



Hon. Sen Joel Villanueva
Chairperson
Committee on Labor and Employment
Senate
Philippine Congress
Pasay City

Re. CTUHR Position Paper on the Flexible Work Arrangement or SB 1517

Dear Sen. Villanueva :

Greetings of peace!

Last month, the House of Representatives has passed HB 6152 that will institutionalize a Compressed Work Week. We have learned that you have also introduced a SB 1571 or Flexible Work Arrangement.

As a labor rights organization, we have been monitoring the widely practiced work flexibilization and following up on its impact on workers' rights. Thus, the filing of SB 1571 has raised our interests and concern.

In this regard, we are pleased to submit our position paper, with hopes and prayer that the Committee will consider the views and arguments contained therein in today's and future deliberations about the Bill. When asked, we are happy to present this to the honourable committee.

Thank you very much.

Yours sincerely,

Daisy Arago
Executive Director
13 September 2017

Position Paper by

Center for Trade Union and Human Rights (CTUHR)

On the

Flexible Work Arrangement or SB 1571, Amending Article 83 of the Labor Code of the Philippines which limits the working hours to 8 hours per day, introduced by Senator Joel Villanueva

The Center for Trade Union and Human Rights (CTUHR), an independent labour rights organization based in Quezon City would like to bring to the attention of this Committee why we oppose the proposed Senate Bill 1571 which includes: 1) Compressed Workweek; 2) Gliding or Flexi-Time 3) Flexi-Holidays Schedule

While the three components of SB 1571 are presented to be in consideration to workers' time, health and well-being, the Bill will actually worsen the condition of workers and will legalize or institutionalize what we see, as affirmed by the UN Committee on Economic Social and Cultural Rights (UN CESCR)¹ as slave-like conditions at work that pervades in the country.

CTUHR would also to bring to their attention on its position with regard to work flexibilization, which the SB 1571 seeks to strengthen.

- 1. Work flexibilization is an anathema to workers and trade union organizations. Having a trade union is a basic workers' right that s/he must enjoy as enshrined in the 1987 Philippine Constitution and International Human Rights instruments that Philippines pledged to adhere.**

However, since the Philippines became a party to the World Trade Organization in 1995, and embraced all its conditionalities including economic liberalization and labour flexibilization, the bad condition of workers and state of trade unions had gone from worse to worst. Liberalization has forced local and other small or medium-sized companies unable to compete with TNCs given more access to the Philippines to close down or resort to sub-contracting arrangement and engage in cut-throat race to the bottom. This resulted to massive workers displacement forcing them to grapple and compete for temporary jobs even at lower wages to survive. Since then, a steady rise in contractual and flexible work arrangement in almost all industries and economic sectors is observed, simultaneous to the rise of work informalization, precarity and in-work poverty. The 1992, National Statistics Office-ILO Survey for instance, noted that share of informal workers (urban and rural), those unable to get gainful employment in the 'economic liberalization' was at 50% of total employment¹, and increased to 52% in

¹http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_474878.pdf

1999.² More than 10 years later, the World Bank noted in its report in 2013 and 2016 that 75% percent of Filipino workers or around 28 million are informally employed³ with little or no protection from job losses and opportunities to find gainful employment.⁴

The World Bank report “Labor Market Review: Employment and Poverty in the Philippines” released on June 10, 2016 noted the existence of pervasive in-work poverty, where workers remain below the poverty line despite having jobs and despite economic growth in the last decade. The same report found that the growth of real wages—or wages adjusted for changes in prices of goods and services—has yet to catch up with rising productivity. As a result, many workers remain poor. This prevalence of poverty among workers reflects two things: the scarcity of “good jobs” and low earning capacity of poor workers.

This only proved that even those responsible and involved in decision making to adopt work flexibilization note (though may not acknowledge) that neoliberalization which breeds flexible work arrangements does not and will not benefit the workers, despite the country’s economic growth.

Work flexibilization also promotes forced migration that has severely and negatively impacted families particularly the children. The lack of regular and well-paid jobs aggravated by low wages and lack of benefits are forcing Filipinos to work overseas to support their families. Simultaneous to the steady rise in job informalization, the number of Filipinos leaving the country to work overseas, which now accounts to more than 10% of the population also increases. Rather than, stemming the diaspora to protect Filipino families, the past and present administrations had treated them as stable source of foreign exchange.

As regards to the unionization rate in the country, while already very low, flexibilization drives the country’s trade union density to dramatically decline. For example there were about 3.57 million union members in 1995 and it went down to 63% (1.918 million) in 2007. It fell to a mere 8.7% or 1.95 million workers⁵ of the wage and salaried workers, not even labour force in 2016. This leaves the majority of the workers denied of union protection or opportunity to improve work conditions through collective bargaining agreement (CBA).

