



**O CAMPO & SURALVO LEGAL UPDATES**

**(1) DATA PRIVACY:** The National Privacy Commission has identified **ENFORCEMENT** as its focus for the year 2018. 2017's focus was **COMPLIANCE** while 2016's was **AWARENESS**.

**(2) LABOR LAW:** The issue of security of tenure has been grabbing headlines and the attention of the Executive and Legislative branches of government.

**(3) CONSTITUTIONAL CHANGE:** The President has received the draft constitution from the consultative commission.

**AGENDA**

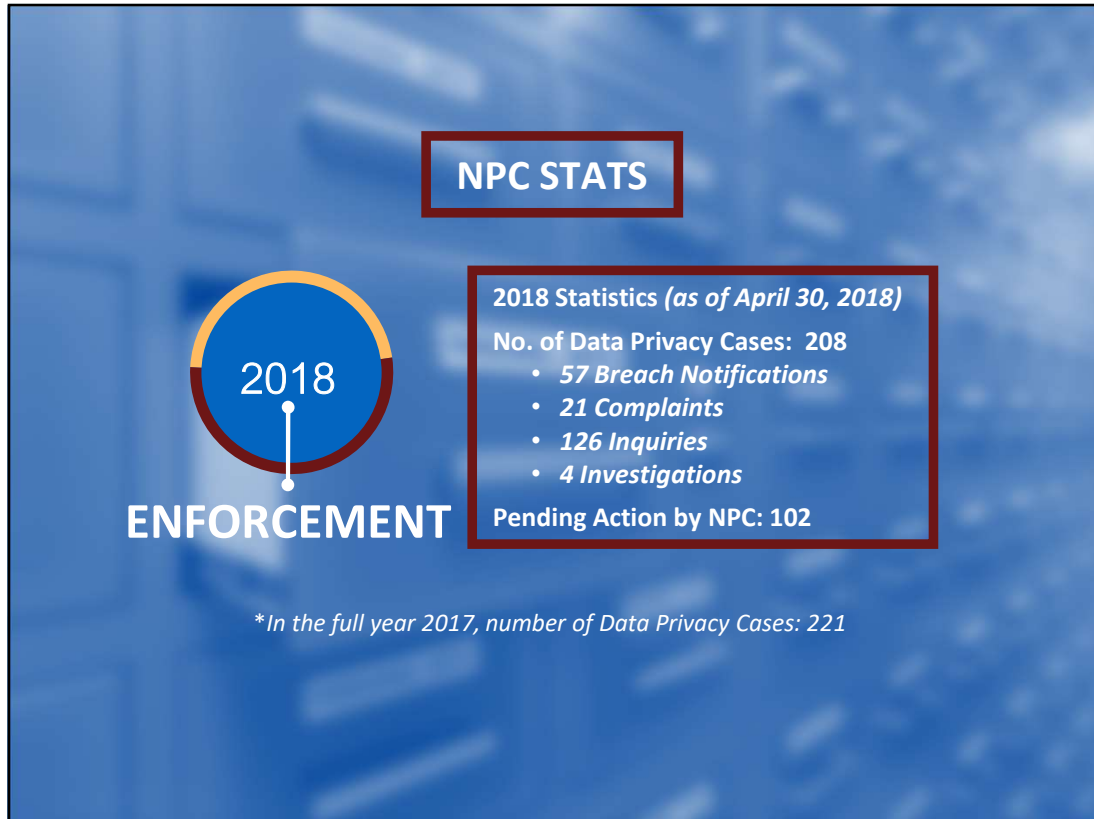
**DATA PRIVACY LAW**

*The National Privacy Commission (NPC) is, this year, focusing on the enforcement of privacy laws and regulations. The past two years were dedicated to raising awareness and laying the foundation for compliance by key sectors and organizations. The NPC is now intensifying monitoring activities, while at the same time promulgating new issuances that clarify the application of the rules that guide compliance.*

**NPC FOCUS**

2016      2017      2018

AWARENESS      COMPLIANCE      ENFORCEMENT



### NPC TEMPLATES

NPC Advisory No. 18-02 issued on 26 June 2018

Updated Templates on Security Incident and Personal Data Breach Reportorial Requirements

- Annual Security Incident Reports for Personal Information Controllers (PICs) - **Annex A**
- Annual Security Incident Reports for Personal Information Processors (PIPs) – **Annex B**
- Mandatory Notification: Personal Data Breach (for the NPC) – **Annex C**
- Mandatory Notification: Personal Data Breach (to Data Subjects) – **Annex D**

### NPC TOOLKIT (May 2018)

Improved on previous editions and provides more templates/guides


SIGNIFICANT TEMPLATES AND GUIDES:

- (1)** Accountability and Compliance Checklist
- (2)** Data Sharing Agreement Template
- (3)** Privacy Manual Guide
- (4)** Privacy Notice Guide

**ADVISORY OPINIONS**


**NPC Circular 16-04**

- An advisory opinion may be issued by the Commission on matters relating to data privacy or personal data protection, at the instance of any party, or on any complaint filed, which failed to comply with the requirements of Rule II herein (*Rule II is the provision on filing of complaints*).
- No request for an advisory opinion may be entertained unless:
  - the request provides sufficient facts to allow for evaluation of the matter relating to data privacy or personal data protection;
  - the request relates to novel issues or legitimate concerns that merit further evaluation;
  - the request is not related to any pending case before the NPC, or on any matter that is subject of an ongoing investigation; and
  - the request is not on a matter that has previously been subject of an advisory opinion.
- An advisory opinion shall be limited to discussion of the issues and applicable law or jurisprudence but shall not impose any sanctions or award damages.



**LABOR LAW: ENDO**

*The issue of security of tenure and the so-called Endo labor practices have attracted not just headlines but also the attention of the executive and legislative bodies. The Department of Labor has, in recent months, intensified its review of contracting and subcontracting practices of businesses and, in certain cases, deemed some arrangements illegal. The Congress has deliberated on several measures that address these practices. The Senate Committee on Labor, Employment and Human Resource Development recently recommended the approval of Senate Bill No. 1826.*



**SB 1826**

**Labor Only Contracting**

**CURRENT  
RULES  
(DO 18-A)**

The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal;

**OR**

The contractor does not exercise the right to control over the performance of the work of the contractual employee.

**SB NO. 1826  
PROPOSED  
AMENDMENTS**

The job contractor, whether licensed or not, merely recruits and supplies or places workers to a contractee, regardless of whether or not he has substantial capital or investment;

**OR**

The workers supplied are performing activities which are directly related to the principal business of the contractee;

**OR**

The workers are under the control and supervision of the contractee.



**SB 1826**

**REGULAR EMPLOYMENT**

**STATUS OF EMPLOYMENT:**

- All employees, except probationary employees, are deemed regular, including project and seasonal employees.
- Project and seasonal employees are regular for the duration of the project or season. In project or seasonal employment, workers are called to work from time to time and temporarily laid-off during the completion of the project or off-season but are in the work pool on leave with or without pay status in between projects or seasons.
- All other forms of employment are prohibited and workers under such arrangements are deemed regular from the first day of employment.



**SB 1826**

## LICENSING OF CONTRACTORS

**COMPLIANT JOB CONTRACTOR:**

- Independent and separate business from the contractee;
- Paid-up capital or net worth of at least PhP5 Million, which may be increased as deemed appropriate through tripartite consultation;
- Expert or specialist in the job, work or service being contracted that shall not be directly related to the principal business of the contractee.

Expertise or specialization shall be established by showing, among others, a core of competent professionals or skilled workers especially trained to carry out the job, work or service or track record in such field of specialization;



**SB 1826**

## LICENSING OF CONTRACTORS

**COMPLIANT JOB CONTRACTOR (continued):**

- Must have regular employees and equipment, machineries or tools necessary to complete the job, work or service contracted out;
- Must exercise control over the performance and completion of the job, work or service contracted out;
- Have certification of compliance with labor and social welfare laws including proof of payment of social security, Philhealth and Pag-Ibig contributions; and
- Must pay license fee, which shall not be lower than PhP100,000.

*\* The job contractor must prove that it has financial capacity based on factors such as the number of employees and the nature of the business.*



**SB 1826**

## EMPLOYMENT STANDARDS

**EMPLOYEE RIGHTS: GENERAL**

- **Rights of Employees of Job Contractors:** The terms and conditions of employment shall not be lower than the minimum standards set by law and regulations.
- **If there is a finding of labor-only contracting:** The workers are deemed regular employees of the contractee, retroactive to the date when they were first deployed to the said contractee.




**SB 1826**

## EMPLOYMENT STANDARDS

**EMPLOYEE RIGHTS: TRANSITION SUPPORT**

- **Transition Support Program (TSP)**  
3-month financial support for employees in between job periods conditioned on undergoing skills training or upgrading under TESDA or TESDA accredited institutions.  
The financial support shall not be lower than the appropriate minimum wage and released at the end of every month.
- **Sources of the funds for the TSP**  
100% of the registration/renewal fees paid by contractors;  
All fines collected for violation of the prohibition on labor-only contracting; and  
Funds from the adjustment measure program of the DOLE.



