

Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Intramuros, Manila

Department Circular No. 01
Series of 2012

Clarifying the Applicability of
Department Order No. 18-A, Series of 2011, to
Business Processing Outsourcing (BPO)/Knowledge Process Outsourcing
(KPO) and the Construction Industry

1. Purpose. This Circular is being issued in response to queries on whether firms or companies in the Business Process Outsourcing (BPO) or Knowledge Process Outsourcing (KPO) and in the Construction Industry are covered by Department Order No. 18-A, Series of 2011, or the Rules Implementing Articles 106 to 109 of the Labor Code of the Philippines, as amended.
2. Existing Rules under Department Order No.18-A, Series of 2011.
 - 2.1. In the implementation of Articles 106 to 109 of the Labor Code, as amended, Department Order No. 18-A, Series of 2011, states in Section 3(c) that contracting or subcontracting is "an arrangement whereby a principal agrees to put out or farm out with a contractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal".

Additionally, it defines trilateral relationship in Section 3 (m) to refer to the relationship in a contracting or subcontracting arrangement where there is a contract for a specific job, work or service between the principal and the contractor, and a contract of employment between the contractor and its workers. There are three (3) parties involved in contracting or subcontracting arrangements, the principal who decides to farm out a job, work or service to a contractor; the contractor who has the capacity to independently undertake the performance of the job, work or service; and the workers engaged by the contractor to accomplish the job, work or service.

- 2.2. Further, Section 36 of D.O.18-A, Series of 2011, provides that contracting or subcontracting arrangements in the Construction Industry, under the licensing coverage of the Philippine Contractors (Construction) Accreditation Board (PCAB), shall be covered by the applicable provisions of these Rules and shall continue to be governed by Department Order No. 19, Series of 1993 (*Guidelines Governing the Employment of Workers in the Construction Industry*); Department Order No. 13, Series of 1998 (*Guidelines Governing the Occupational Safety and Health in the Construction*

Industry); and DOLE-DPWH-DILG-DTI and PCAB Memorandum of Agreement-Joint Administrative Order No. 1, Series of 2011 (on coordination and harmonization of policies and programs on occupational safety and health in the construction industry). While other industries covered by a separate regulation of the DOLE or other government agency, contracting or subcontracting therein shall be governed by these Rules unless expressly provided otherwise.

- 2.3. Section 2, subparagraph 2.5 of Department Order No. 19, Series of 1993, or the Guidelines Governing the Employment of Workers in the Construction Industry provides:

“Contracting and subcontracting. – The practice of contracting out certain phases of a construction project is recognized by law, particularly wage legislations and wage orders, and by industry practices. The Labor Code and its Implementing Regulations allow the contracting out of jobs under certain conditions. Where such job contracting is permissible, the construction workers are generally considered as employees of the contractor or subcontractor, as the case may be, subject to Article 109 of the Labor Code, as amended.”

3. Applicability of the D.O.18-A, Series of 2011 to BPO.

- 3.1. DO 18-A, Series of 2011, clearly speaks of a trilateral relationship that characterizes the covered contracting/subcontracting arrangement. Thus, vendor-vendee relationship for entire business processes covered by the applicable provisions of the Civil Code on Contracts is excluded.
- 3.2. DO18-A, Series of 2011, contemplates generic or focused singular activity in one contract between the principal and the contractor (for example, janitorial, security, merchandising, specific production work) and does not contemplate information technology-enabled services involving an entire business processes (for example, business process outsourcing, knowledge process outsourcing, legal process outsourcing, hardware and/or software support, medical transcription, animation services, back office operations/support). These companies engaged in business processes (“BPOs”) may hire employees in accordance with applicable laws, and maintain these employees based on business requirements, which may or may not be for different clients of the BPOs at different periods of the employees’ employment.

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