- 2. The bill on Flexible Work Arrangement or SB 1571 as the name openly states formalizes this widely-practiced work flexibilization, which as stated above, massacred the regular jobs, intensify work informalization and precarity, depress wages, destroys**

² Sale, Jonathan, ‘Quo Vadis’ Declining Trade Union Membership, http://www.dlsu.edu.ph/research/centers/cberd/pdf/bus_focus/Declining_tradeunion.pdf

³ Informal employment is sum of jobs in informal enterprises and informal (non-regular) jobs in formal enterprises, which include self-employed, unpaid family workers and non-regular workers.

⁴ Philippine Economic Update, World Bank, Marh 2013

⁵ A Violent DisOrder, Deepening Poverty, CTUHR Report, July 2017

the trade unions and increase in-work poverty. It professes to espouse an alternative work arrangement, but presents only a legal alternative for employers and corporations to replace established and hard-won labour standards in work hours, pay and employers' accountability to respect workers rights. It is no alternative to workers; it will strengthen the exploitative nature of current workplace practices. Despite the slight differences with HB6152, SB 1571 in all its features and components is regressive and thus, we urge the Senate to REJECT the Bill.

2.1 The Compressed Work Week (CWW) which will allow companies to reduce workdays to 12-hour work day per week is patently anti-worker and plainly pro-business and pro-capitalists.

2.1.1 SB 1571 is no different from HB 6152 except for what it states that CWW implementation in workplaces is **Voluntary**, (underscoring supplied), similar to the DOLE order issued in 2004. However, in reality, workers particularly the daily paid contractual workers have simply no choice, or were not given an option but to work more than 8 hours a day either to keep their jobs or to augment their income.

An ongoing study conducted by CTUHR, involving around 200 workers from 48 companies in Greater Manila area from July – August 2017, revealed that 91% of the respondents said that they want to increase their income, so they work beyond 8 hours. The study also revealed that 80% of the respondents have signed a contract that they only work for 8-hours, but 60.3% said that the companies asked them to work beyond 8 hours up to 12 hours, based on two-shift work. CTUHR Risk Assessment in Semiconductor and Electronic industry in the Philippines reveal that workers are forced to work overtime, if they will not agree, they lose their jobs.⁶

It must be added that 'workers' consent' can only be possible in a workplace where the workers are genuinely represented by a trade union. And the Philippine labour situation, clearly speaks that this is not the case. In Valenzuela, where unions exist in some factories like in Kentex Manufacturing, the unions are organized by the company and thus, do not represent the workers' interests or workers referred them as 'unyon sa loob' (inside union). This kind of unions were organized simply to comply when necessary or convenient for DOLE's tripartite inspection of compliance to labor standards, while new genuine and independent unions are nipped from the bud and leaders are dismissed from jobs. *[CTUHR Research on the condition of Workers in Valenzuela, is attached as Annex A]*

Thus, the inclusion of the word voluntary, to differentiate it from HB 6152, negates the above stated facts on unions and consent, not to mention that majority of companies especially in manufacturing and service sectors have been illegally practicing long

⁶http://electronicswatch.org/en/regional-risk-assessment-semiconductor-and-electronics-industry-philippines-december-2016_2522068.pdf

working hours, and not even one had been reprimanded or prosecuted for doing illegal acts.

2.1.2 CWW, as we had reiterated against HB 6152, backpedals the gain of workers struggle that catapulted the more than century-old International Labor Standards and the Philippine law stipulating that eight (8) hours/day is the normal working hours. This victory was in recognition of the physical, emotional, mental, social and even economic pressure that human body can bear without destroying it. It was recognition that workers are not machines, that they are humans innate with dignity. These reasons were factored in deciding that optional corresponding overtime payment in excess of 8-hour work is paid higher than regular hour to compensate for the additional stress that it caused.

2.1.3 CWW will further cut on wages and income while increasing capital profits by saving on business costs. The workers minimum wages in the country are already way below the living wage, and taking additional income that they can get from overtime pay by working 12 hours a day for four days is tantamount to sending them deeper into poverty and precariousness. To illustrate, and assuming that companies in Metro Manila for example, pay their workers the minimum wage, a 4-day of 12-hour-work week will mean a lost of about Php1,227.42 equivalent to a 16-hour-overtime (OT) pay per week or Php4,909.68/month as the 4-hour in excess to 8-hour work will considered as regular hours instead of overtime.

