THE
LABOR CODE
WITH COMMENTS
AND CASES
Books by the Author

EMPLOYMENT AND OUTSOURCING UNDER PHILIPPINE LAW

Two Basic Labor Questions: Legal concepts and court rulings on employment and non-employment relationships explained for the general reader

SPECIAL LABOR LAWS

The labor laws outside the Labor Code that are required subjects in the law curricula (Bachelor of Laws and Juris Doctor) and often consulted by employers and employees. Some special laws are annotated with comments and court rulings

THE LABOR CODE WITH COMMENTS AND CASES

LABOR STANDARDS AND WELFARE (Volume I)
LABOR RELATIONS (Volume II-A)
EMPLOYMENT TERMINATION (Volume II-B)

The two-volume textbooks: A comprehensive study of the whole Labor Code, richly amplified with comments and court rulings; intended for law or business students, lawyers, other practitioners, and business persons; recipient of the Supreme Court “Centenary Book Award”; a “popular labor law textbook” (the Supreme Court in Cainta Catholic School case, May 4, 2006); now on its twenty-second year, eighth edition

EVERYONE’S LABOR CODE

The labor law fundamentals and reviewer: The Labor Code for business and law students, bar reviewees, unionists, and the general public; key codal provisions are supplemented with essential explanatory ‘Notes’ and rulings condensed in plain English; seventh edition

ESSENTIAL LABOR LAWS

The companion book: A handy bible of the labor laws most frequently consulted by most practitioners and ardent students

LABOR LAWS SOURCE BOOK

The compilation: The integrated, updated, and systematic compilation of virtually all labor laws; primarily meant for practitioners, teachers, and researchers; consists of three parts: the Labor Code with update and reference notes; the Implementing Rules; and other labor laws; previously titled Labor Law Handbook

DEMOCRACY AND SOCIALISM: A CURRICULUM OF CONTENTIONS

A study in political theory: An integrating exposition of the principles and postulates of the two socio-political ideologies; approved as general reading or college reference book by the Department of Education
THE EXECUTIVE COMMITTEE OF THE CENTENARY CELEBRATIONS

hereby presents this

Centenary Book Award

to

"The Labor Code with Comments and Cases"
2 volumes (1999 edition, Reprint 2001)

by Cesario Alvero Azucena, Jr.

which has been a scholarly reference in the field of law.

Given on the 8th day of June 2001, on the Centenary of the Supreme Court of the Philippines, Manila, Philippines.

HILARIO G. DAVIDE, JR.
Chief Justice
Supreme Court

ARTEMIO V. PANGANIBAN
Associate Justice
Overall Chairperson, Centenary Celebrations

AMEURGIN A. MELENCIO HERRERA
Retired Justice
Chairperson, Centenary Legal Publications Committee

CAMILO D. QUIASON
Retired Justice
Chairperson, Sub Committee on Centenary Legal Publications
VOLUME I contains the Preliminary Title and Books I to IV of the Labor Code:

PART ONE — The Labor Code with Annotations

Preliminary Title
Book I — Pre-employment
Book II — Human Resources Development
Book III — Conditions of Employment
Book IV — Health, Safety and Social Welfare Benefits

PART TWO — Rules Implementing Books I to IV of the Labor Code

Appendix

VOLUME II-A covers Book V of the Labor Code:

PART ONE — The Labor Code with Annotations

Book V — Labor Relations

PART TWO — Rules Implementing Book V of the Labor Code

VOLUME II-B covers Book VI and VII of the Labor Code:

PART ONE — The Labor Code with Annotations

Book VI — Post-employment
Book VII — Transitory and Final Provisions

PART TWO — Rules Implementing Books VI and VII of the Labor Code
LABOR LAW I

1. Preliminary Title
2. Book I of the Labor Code
   Pre-employment
   2.1 Migrant Workers and Overseas Filipinos Act (R.A. No. 8042)
      as amended by R.A. No. 10022
   Human Resources Development
   3.1 TESDA Law (R.A. No. 7796)
   3.2 Magna Carta for Disabled Persons (R.A. No. 7277)
   Conditions of Employment
   4.1 Paternity Leave
   4.2 Thirteenth Month Pay (P.D. No. 851)
   4.3 Protection and Welfare of Women Workers
   4.4 Child Abuse
   4.5 Sexual Harassment
5. Book IV of the Labor Code
   Health, Safety, and Social Welfare Benefits
   5.1 Social Security System
   5.2 Government Service Insurance System
   5.3 PhilHealth

LABOR LAW II

   Labor Relations
2. Book VI of the Labor Code
   Post-employment
   Transitory and Final Provisions
THE
LABOR CODE
OF THE
PHILIPPINES

Presidential Decree No. 442

A DEGREE INSTITUTING A LABOR CODE, THEREBY
REVISING AND CONSOLIDATING LABOR AND
SOCIAL LAWS TO AFFORD PROTECTION TO
LABOR, PROMOTE EMPLOYMENT AND HUMAN
RESOURCES DEVELOPMENT AND ENSURE
INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE.

