

LEGAL  
ALERT

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**Author**

**Felix Sy**  
Managing Partner  
Insights Philippines  
Legal Advisors (IPLA)  
felix.sy@insights-law.com

**Lorybeth Baldrias-Serrano**  
Partner  
Insights Philippines  
Legal Advisors (IPLA)  
lorybeth.serrano  
@insights-law.com



## Labor Contracting and Subcontracting under Department Order No. 174-17 issued by the Department of Labor and Employment

On 4 April 2018, the Department of Labor and Employment of the Philippines (“DOLE”) ordered a Philippine multinational fast food chain, to regularize more than 6,000 of its workers who were deployed by two contractors. DOLE has also issued a compliance order to a franchise holder of an international fast-food chain in the Philippines, directing it to regularize more than 700 of its workers deployed by three contractors. Aside from these orders, DOLE has also announced that it will conduct inspections on other fast-food chains.

In light of these recent developments, there is a need to revisit the salient features of DOLE Department Order No. 174-17 (“DO 174”), which is the governing rule for labor contracting and subcontracting arrangements in the Philippines.

### Prohibition on “Labor-Only” Contracting

DO 174 reiterates the absolute prohibition under the Philippine Labor Code and jurisprudence against labor-only contracting.

Under DO 174, labor-only contracting refers to the following arrangements:

- the contractor or sub-contractor does not have substantial capital. DO 174-17 increased the amount of substantial capital, from at least PHP3 million to at least PHP5 million in case of corporations, partnerships, and cooperatives. As for a single proprietorship, the owner must have a net worth of at least PHP5 million.
- the contractor or subcontractor does not have investments in the form of tools, equipment, machineries, supervision work premises, among others.
- the contractor’s or subcontractor’s employees recruited and placed are performing activities which are directly related to the main business operation of the principal.
- the contractor or subcontractor does not exercise the right to control over the performance of the work of the employee, then it is also considered labor-only contracting under DO 173-14.

### Other Illicit Forms of Employment Arrangements

DO 147-17 also prohibits the following employment arrangements for being contrary to law or public policy:

- When the principal farms out work to a CABO, which is a person or group of persons or a labor group which under the guise of a labor organization, cooperative or any entity, supplies workers to an employer, with or without any monetary or other consideration, whether in the capacity of an agent of the employer or as an ostensible independent contractor;
- Contracting out of job or work through an in-house agency;
- Contracting out of job or work through an in-house cooperative which merely supplies workers to the principal;
- Contracting out of a job or work by reason of a strike or lockout whether actual or imminent;
- 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;

- Requiring the contractor's/subcontractor's employees to perform functions which are currently being performed by the regular employees of the principal;
- 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 payroll 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 a member of a cooperative;
- Repeated hiring by the contractor or subcontractor of employees under an employment contract or short duration;
- Requiring employees under a contracting or 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
- Other practices, schemes or employment arrangements designed to circumvent the right of workers to security of tenure.

### **Mandatory Service Agreement**

DO 174 requires a service agreement between the principal and contractor or sub-contractor. It must include provisions on the specific description of the job or work being subcontracted, its duration as well as the agreed amount of the contracted job or work.

### **Mandatory Registration of Contractors and Sub-contractors**

All contractors and sub-contractors are required to be registered with DOLE. Failure to register gives rise to the presumption that the contractor or sub-contractor is engaged in labor-only contracting.

If there is a finding by the DOLE that the contractor or subcontractor is engaged in labor-only contracting or other illicit forms of employment arrangements, the principal shall be deemed the direct employer of the contractor's or subcontractor's employees. To that end, DOLE will require the principal to regularize these workers.

With DOLE's continuing campaign against contractualization, companies that engage the services of contractors or sub-contractors must make sure that their arrangements are compliant with DO 174.

If you have any questions or require additional information, please contact [Felix Sy](#), [Lorybeth Serrano](#) or the ZICO Law partner you usually deal with.

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