

Position paper on Senate Bill 1571 Amending Article 83 of the Labor Code of the Philippines submitted to the Senate Committee on Labor, Employment and Human Resources Development on September 13, 2017

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The issue of labor flexibilization has been one of the major problems besetting the workers. The widespread flexible types of employment have directly affected the workers' wages, the right to freedom of association, and the unionization rate in the country. Labor market flexibility implies that employers have more control and workers have less bargaining rights over their working conditions. As a result, workers often receive wages below the prevailing minimum wage, suffer from precarious employment, and endure long hours of work beyond what is legally mandated.

Data from independent think tank IBON Foundation show two out of three employed Filipino workers (24.4 million) are non-regular or engaged in precarious jobs while unemployment increased to 4.6 million. In the last three decades, the unionization rate in our country has dramatically declined to only 8.7% of salaried workers (1.95 million) with only 207,811 workers covered by Collective Bargaining Agreement or CBA according to Center for Trade Union and Human Rights. These factors have intensified economic inequality and poverty, with seven out of 10 Filipinos rating themselves poor.

Despite these alarming conditions, various compressed workweek schemes have been implemented in the pretext of promoting flexibility in the workplace but are essentially in favor only of the employer. The Compressed workweek scheme is a flexible work arrangement wherein the normal workweek is reduced to less than six (6) days with 48 hours still being the normal total work hours per week. This means that the normal workday is increased to more than eight hours without corresponding overtime premium (DA 2-09). Like the illegal practice of contractualization, compressed workweek has been a common scheme of capitalist-employers particularly in Philippine Special Economic Zones (SEZs) to lengthen the working day through forced overtime without pay and without raising the wages of workers.

Labor flexibilization and consolidation of neoliberal policies have been the response of the capitalists in the wake of global economic crisis. These policies are wielded in state-enforced rules and guidelines directed to weaken unions in collective bargaining and ensure profit. During the early 1990s recession, the Department of Labor and Employment issued Department Order No. 021-90 "Guidelines on the Implementation of Compressed Workweek" urging employees to adopt a compressed workweek scheme due to the oil crisis. Fourteen years after, at the height of energy crisis and what would lead to the 2007-2008 financial crisis, Department Advisory No. 02 series of 2004 "Implementation of Compressed Workweek Schemes" was issued, reiterating that employers and workers may opt to adopt a mutually acceptable compressed workweek arrangement suitable to the requirements of the companies based on modernization in work processes. Certainly, technology has changed the operations in workplaces but the benefits and progress are not fairly shared between the management and the workforce.

In 2009, Labor Secretary Marianito Roque issued an advisory on the adoption of flexible work arrangements (DA 2) as a measure against the adverse impact of the global financial crisis. Finally, a

bill aimed to institutionalize the compressed work week scheme was passed at the House of Representatives and is pending before the Senate. The Flexible Work Arrangement Bill stems from the House Bill that went as far as amending a number of provisions in the Labor Code: Article 83 on normal hours of work, of Article 87 on overtime work, and of Article 91 on right of weekly rest day. Article 83 of the Labor Code stresses that normal hours of work shall not exceed eight (8) hours a day. Work beyond eight hours entails corresponding overtime pay is given to the employee.

Eight-hour work or 40-hour workweek is an international standard that rose from social movements all over the world; a victory won by workers and trade unionists in the struggle against slave-like working conditions imposed by the profit-oriented capitalists.

Worsening labor situation in the country

The Duterte Administration promised change yet the workers are being bled dry by worsening labor situation. Joblessness and those actively seeking for work remains high at 11.5 million and the overall quality of work continues to decline. Widespread contractualization, land grabbing, and lack of decent jobs forced Filipinos to leave their families and work abroad. An estimated 6,092 Filipinos leave the country daily, mostly women, who are vulnerable to exploitation, discrimination, and other gender-specific assaults. Poverty and the increase of unemployment in the country are bolstered by labor flexibilization schemes that further press down wages.

In addition, President Duterte's proposed plan on rehashing the two-tier wage system is far from the workers' demand of a national minimum wage. While the cost of living rises, workers continue to receive meager wages in their workplace and at home, they face threats of violent demolitions and harassment in the name of war on drugs.

The latest labor force final results (2016) indicated that almost two-thirds or 65.7% of the 41.7 million total employed persons were working full time, of which 21.8% worked more than 48 hours in a week. Moreover, so-called "mandatory overtime" is widely practiced in various enterprises, particularly in Business Processing Outsourcing companies (BPOs). Workers have been, and still are enduring longer shifts and rising overtime hours without overtime pay.

Equally alarming is at current 8-hour workday, 46.1% of Filipino workers (31 million) have not been receiving the minimum wage (PSA, 2016). The average daily basic pay in the country is only Php 400.95 or Php 278.44 in real terms, with the lowest minimum wage of Php 235 (Region IV) equivalent only to Php 156.25 in real terms. These amounts are very far from the family living wage of Php 1,130 per day, indicating a 79% wage gap. In a study conducted by EILER in two urban poor communities (2015), 77% of the women in the areas are engaged in informal work as "sari-sari" storeowners, sidewalk vendors (of drinks and snacks), garlic peelers and laundry-women. About 22% are jobless while only a very small percentage are wage and salary workers. Households in depressed communities do not have sufficient income as most earn below Php 100 a day. In a separate study, EILER found that one in five households has incident of child labor in hazardous industries of plantations and mines. A total of 48% of the child laborers surveyed earn less than Php 150 per day and endure work up to 24 hours in mines.

