# Notes on DO 18-A, Series of 2011

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A. **Issues encountered.**

(1) Labor organizations and workers pointed to Department Order No.18-02 as the DOLE "contractualization of labor policy" or to have undermined their right to security of tenure due to the proliferation of subcontracting and outsourcing arrangements. In particular, the Alliance of Progressive Labor (APL) together with the other members of the *Kilusan Laban sa Kontrakwalisasyon* (APL, Makabayan, Partido ng Manggagawa, among others) has stated that indirect employment schemes, such as subcontracting, contractualization and casualization, as well as the abuses of the classes of employment allowed by law have impaired the workers right to security of tenure. They also claimed the arrangements has stymied the growth of unions due to the precariousness of the jobs, and more and more workers have become non-regular workers.

(2) Cases of violations of labor standards, circumvention of the security of tenure and other provisions of the Labor Code, and proliferation of fly-by night subcontractors.

(3) Proliferation of manpower cooperatives in the subcontracting arrangement that do not comply with minimum wage, SSS and other workers' basic benefits, including the curtailment of the right to self-organization.

B. **New amendatory DOLE Department Order**.

Guided by the principle of tripartism[1] and consensus-based approach, on 14 November 2011, DOLE Secretary Rosalinda Dimapilis-Baldoz issued Department Order No. 18-A, Series of 2011, entitled: "Rules Implementing Articles 106 to 109 of the Labor Code, As Amended", to address the gaps of DO 18 on security of tenure, compliance with workers' rights to labor standards as well as occupational health and safety standards, and enforcement aspect.

The new DO is a product of six (6) tripartite consultations and separate sectoral and organizational sittings, in addition to the almost five (5) years failed attempts to review and amend the DO 18.

The new DO recognizes subcontracting as legitimate business undertaking but tightens the requirement to ensure that only legitimate subcontractors can subcontract jobs or services. It reiterates the prohibition on labor-only contracting and the test for legitimate engagement as set in DO18-02. Specifically, the new DO:

[1] Tripartism refers to the involvement/representation of workers and employers shall in decision and policy-making bodies of the government. The Philippine Government adopted Tripartism as a state policy, particularly by virtue of Section 3, Article XIII (Social Justice and Human Rights) of the Philippine Constitution, Article 275 (Tripartism and Tripartite Conferences) of the Philippine Labor Code, as amended, and by ratification of ILO Convention No. 144 (Tripartite Consultations to Promote the Implementation of International Labor Standards). Bureau of Labor Relations website. (Accessed on 21 October 2011)

**1.** Delineates service contracting/subcontracting from private recruitment and placement agency (PRPA), by prohibiting contractors/subcontractors from engaging in PRPA activities and vice-versa. This distinguishes a subcontractor, who should be an **independent employer,** from a PRPA who merely acts for and on behalf of an employer and not the employer of the recruited and placed workers at a company or an employer**. Thus, effectively removing one critical source of circumvention of the Labor Code provisions.**

2. Sets clear criteria for legitimate contracting or subcontracting by requiring compliance with the following:

**(a)** Minimum capitalization requirement of at least P3 Million fully paid up capital for all subcontractors whether corporation, partnership and cooperative; and a net worth of at least P3 Million for single proprietorship; **(Section 3[l])**

**(b)** Proof of ownership or lease agreement on tools, equipment, machineries and work premises actually and directly used by the contractor in the performance or completion of the job, work or services contracted out, subject to verification inspection prior to the grant of registration as legitimate subcontractor; **(Section 15. Requirements for registration)**

**(c)** Payment of P25,000.00 registration fee; **(Ibid.)**

**(d)** Proof of financial capacity to pay the wages and benefits of the workers in every service contract using the Net Financial Contracting Capacity (NFCC) formula in government procurement; (**Section 3[g])**

(e) Control over the performance of the work of the employee deployed or assigned to render the contracted work or services. (**Section 6[b] on Prohibition on labor-only contracting**)

**3.** Induces ethical and professional subcontracting, by ensuring compliance with labor standards and occupational health and safety standards through:

(a) Requiring an employment contract and Service Agreement (**Section 9. Required contracts under the Rules.)**

(b) Prescribing a standard form for Service Agreement containing: (i) the description of the job, work or service to be rendered by the subcontractor; (ii) place of work, compliance with labor standards and occupational health and safety, and a **standard administrative fee of at least ten (10) percent**; (iii) capacity to carry out the contract; (iv) details of

the terms of payment; (v) issuance of bond/s as may be agreed upon by the parties to the contract; and (vi) term or duration of the Service Agreement. (**Section 8 on Rights of contractor's employees and Section 9 on Required contracts under the Rules.)**

**(c)** Setting a standard administrative fee of at least ten (10) percent to prevent the "**race to the bottom**" competition to the detriment of workers wages and benefits. (**Section 9 [b] )**

**(d)** Inclusion of cooperatives to observe the regulations on subcontracting and the required registration with DOLE Regional Offices to ensure their compliance to labor standards and regulations. (**Section 2. Coverage)**

**(e)** Development of co-regulation schemes with the tripartite stakeholders. (**Section 33. Financial Relief Program; Tripartite Co-Regulation Engagement.)**

(f) Prohibition of repeated hiring of employees under an employment contract of short duration (5-month employment contract) or under a Service Agreement of short duration with the same or different contractors. (**Section 7. Other Prohibitions)**

**(g)** Underscoring observance of security of tenure by requiring compliance with the clear standards of due process in termination cases. **(Section 11 on Security of tenure of contractor's employees, and Section 12 on standards of due process to be observed termination of employment)**

4. Set out a summary administrative remedy in case of violation of the Rules by:

**(a)** Providing grounds for cancellation of contractor's certificate of registration, i.e., violation of labor standards and occupational and safety standards, misrepresentation or false statement in the application and documents for registration, violation of the rights of workers including the right to self-organization and collective bargaining, non-submission of semi-annual reports, among others; **(Section 23. Grounds for cancellation)**

**(b)** Providing the summary procedure and periods for cancellation of certificate of registration. **(Section 24. Due process in cancellation of registration.)**

**5.** Strengthens the engagement of the tripartite partners in the implementation and compliance with the Rules through:

(a) Provision for a "firm-level approach" through collective bargaining agreement negotiation, or "industry-level approach" through Voluntary Code of Good Practices, in determining functions that can or cannot be subcontracted. (**Section 32. Collective bargaining and/or Industry Tripartite Council)**

(b) Creation of region-based tripartite monitoring team as subcommittee of the Regional TIPC and task to submit a quarterly regional monitoring report to the DOLE Secretary and to the NTIPC, which exercises oversight functions. (**Section 30. Tripartite implementation and monitoring of compliance; Use of registration fees, and Section 31 on Oversight functions of the National TIPC.)**

6. The new Department Order is a testament that the tripartite partners (government, labor and employers groups) have effectively harnessed the institution of tripartism and social dialogue in handling highly contentious and delicate issues such as security of tenure and subcontracting.[2]

[2] Ibid.