DOLE Department Order¹ on Contracting and Subcontracting

Secretary Silvestre H. Bello III

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Reaffirming workers' constitutional and statutory right to security of tenure

Greetings!

Firstly, we would like to express our appreciation to our valued partners - the labor and employer, to you - the media and to the public in general, for your support to the Department and for your enduring patience of waiting for the issuance of the new DOLE Department Order on Contracting and Subcontracting.

As one song goes, the wait is over. And yes, the long wait is indeed over. I have already signed the Department Order on Contracting and Subcontracting superseding DOLE Department Order No. 18-A. If you recall, I ordered the review of DO 18-A when I assumed office as Secretary of Labor. A Technical Working Group chaired by Usec. Ciriaco Lagunzad III and co-chaired by Usec. Joel Maglunsod was constituted to lead the review. The review was no easy. It was long and extensive because the Department has to consult all sectors, not only here in the National Capital Region and Luzon, but also in Visayas and Mindanao. There were five (5) Focus Group Discussion sessions,² three (3) area-wide Labor Summits³, and about 17 sectoral meetings⁴. The National Tripartite Industrial Peace Council was also convened last March 7, 2017.

We, at the Department, would have wanted a consensus Department Order - a DO that is both acceptable to, and endorsed by labor and employer. But after almost nine (9) months of dialogues, meetings, and consultations, the fundamental difference between labor and employer remains. The latter is of the position that contracting and subcontracting is allowed by law, and the power of the Secretary of Labor is merely regulatory in nature. The former, however, is poised on insisting total prohibition of all forms of contractualization and fixed term employment. Given this impasse and taking into consideration the social and economic impact of prolonged policy uncertainties, we think that it will be for the benefit of the greater public if the Department, through the Secretary of Labor, would finally put closure to this issue, and exercise the power and discretion given him under the law.

Based on the Labor Code, as amended, the Secretary of Labor has no power to prohibit all forms of contractualization and fixed term employment. This matter is a function of legislation. While he has quasi-legislative power, the Secretary of Labor cannot, through rules and regulations, amend or supplant existing provisions of law. The Secretary of Labor can only regulate contracting and subcontracting. Hence, this new DOLE Department Order on Contracting and Subcontracting.

¹ Department Order No. 174 Series of 2017 – Rules Implementing Articles 106 to 109 of the Labor Code, As Amended

² 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.

³ 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.

⁴ High-level meetings, 5 labor sector dialogues, and 5 Tripartite Executive Committee meetings.

The new DOLE Department Order on Contracting and Subcontracting: 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.

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;
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;
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.

The Department would like to underscore though that a DO, however well-crafted, loses its utility and purpose if not well-implemented. Hence, I directed Usec. Joel Maglunsod and Usec. Bernard Olalia to review the enforcement framework of labor laws and standards under Department Order No. 131-B. Also, I have already requested the creation of 200 plantilla positions in addition to the existing pool of labor laws compliance officers. We will create regional inspection teams that directly report to the Office of the Secretary. Usec. Joel Maglunsod and Usec. Bernard Olalia will supervise these regional inspection teams.

The Department will strictly implement this new DOLE Department Order, all labor laws, rules and regulations to protect worker's rights and promote their welfare particularly on labor standards, self-organization, collective bargaining and security of tenure.

Maraming Salamat!

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