**THE FEDERAL CONSTITUTION (DRAFT)**

*The Consultative Committee convened by the President to Review the 1987 Constitution recently submitted to the President its report together with a draft constitution which creates a Federal Republic with 16 Federated Regions, the Bangsamoro Region and the Federated Region of the Cordilleras. The draft constitution also proposed changes that will impact the regulation of economic rights, taxation, and the ownership and operation of businesses.*



**The Bill of Rights is demandable against the State and non-state actors and their enforcement shall be consistent with national standards.**



**Every person has the right to:**




- To adequate food;
- To universal and comprehensive healthcare;
- To complete, quality education;
- To adequate and decent housing; and
- To livelihood and employment opportunity.



**Individuals and groups, including corporations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.**



 <p>A person has the right to inquire from any government office or agency the information or data that has been obtained, stored, or processed about himself, and to demand, that such data and information be corrected or deleted, or in case of a private entity or person, that their use be enjoined.</p>	 <p>No law granting any Federal tax exemption shall be passed without the concurrence of a <b>two-thirds of all the Members of each House of Congress, voting separately.</b></p>	 <p>No person shall be elected Senator, Member of the House of Representatives, Vice-President, President, Federal Commissioner, Member of Regional Assembly, Judge, Justice... <b>unless he is holder of a college degree or its equivalent, member of the bar...</b></p>
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 <p>The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.*</p>	 <p>Only Filipino citizens or corporations or associations at least seventy percent (70%) of whose voting capital is owned by such citizens, shall be allowed to engage in the advertising industry.*</p>	 <p>No franchise for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty percent (60%) of whose voting capital stocks are owned by such citizens.*</p>
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**\*Congress may, by law, *change the voting capital requirement* for the above, (considering public welfare and national security); such entities shall be *managed by citizens of the Philippines.***



The Federal Republic shall consist of **sixteen (16) Federated Regions, the Bangsamoro and the Federated Region of the Cordilleras**. Their apportioned component units are in the appended Ordinance I of the Constitution. Congress may, by law, create, abolish, merge, and divide the Regions and determine their constituent political subdivisions, subject to the ratification by the people in a referendum held for the purpose in the political subdivisions affected.

All Regions are permanent and indissoluble parts of the Federal Republic of the Philippines. It is prohibited for anyone to advocate, demand for, or support the secession of any Region from the Federal Republic.



Regional Assembly, Bangsamoro Parliament, Regional Deputy Governor, Regional Governor, Regional Civil Service, Regional Supreme Court, Regional Appellate Court, Federal Intergovernmental Commission...



The Federated Regions shall be given a share of not less than fifty percent (50%) of all the collected income taxes, excise taxes, value-added tax, and customs duties, which shall be equally divided among them and automatically released.



The Federated Regions shall have the power to levy and collect the following taxes, licenses and fees: (a) Real Property Tax; (b) Estate Tax; (c) Donor's Tax; (d) Documentary Stamp Tax; (e) Professional Tax; (f) Franchise Tax; (g) Games and Amusement Tax; (h) Environmental Tax, Pollution Tax, and similar taxes; (i) Road Users Tax; (j) Vehicle Registration Fees; (k) Transport Franchise Fees; and (l) Local taxes and other taxes which may be granted by federal law.

The Federal Government shall have the power to levy and collect all taxes, duties, fees, charges, and other impositions **except the power to tax granted to the Federated Regions**.










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## □ ABOUT OS LAW:

*Ocampo & Suralvo Law Offices (OS Law) is a Philippine corporate, commercial and tax law firm.*

*OS Law assists its clients with their corporate, commercial and tax needs across a spectrum of business concerns including general corporate and commercial matters, company establishment and registration, contract negotiation and drafting, mergers and acquisitions, joint ventures, corporate restructuring and foreign direct investments.*

*OS Law is also driven to provide Philippine businesses with solutions that will enable them to thrive in the global economy. Through its collaboration with DFDL, an international law firm focused on Asia's emerging economies, it provides its clients with access to the tax and legal expertise of 12 offices in eight countries.*



*Jude is a Philippine attorney specializing in mergers and acquisitions, corporate law and tax. Jude has assisted a number of global and ASEAN multinationals in multi-jurisdictional reorganizations and has advised many clients on complex mergers and acquisitions. He holds a Master of Laws degree from Harvard where he received the Landon H. Gammon Fellowship. He also earned a Master of Business Administration degree (Finance and Supply Chain Management) from UNC Chapel Hill's Kenan-Flagler Business School where he was a UNC Kenan-Flagler Fellow. He is a graduate of the University of the Philippines College of Law.*

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