EILER's studies on compressed workweek schemes go as early as 2000, published in the book *Race to the Bottom*. NIDEC Copal Philippines Corporation, a Japanese-owned electronics assembler located in the Light Industry and Science Park I implemented the compressed workweek scheme on September 2001 where workers render 10 hours of work per shift, two shifts a day, five days a week, alternating Saturdays or even Sundays when demand is high. Additional rest day and overtime premiums were eliminated. The basic wage of NIDEC workers ranged from Php 285 to 330 per day. For the electronics industry in 1999, it is equivalent to only Php 239 in real terms. Workers at NIDEC used to work three 8-hour shifts per day, six days per week (48-hour workweek). The NIDEC management also orchestrated union busting as it favored the company union headed by its former organizer-turned-new-HR manager over the union affiliated with a militant labor federation.

Most Filipino workers at present are daily wage earners whose incomes are based on an 8-hour workday plus overtime. In the proposed flexible work arrangement, the workdays may be compressed to four days of 12 hours, reducing the income of daily wage earners of at least a third. This would mean that working for 12 hours on a Sunday only earns the worker the daily wage, instead of 130% rest day premium pay plus 30% overtime rate.

In a recent consultation with various trade unions, EILER found that workers from two companies situated in the Special Economic Zone in Cabuyao, Cavite experienced extended work hours, lower wages and health problems with the implementation of compressed workweek schemes. Optodev Inc. and Nexperia SCI workers have four workdays of 12-hour work each. On the seventh day of the week, the next cycle of four workdays of 12-hour work each restart. This means workers have moving or alternating rest days and 60-hour workweeks.

Under the labor standard of an 8-hour workday and 48-hour workweek, workers should earn 8.6 times their daily wage rate and earn two rest days without such scheme. However, in one week they only earn 7.5 times their daily wage rate for 60 hours of work (7.5×8 hours). The workers are robbed of 1.1-day worth of wages as well as rest days and overtime pay per week. The companies also took away the workers' second rest day for their 12-hour backbreaking work. Production of the two companies increased by 75% and expanded to seven days of 12 hours, while only paying the workforce with daily wage rate.

Due to management's anti-union approach, it took the union in Optodev one year of struggle to successfully rid of the compressed workweek scheme and bring back what were taken away from the workers. The union in Nexperia continues to resist the implementation of flexible work arrangement. However, since contractualization prevents workers from joining the union and exercise their bargaining rights, the Nexperia management could further exploit the non-regular and non-unionized workers thereby pitting them against regular workers.

Another important consideration is the workers' health and well-being. Several studies have shown that a workday that does not exceed eight hours is more beneficial to the worker and promotes a sustainable working environment. In an ongoing study by the Center for Trade Union and Human Rights, the extent and impact of long working hours is detrimental to the workers' family and social life, as well as workers' health. The participants working more than eight hours per day suffer from the time they also spend on road traffic, taking up to 20 hours of their waking hours. The study also

found discrimination in companies that heavily favor younger workers (under 30 years old and single) because older workers can no longer endure the long working hours. Such practice is similar to what is being implemented in Special Economic Zones (SEZs).

In sum, the proposed amendment to the Labor Code stipulated in Flexible Work Arrangement Bill completely undermines the historical victories gained by workers worldwide against slave-like conditions imposed by the capitalists in their workplace. The bill gives absolute power to the employers to shift working hours and days without restrictions, and limits the workers' right to refuse a 12-hour workday. The amendment the bill pushes only favors the employers by saving on labor costs with workers receiving very low wages and insufficient to no benefits.

The compressed workweek scheme as a form of labor flexibilization removes regulatory statutes on wages and benefits. It further promotes contractualization, depresses wages, denies workers their security of tenure, and weaken the bargaining rights of unions. It is unmistakably another neoliberal attack on the rights of workers in favor of big local and foreign businesses. Meanwhile the legitimate demands for living wages, decent and regular jobs, and better conditions in the workplace remain unheeded.

Historical significance of the 8-hour workday (40-hour workweek)

The struggle for 8-hour workday gave birth to the international labor movement or May Day. In the 18th century, workers have demanded negotiation with their employers to increase wages, end the abusive conditions and reduce long hours of work in the factories. By the 19th century, American workers still logged up to 100 hours per week under horrible working conditions. Women and young children across the United Kingdom were working up to 70-hour weeks. In France, a century before winning the 35-hour workweek, peasants dependent on thriving textile industry also toiled 16-hour workday, six to seven days in a week as seasonal migrant workers to augment their low income.

