

DOLE Department Order No. 174, Series of 2017

Last 16 March 2017, the Department of Labor and Employment (DOLE) released Department Order No. 174, Series of 2017, which provided the rules regarding the implementation of Articles 106 to 109 of the Labor Code, as amended, or those governing contracting and subcontracting arrangements.

Section 5 of D.O. No. 174 expressly prohibits labor-only contracting, which is defined as an arrangement where the contractor or subcontractor (a) (i) does not have substantial capital, or (ii) does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others, and (b) does not exercise the right of control over the performance of the work of the employee.

Meanwhile, Section 6 of D.O. No. 174 prohibits other illicit forms of employment arrangements committed by principals and/or contractors/subcontractors, such as:

- (a) where the principal farms out work to a “Cabo,” which is defined as a person/group/labor group which, under the guise of a labor organization/cooperative/entity, supplies workers to an employer, with or without any monetary consideration, whether in the capacity of an agent of the employer or as an ostensible independent contractor;
- (b) contracting out of job or work through an in-house agency or in-house cooperative, which merely supplies workers to the principal;
- (c) contracting out of a job or work by reason of a strike/lockout whether actual or imminent;
- (d) contracting out of a job or work being performed by union members, when such will interfere with, restrain, or coerce employees in the exercise of their right to self-organization;
- (e) requiring contractor’s/subcontractor’s employees to perform functions which are currently being performed by the regular employees of the principal;
- (f) 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 requiring the employee to become a member of a cooperative;
- (g) repeatedly hiring by the contractor/subcontractor of employees under an employment contract of short duration;
- (h) 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; and
- (i) such other practices, schemes, or employment arrangements designed to circumvent the right of workers to security of tenure.

In the event that there is a finding that the contractor/subcontractor is engaged in labor-only contracting, the principal shall be deemed the direct employer of the contractor’s/subcontractor’s employees. Meaning, the contractor/subcontractor will be treated only as an agent of the principal, who

will then be liable to the employees, not only with the payment of wages, but also for all their entitlements and benefits under the labor laws.

D.O. No. 174 also requires the execution of (1) an Employment Contract between the contractor/subcontractor and its employees, which the former must furnish/inform the employee in writing on or before the first day of his/her employment, and (2) a Service Agreement between the contractor/subcontractor and the principal. Non-submission of the Service Agreement is a ground for the cancellation of the contractor's registration.

However, Section 8 of D.O. No 174 allows permissible contracting and sub-contracting when the following circumstances concur:

(a) the contractor/subcontractor is engaged in a distinct and independent business and undertakes to perform the job or work on its own responsibility, according to its own manner and method;

(b) the contractor/subcontractor has substantial capital to carry out the job farmed out by the principal on his account, manner, and method, investment in the form of tools, equipment, machinery, and supervision;

(c) in performing the work farmed out, the contractor or subcontractor is free from the control and/or direction of the principal in all matters connected with the performance of the work except as to the results thereof; and

(d) the Service Agreement ensures compliance with all the rights and benefits for all the employees of the contractor/subcontractor under the labor laws.

Under Section 10 of D.O. No. 174, the contractor's/subcontractor's employees shall be entitled to security of tenure and all the rights and privileges under the Labor Code, which includes: (a) safe and healthful working conditions; (b) labor standards, such as, but not limited to service incentive leave, rest days, overtime pay, holiday pay, 13th month pay, and separation pay; (c) retirement benefits under the SSS or retirement plans of the contractor/subcontractor; (d) social security and welfare benefits; and (e) self-organization, collective bargaining, and peaceful concerted activities, including the right to strike.

D.O. No. 174 also provides that when the termination of employment of the contractor's/subcontractor's employees is caused by pre-termination of the Service Agreement, or from the completion of the phase of the job or work for which the employee is engaged, the latter may opt to wait for re-employment within three (3) month to resign and transfer to another contractor-employer. Failure of the contractor to provide new employment shall entitle the employee to separation benefits, as may be provided by law or the Service Agreement, whichever is higher, without prejudice to his/her entitlement to completion bonuses or other emoluments. Furthermore, the mere expiration of the Service Agreement shall not be deemed as a termination of employment of the contractor's/subcontractor's employee, who are the regular employees of the latter.

Under D.O. No. 174, it shall be mandatory for all persons or entities acting as contractors to register with the DOLE Regional Office where it principally operates. Failure to comply thereto creates a presumption that the contractor is engaged in labor-only contracting.

Section 23 of D.O. No. 174 provides that the registration of a contractor or sub-contractor may be cancelled or revoked on any of the following grounds, viz: (a) misrepresentation of facts in the application; (b) submission of falsified/tampered application or supporting documents to the application for registration; (c) non-submission of the Service Agreement between the principal and the contractor when required to do so; (d) non-submission of the required semi-annual report; (e) final findings that the contractor has engaged in labor-only contracting and/or other illicit forms of employment arrangements; (f) non-compliance with labor standards and working conditions; (g) findings of violation of the rights of contractor's employees and provisions of Service Agreements and Employment Contracts; (h) non-compliance with SSS, HDMF, Pag-IBIG, PhilHealth, and Employee Compensation Commission (ECC) Laws; (i) collecting any fees not authorized by law and other applicable rules and regulations; and (j) violations of any provisions of the Labor Code.

Complaints against the contractor or sub-contractor based on any of the abovementioned grounds shall be filed in writing and under oath with the DOLE Regional Office that issued the certificate of registration.

Despite its broad and encompassing coverage, D.O. No. 174 excludes from the ambit of its provisions the contracting/subcontracting arrangements in the Construction Industry, which are covered by the Philippine Construction Accreditation Board (PCAB).