

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila
SEVENTEENTH CONGRESS
First Regular Session
H.B. No. 916



Introduced by Representative Herminio Harry L. Roque, Jr.

THE ANTI-EDO ACT

EXPLANATORY NOTE

This proposed Bill give fixed-term employees (contractual employees) the right in principle not to be treated less favorably than permanent employees of the same employer doing similar work. The right, which is exercisable by complaint to the National Labor relations Commission, applies where the less favorable treatment is on the ground that the employee is fixed-term and is not justified on objective grounds.

This proposed Bill make provision about what constitutes objective justification.

This Bill also provide that where a fixed-term employee who has been continuously employed on fixed-term contracts for four years or more is re-engaged on a fixed-term contract without his continuity being broken, the new contract has effect under the law as a permanent contract unless the renewal on a fixed-term basis was objectively justified.

This proposed law seeks to remove discrimination in statutory rights between fixed-term employees (or certain types of fixed-term employees) and permanent employees.

This Bill implements the Constitutional right of the people to security of tenure.

REP. HERMINIO HARRY L. ROQUE, JR.

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CITATION, COMMENCEMENT AND INTERPRETATION

1. —(1) These Regulations may be cited as the Fixed-term Employees (Prevention of Less Favorable Treatment) of 2016

(2) In these Regulations— “employer”, in relation to any employee, means the person by whom the employee is (or, where the employment has ceased, was) employed;

“fixed-term contract” means a contract of employment that, under its provisions determining how it will terminate in the normal course, will terminate—

- a) on the expiry of a specific term,
- b) on the completion of a particular task, or
- c) on the occurrence or non-occurrence of any other specific event other than the attainment by the employee of any normal and bona fide retiring age in the establishment for an employee holding the position held by him,

and any reference to “fixed-term” shall be construed accordingly;
“fixed-term employee” means an employee who is employed under a fixed-term contract;

“permanent employee” means an employee who is not employed under a fixed-term contract, and any reference to “permanent employment” shall be construed accordingly;

“pro rata principle” means that where a comparable permanent employee receives or is entitled to pay or any other benefit, a fixed-term employee is to receive or be entitled to such proportion of that pay or other benefit as is reasonable in the circumstances having regard to the length of his contract of employment and to the terms on which the pay or other benefit is offered;

1 "renewal" includes extension and references to renewing a contract
2 shall be construed accordingly;
3

4 **COMPARABLE EMPLOYEES**

5 2.—(1) For the purposes of these Regulations, an employee is a comparable
6 permanent employee in relation to a fixed-term employee if, at the time when the
7 treatment that is alleged to be less favorable to the fixed-term employee takes place,

8 a) both employees are—

9 (i) employed by the same employer, and

10 (ii) engaged in the same or broadly similar work having regard, where
11 relevant, to whether they have a similar level of qualification and skills;
12 and

13 (ii) the permanent employee works or is based at the same
14 establishment as the fixed-term employee or, where there is no
15 comparable permanent employee working or based at that
16 establishment who satisfies the requirements of sub-paragraph
17 (a), works or is based at a different establishment and satisfies
18 those requirements.

19 (2) For the purposes of paragraph (1), an employee is not a comparable
20 permanent employee if his employment has ceased.
21

22 **LESS FAVOURABLE TREATMENT OF FIXED-TERM EMPLOYEES**

23 3.— (1) A fixed-term employee has the right not to be treated by his employer
24 less favorably than the employer treats a comparable permanent employee—

25 a) as regards the terms of his contract; or

26 b) by being subjected to any other detriment by any act, or deliberate
27 failure to act, of his employer.

28 (2) Subject to paragraphs (3) and (4), the right conferred by paragraph (1)
29 includes in particular the right of the fixed-term employee in question not to be
30 treated less favorably than the employer treats a comparable permanent employee in
31 relation to—

32 a) any period of service qualification relating to any particular condition
33 of service,

34 b) the opportunity to receive training, or

35 c) the opportunity to secure any permanent position in the establishment.

36 (3) The right conferred by paragraph (1) applies only if—

- 1 a) the treatment is on the ground that the employee is a fixed-term
2 employee, and
3 b) the treatment is not justified on objective grounds.
4

5 (5) In determining whether a fixed-term employee has been treated less
6 favorably than a comparable permanent employee, the pro rata principle shall be
7 applied unless it is inappropriate.
8

9 (6) In order to ensure that an employee is able to exercise the right conferred
10 by paragraph (1) as described in paragraph (2)(c) the employee has the right to be
11 informed by his employer of available vacancies in the establishment.
12

13 (7) For the purposes of paragraph (6) an employee is "informed by his
14 employer" only if the vacancy is contained in an advertisement which the employee
15 has a reasonable opportunity of reading in the course of his employment or the
16 employee is given reasonable notification of the vacancy in some other way.
17

18 **OBJECTIVE JUSTIFICATION**

19
20 4.—(1) Where a fixed-term employee is treated by his employer less favorably
21 than the employer treats a comparable permanent employee as regards any term of
22 his contract, the treatment in question shall be regarded for the purposes of
23 regulation 3(3)(b) as justified on objective grounds if the terms of the fixed-term
24 employee's contract of employment, taken as a whole, are at least as favorable as the
25 terms of the comparable permanent employee's contract of employment.
26

27 28 **RIGHT TO RECEIVE A WRITTEN STATEMENT OF REASONS FOR LESS** 29 **FAVOURABLE TREATMENT**

30
31 5.—(1) If an employee who considers that his employer may have treated him
32 in a manner which infringes a right conferred on him by regulation 3 requests in
33 writing from his employer a written statement giving particulars of the reasons for
34 the treatment, the employee is entitled to be provided with such a statement within
35 twenty-one days of his request.

36 (2) A written statement under this regulation is admissible as evidence in
37 any proceedings under these law.

1 (3) If it appears to the tribunal in any proceedings under these
2 Regulations—

- 3 a) that the employer deliberately, and without reasonable excuse, omitted
4 to provide a written statement, or
5 b) that the written statement is evasive or equivocal, it may draw any
6 inference which it considers it just and equitable to draw, including an
7 inference that the employer has infringed the right in question.
8

9 (4) This regulation does not apply where the treatment in question consists of
10 the dismissal of an employee, and the employee is entitled to a written statement of
11 reasons for his dismissal .
12

13 **UNFAIR DISMISSAL AND THE RIGHT NOT TO BE SUBJECTED TO**
14 **DETRIMENT**
15

16 6.—(1) An employee who is dismissed shall be regarded as unfairly dismissed
17 if the reason (or, if more than one, the principal reason) for the dismissal is a reason
18 specified in paragraph (3).

19 (2) An employee has the right not to be subjected to any detriment by any act,
20 or any deliberate failure to act, of his employer done on a ground specified in
21 paragraph (3).

22 (3) The reasons or, as the case may be, grounds are—

- 23 (i) that the employee—brought proceedings against the employer
24 under this law;
25 (ii) requested from his employer a written statement under regulation 5
26 or regulation 9;
27 (iii) gave evidence or information in connection with such
28 proceedings brought by any employee;
29 (iv) otherwise did anything under these Regulations in relation to
30 the employer or any other person;
31 (v) alleged that the employer had infringed these Regulations;
32 (vi) refused (or proposed to refuse) to forgo a right conferred on him
33 by these Regulations;