Early labor movements pushing for shorter work hours trace their roots in the Industrial Revolution in the UK, popularized by Robert Owen's slogan in 1810: "Eight hours' labour, Eight hours' recreation, Eight hours' rest." The International Workingmen's Association founded in London in 1864 became the first international organization to formally demand 8-hour workday during its first congress in Geneva, Switzerland held in 1866. The demand set forth that the legal limit of working hours in a day is a preliminary condition in the emancipation of the working class.

On the historical day of May 1, 1886, 35,000-strong Chicago unionists and ordinary citizens walked out of their jobs and made the city the center of the 8-hour a day national movement. In the following days, tens of thousands more joined the strike. The demonstration was disrupted when on May 3 the police fired at the people. This was followed by a bombing incident the next day, during a protest meeting in Haymarket Square (the Haymarket Affair). On the morning of May 5, martial law was declared and the police made it difficult for the workers to continue their strikes and hold peaceful gatherings. The local government also banned the radical press from publishing the demands of the workers. Labor leaders were rounded up, arrested, injured or killed. People around the world were outraged by the tragedy, and at the same time, inspired by the American workers'

struggle.

In the Philippines, anti-imperialist Union Obrero Democratica de Filipinas (formerly Union Obrera Democratica), the country's first labor federation, marked the first Labor Day in 1903 as it pressed for the country's independence and workers' economic rights. Thousands of Filipino workers marched from Plaza Miranda to Malacañang and held a demonstration despite the refusal and declaration of UODF as illegal by the US colonial government. Again, the workers were met with violence and oppression by the state. In 1913, the Congreso Obrero de Filipinas continued what the UODF began and demanded fairer labor standards for the workers.

During the American colonial rule, companies imposed 12-hour workday. Militant trade unionists tirelessly pushed for 8-hour workday, rights of women workers, abolition of child labor, and accountability from capitalists. One of them was Felixberto Olalia, Sr. or Ka Bert who actively engaged in dialogues with the legislators in 1934 to adopt what is now the current 8-hour workday stipulated in the Labor Code.

Organized women workers had always participated and played a critical role in advancing 8-hour workday. In the months leading to the October Revolution of 1917, hundreds of thousands of workers in Russia assembled in their respective plants and factories in a series of nationally coordinated strikes, igniting a bigger demonstration in Petrograd (modern-day St. Petersburg). The starvation caused by the war was for the working women to solve as men then were mobilized in the army. On International Women's Day (February 23 in old Russian calendar), women textile workers initiated solidarity protests and mass rallies that attracted even more demonstrators who similarly demanded higher wages against the increasing prices of goods, an end to the world war, and the overthrow of Tsardom. The police ordered widespread arrests and shooting of the striking workers. The strike movement continued and after the October Revolution, the 8-hour workday was implemented; discriminatory laws that thwart women's freedom were abolished making Russian women workers the first in history to attain the right to paid maternity leaves, government-funded health and childcare, and safety standards at work.

The substance of the 8-hour workday finds its expression in the very first convention of the International Labor Organization (C001) in 1919, and in Convention 30 (C030) in 1930, which ratified the working hours of persons employed in any public or private industrial undertaking, and those who work in commerce and offices shall not exceed eight hours. Convention 47 (CO47) soon followed in 1935, adopting the principle of 40-hour workweek without reducing the standard of living. The 8-hour workday is also the fundamental cornerstone of the Philippine Labor Code enacted on May 1, 1974, as wages, benefits, health (time for rest), and unionism are based on this victory won by the workers.

The historical significance of the 8-hour workday or 40-hour workweek as an international labor standard is enshrined in Article 83 of the Labor Code and is therefore straightforward, born and bred from the militant Philippine labor movement, linked to the struggle of workers worldwide. Clearly, DOLE advisories in effect violate the constitutional rights of workers and the amendment to the Labor Code proposed in the Flexible Work Arrangement Bill turn a blind eye on established laws governing 8-hour day or 40-hour workweek and overtime work.

Our recommendations

Based on the foregoing considerations, there is a need to counter the alarming trend of intensifying labor flexibilization in our country. We voice out the following demands and recommendations, which we humbly request this committee to take up:

- 1) Junk the proposed Flexible Work Arrangement Bill, which severely reduces the wages and benefits of the workers, and uphold laws governing the 8-hour workday;
- 2) Pass the Occupational Safety and Health Bill pending before the Senate and prioritize Regular Employment Bill to strengthen the rights of workers to decent and regular jobs;
- 3) Repeal Articles 106-109 of the Labor Code, thereby rendering DOLE Department Order 174 null. Further, junk all policies that further legitimizes contractualization and authorizes employers to engage in subcontracting and multiple subcontracting both in private and public sector;
- 4) Repeal the Wage Rationalization Law and implement a national minimum wage. Further, immediately increase the minimum wage at par with the living family wage of Php 1,130 to provide immediate relief to the workers;
- 5) Ratify ILO Conventions 1, 30 and 47 in recognition of the 8-hour workday and ILO Convention 155 on Occupational Safety and Health as the international labor standards, and take appropriate legislative measures to strengthen the compliance with the standards.

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