As Amended
By Presidential Decree Nos. 570-A, 626, 643, 823, 819,
849, 850, 865-A 891, 1367, 1368, 1391, 1412, 1641,
1691, 1692 1693, 1920, 1921

Batas Pambansa Blg. 32, 70, 130 and 227

Executive Order Nos. 47, 111, 126, 179, 180, 203, 247,
251, 252, 307, 797

and

Republic Act Nos. 6640, 6657, 6715, 6725, 6727, 7641,
7655, 7700, 7730, 7796, 8042, 8188, 8558, 9177, 9256,
9347, 9481, 9492, 10151, 10022, 10361, 10395 and 10396

WITH
COMMENTS AND CASES
IMPLEMENTING RULES
APPENDICES
**ABBREVIATIONS**

Without meaning to be informal but only for ease and brevity, this text occasionally uses abbreviations, commonly known in labor relations practice, such as the following:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>BLR</td>
<td>Bureau of Labor Relations</td>
</tr>
<tr>
<td>BU</td>
<td>Bargaining Unit</td>
</tr>
<tr>
<td>BWC</td>
<td>Bureau of Working Conditions</td>
</tr>
<tr>
<td>C.A.</td>
<td>Commonwealth Act/Court of Appeals</td>
</tr>
<tr>
<td>CBA</td>
<td>Collective Bargaining Agreement</td>
</tr>
<tr>
<td>CBL</td>
<td>Constitution and By-laws</td>
</tr>
<tr>
<td>C.E.</td>
<td>Certification Election</td>
</tr>
<tr>
<td>CNA</td>
<td>Collective Negotiation Agreement</td>
</tr>
<tr>
<td>CSC</td>
<td>Civil Service Commission</td>
</tr>
<tr>
<td>D.O.</td>
<td>Department Order</td>
</tr>
<tr>
<td>DOLE</td>
<td>Department of Labor and Employment</td>
</tr>
<tr>
<td>EBR</td>
<td>Exclusive Bargaining Representative</td>
</tr>
<tr>
<td>E-E</td>
<td>Employer-employee (Relationship)</td>
</tr>
<tr>
<td>E.O.</td>
<td>Executive Order</td>
</tr>
<tr>
<td>JC</td>
<td>Job Contracting</td>
</tr>
<tr>
<td>LA</td>
<td>Labor Arbiter</td>
</tr>
<tr>
<td>LLO</td>
<td>Legitimate Labor Organization</td>
</tr>
<tr>
<td>LMC</td>
<td>Labor-Management Council/Committee</td>
</tr>
<tr>
<td>LoC</td>
<td>Labor-only Contracting</td>
</tr>
<tr>
<td>M.O.</td>
<td>Memorandum Order</td>
</tr>
<tr>
<td>MR</td>
<td>Motion for Reconsideration</td>
</tr>
<tr>
<td>NCMB</td>
<td>National Conciliation and Mediation Board</td>
</tr>
<tr>
<td>NLRB</td>
<td>National Labor Relations Board (in U.S.)</td>
</tr>
<tr>
<td>NLRC</td>
<td>National Labor Relations Commission</td>
</tr>
<tr>
<td>NWPC</td>
<td>National Wages and Productivity Commission</td>
</tr>
<tr>
<td>OSEC</td>
<td>Office of the Secretary</td>
</tr>
<tr>
<td>OWWA</td>
<td>Overseas Workers’ Welfare Administration</td>
</tr>
<tr>
<td>P.D.</td>
<td>Presidential Decree</td>
</tr>
<tr>
<td>POEA</td>
<td>Philippine Overseas Employment Authority</td>
</tr>
<tr>
<td>R.A.</td>
<td>Republic Act</td>
</tr>
<tr>
<td>RD</td>
<td>Regional Director</td>
</tr>
<tr>
<td>RO</td>
<td>Regional Office</td>
</tr>
<tr>
<td>RTWPB</td>
<td>Regional Tripartite Wages and Productivity Board</td>
</tr>
<tr>
<td>TESDA</td>
<td>Technical Education and Skills Development Authority</td>
</tr>
<tr>
<td>TRO</td>
<td>Temporary Restraining Order</td>
</tr>
<tr>
<td>VA</td>
<td>Voluntary Arbitration</td>
</tr>
<tr>
<td>VR</td>
<td>Voluntary Recognition</td>
</tr>
<tr>
<td>WA</td>
<td>Workers’ Association</td>
</tr>
<tr>
<td>WO</td>
<td>Wage Order</td>
</tr>
</tbody>
</table>
To Father and Mother, my Lolita, Noel, Mylene, Carmen, and Bennet, my brothers and sisters, and those of my clients and students who have inspired me, this work is gratefully dedicated.

