SyCipLaw Labor Bulletin:

New DOLE Guidelines on Contracting and Subcontracting

The Department of Labor and Employment (DOLE) has issued Department Order No. 174, series of 2017 (DO 174), providing a new set of guidelines to govern contracting and subcontracting.

DO 174 identifies two arrangements that constitute labor-only contracting, which is prohibited under the law. The first type is when **(a)** the contractor does not have substantial capital or it does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others; and **(b)** the contractor's employees are performing activities which are directly related to the main business of the principal. The second type is when the contractor does not exercise the right of control over the performance of the work of its employees.

While many provisions of the previous guidelines governing contracting and subcontracting were maintained, the most significant changes introduced by DO 174 include:

- The registration fee of contractors has been increased to ₱100,000 and the effectivity of the certificate of registration has been decreased to two years. The capitalization requirement of contractors has also been increased to ₱5,000,000.

- Contracting out work through an in-house cooperative, which merely supplies workers to the principal, is a prohibited form of employment arrangement.

- Prohibition on requiring the contractor's employees to perform functions that are currently being performed by regular employees of the principal.

- The mandatory provisions in a service agreement between a principal and contractor has been reduced and it is no longer required to include provisions on: **(a)** Net Financial Contracting Capacity; **(b)** ensuring compliance with all the rights and benefits of the employees under the Labor Code; and **(c)** the obligation of the contractor to directly remit the relevant contributions to the Social Security System, Employees Compensation Commission, Philippine Health Insurance Corporation, and the Home Mutual Development Fund.

- The termination of a service agreement between a principal and a contractor does not automatically result in the termination of the employment of the contractor's employees.

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With the issuance of DO 174 and the Government's recent pronouncements on its campaign against contractualization and "end of term" arrangements, we encourage companies that engage the services of contractors to review DO 174, ensure that its service contractors are compliant with the new guidelines, and review its contracting arrangements to ensure that it is not engaged in labor-only contracting or other prohibited forms of employment arrangements.

About SyCip Salazar Hernandez & Gatmaitan

Founded in 1945, SyCip Salazar Hernandez & Gatmaitan is one of the most established and largest law firms in the Philippines. Although its work centers on business activity, the firm has offered a broad and integrated range of legal services that cover such areas as family relations, constitutional issues, and other matters of law unrelated to commerce.

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