While a 48-hour or 72-hour rest day a week sounds enticing and considerate and one of the supposed reasons behind SB 1571, it is also deceptive as it completely ignored the fact that workers and their families have to eat and to support household expenses, even on rest days and income reduction will negatively impact the family's basic needs. Hungry families cannot enjoy a three-day rest. Thus, this will compel the workers to look for whatever additional sources of income they can get, making them more vulnerable to the vagaries of the labour market.

2.1.4 CWWlegally paves long working hours violates workers rights to health, well-being and discriminatory to older persons - Initial findings of CTUHR's ongoing study on the extent and impact of long working hours suggests that excessive long working hours is detrimental to the workers' family and social life as well as workers' health. Interviewees noted that they have little time left to spend with their family, friends and even themselves. The 12-16 hours they spend at work, over the time spend on road traffic is already taking almost 18-20 hours of their day, draining them whatever energy is left. The study also found that these company practices heavily favor younger workers (under 30 years old) and single and discriminate against 30 years old and above. Interviewees averred that older workers can no longer endure long working hours, and 26 years old and above are considered old particularly in special economic zones.

2.2 Gliding or Flexi-time among workers, as practice in a tiny section of workplaces (BPO, Convergys for example, as Senate Press Release on August 29, 2017 mentioned) cannot be used to impress or imply that majority of more than 22.41 million wage and salary workers in the country CAN or have the freedom to decide to shorten duration of work hours or adopt flexi hours, so long as it complies with 40 or 48 hours a week. While a very small percentage of professionals or mid-top level management may have been given this freedom, as explained above, the workers reality speaks otherwise. In fact, this argument can be used to get the support of this tiny section of workers to rally behind this bill to the detriment of majority of workers. This will further divide the workers and can be used to sow other 'justifications' to confuse them from the ills engendered by work flexibilization.

2.3 Flexi-Holidays Schedule will affect diminution of benefits for workers despite the statement that the Bill will not cause such. The Senate Press release says this [flexi holiday schedule] is "where employees **agree**[underscoring supplied] to avail the holidays at some other days provided there is no diminution of resulting benefits". It must be reiterated that the reality of industrial or labor relations in workplaces tip heavily in favour of the business and the only option for more than 22.41 Million wage and salary workers is to AGREE with the capitalists' decision to change their shift, day-off or even holidays even if they don't like. The menace of disciplinary action or job dismissal hanging over the heads of workers, regular or contractual keep them into agreeing to policies and practices even against their will.

In addition, changing holidays into other day, as in the case of Mitsumi Cebu Corp, in Danao, Cebu (CTUHR conducted several workers' interviews) deprived workers of their holiday pay. Not only the holiday pay is taken, but also the company uses the change to give a sort of 'day-off' to workers. This means, a day considered a day off, is not paid⁷ based on a no-work, no-pay policy.

3. **On Decongesting traffic** – As its endorser, Sen. Joel Villanueva states that the Bill will help decongest traffic by reducing the number of workers reporting to work every day as they adopt flexible work arrangement. Yes, traffic is a major nightmare, and in fact, CTUHR studies revealed that it adds two to six hours to 12-hour work, i.e. taking 16-20 hours/daily of workers time in urban centers. However, resolving traffic congestion is not a workers' responsibility, the state is principally responsible to addressing it. Passing the burden to the workers who have been suffering long from labour exploitation, poor transportation system, and traffic jams created by increasing volumes of private vehicles is not just very wrong, it is a gross injustice.

Conclusion and Recommendations

⁷ CTUHR Risk Assessment in Semiconductors and Electronics Industry, December 2016

Having said the above, CTUHR reiterates that any attempt or move to further legalize the pervasive practice of labour flexibilization on its different forms, or amend the Labor Code to ensure that business and capitalists are efficient and competitive are attacks to the workers rights and welfare. The Duterte administration had already abandoned its promise of ending the ENDO system, by passing the DO 174, and having a new law that SB 1571 seeks, is not only a total betrayal of workers but also multiplying the exploitation and oppression that workers have long been suffering. If providing safeguard to workers' health and rights would be the objective, we recommend the Senate to work and adopt, the following:

1. Defend and uphold the hard won gain of 8-hour workday, and reject bills seeking a Compressed Workweek;
2. In relation to the above, completely Reject SB 1571, review Art 106-109 of the Labor Code towards ending all forms of labour flexibilization, including those legalized by DO 174 so that our workers will be somehow lifted out of poverty and precarity;
3. Pass the Occupational Safety and Health bill that seeks to penalize erring companies or found violating occupational safety and health standards;
4. Review RA 6727 or Wage Rationalization Act of 1989 towards passing a national minimum wage that will narrow the wide divide amongst workers in different regions and provinces in the country as well as close the gap between the minimum wage and family living wage of Php 1,300 per day.#

13 September 2017