Lawyer’s Formation

A lawyer’s professional life begins the day that he or she starts law school. This has not always been the case, of course, but today the first place of almost every lawyer’s career consists of a period of time spent studying law in a formal academic program under the supervision of university professors. However diverse their professional experiences may be in other respects, therefore, lawyers still share at least one thing in common: they have all been law students at one time or another, and it is as students that their professional habits first take shape.

Anthony T. Kronman
The Lost Lawyer (1993)
p. 109
PREFACE
Decades of Advocacy

Since its birth twenty-two years ago, this textbook has aimed to speak not only to students but also to people outside the schools. In this eighth edition, it continues to do so because it deals with matters that students, as future leaders, need to inquire into and people in the world of work, as current leaders, need to act upon.

Laws are initiators of change or followers of change in society, and along with the changes, laws create and enforce rights and obligations of individuals and groups. Laws therefore do not stand still. Particularly is this true of social legislation that includes labor laws. To spread labor education among the people has been the purpose of this work since its inception. It wants to help arouse interest in labor laws as instruments to improve the Filipinos’ quality of life. Those laws must continually be brought to public awareness so that the aims of the law may be achieved. For, indeed, unless known and utilized, labor laws are lifeless and useless. It is the people, assisted by law and strengthened by knowledge, that give life to law as an economic equalizing force.

The revisions in this eighth edition are of three kinds.

Firstly, addition of new laws such as those affecting overseas workers, labor contractors, night workers, women workers, and kasambahay.

Secondly, addition of new court rulings or integration of recent rulings that significantly modify previous ones. These include those about DOLE authority to determine employer-employee relationship, jurisdiction over cases involving corporate officers, effect of nonregistration of labor contractors, per se violation of CBA, dismissal of strikers, pickets as illegal obstruction, financial assistance to dismissed employees, and duration of “temporary” employment. All these are significant jurisprudential developments that people concerned should know. This revised edition synthesizes them. Syntheses or integration of the statutory statements with court rulings has characterized this work, then and now. This has to be so because this book is not a mere collection of labor law provisions and syllabi. Rather, this work com-
prises concepts formed from postulates, rules, and exceptions from authoritative sources, including a few dissenting views. The aim is to construct knowledge,* not just to report decision tidbits.

Thirdly, rewriting of the expositions, as well as rearrangement of topics and subtopics to enhance readability. But the first and uncompromising concern, of course, is accuracy of the messages. Substance and style are of equal importance. Thus, I avoid legalistic jargon and structures and I use plain English to explain legal terms or passages. I heed Justice Learned Hand’s caution: “The language of the law must not be foreign to the ears of those who are to obey it.”

The book is written for the general reader although its main audience is in schools and offices. I mean to reach not only law or business students and lawyers but anyone — workers and managers, lawyers or nonlawyers — who feels concerned about labor and labor-management issues. The preferred audience is the general reader because this work advocates the people’s labor education. Our people need to know labor laws as tools for social justice which at bottom simply means poverty reduction and social equity. Because labor laws define rights and obligations of employers and employees, labor laws therefore help or hinder the kind of living and the kind of future the people, the workers, can have. Labor laws are everyday law. They can help spur dedication to work to increase productivity and earnings just as it can spawn exploitation of the needy and tolerate greed of the wealthy. They can make the rich richer and the poor just stay poor. Labor laws can be a burden or a blessing — retrogressive or progressive — depending on one thing: balancing of rights and interests of employers and employees. Lopsidedly favoring one will debilitate the other, harming thereby the entire socio-economic body. But such balancing of rights and interests requires a precondition: education or awareness about the limits to those rights and interests. Laws make positive and negative commands — what one may do and the other may not. But law itself is lifeless and useless. It comes to life and serves its purpose only if the people actually utilize its force and power.** This happens fruitfully after education. For instance, the employees’ right to participate in policy-making is inert — just ink on paper — if employees are unaware of such right. Education is prerequisite to economic progress and equality because it bars ignorance that allows entry of exploitation.
By the generous response of readers, this book is now older than some people holding it right now. My efforts have been rewarded and I am most grateful for that.

I will be ungrateful if I don’t acknowledge here the highly rewarding years of association that I spent at the Department of Labor and Employment in reviewing and proposing changes to some labor laws and regulations. I reaped intellectual (and economic) rewards in working with the labor law stalwarts within DOLE. Most treasurable of all is the friendship formed through our work.

Lastly, complying with the directive of R.A. No. 10151 (June 21, 2011) this edition renumbers the Labor Code articles, starting with Article 130. The renumbering, of course, was done with extreme care.

C.A.A.

Mandaluyong City and
San Pablo City
April, 2013

---

*The tutor should make his pupil sift everything, and take nothing into his head on simple authority or trust. Aristotle’s principles must no more be principles with him than those of the Stoics or the Epicureans. Let their various opinions be put before him; he will choose between them if he can; if not, he will remain in doubt. Only fools are certain and immovable.

_Che non men che sappi dubbier m’aggrada._ (It pleases me as much to doubt as to know.) Dante, _Inferno_

MICHEL DE MONTAIGNE
(1533–1592)

**Ideas must work through the brains and the arms of good and brave men, or they are no better than dreams.

RALPH WALDO EMERSON
(1803–1882)
PREFACE (2010 Edition)
Keeping Faith with Tradition

A book has to build and keep its own tradition. This seventh edition is an effort to do that.

Republic Act No. 9481 of 2007 amends a number of Labor Code articles to strengthen the self-organizational right of employees. Because of this law the Department of Labor and Employment had to make numerous changes to the rules implementing the law on labor relations, through Department Order No. 40-F-03 released in October 2008.

Aside from these legislative and administrative changes, significant rulings were also issued by the Supreme Court, affecting some statutory provisions and previous decisions. Among these are those declaring as unconstitutional Section 10 of R.A. No. 8042; the precedent-setting rulings on labor contracting and cooperatives; the debatable ruling on jurisdiction to determine employer-employee relationship; and again, the reversal of the ruling on the effect of employee’s defeat in an illegal dismissal case.

These developments—and many more—are all reflected in this new edition.

Unchanged, however, are the underlying objective and the features and methodology of the book. The objective is to analyze and explain, as clearly and authoritatively as possible, the country’s labor law anchored to the Labor Code. The aim, in other words, is to build knowledge—to form cohesive and retainable understanding of concepts comprising a defined subject. This being the aim I have resisted (in this and the past editions) the easier work of merely rattling off court rulings without integrating or synthesizing them. The harder and more meaningful task is determining what materials to include, what to exclude, and how to tie them together, correctly and clearly, so as to create compact, graspmable concepts. Those tasks this edition does. This book therefore continues to feature annotations consisting of authoritative explanations and court rulings, including the most significant and recent ones. The codal articles and the annotations
are linked, analyzed and synthesized objectively and academically.* Figuratively, my aim is not to scatter seedlings in a forest but to build a well-designed landscape with pathways and plants neatly lined up. The features and the methods of explanations, I hope, enhance the objective of offering accessible knowledge of Philippine labor law.

Because this has been the book’s mission since its birth some twenty years ago and because the book has been generously accepted in that light by generations of students, lawyers, and nonlawyers, this edition has to keep faith with that tradition.

All these twenty years, of course, I have always acknowledged my boundless debt of gratitude to my readers inside and outside the universities.

C.A.A.

Mandaluyong City and
San Pablo City
Labor Day, 2010

*It should be the business of teachers to stand outside the strife of parties and endeavor to instill into the young the habit of impartial inquiry, leading them to judge issues on their merits and to be on their guard against accepting ex parte statements at their face value. The teacher should not be expected to flatter the prejudices either of the mob or of officials. His professional virtue should consist in a readiness to do justice to all sides, and in an endeavour to rise above controversy into a region of dispassionate scientific investigation. If there are people to whom the results of his investigation are inconvenient, he should be protected against their resentment, unless it can be shown that he has lent himself to dishonest propaganda by the dissemination of demonstrable untruths.

BERTRAND RUSSELL.
Unpopular Essays
Routledge, 1950
(p. 129)
A body of laws is not understood by reading the bare statutory statements, for the law is and has to be complemented by court rulings on actual cases. The law, alone, is abstract, abstruse, amorphous—lifeless. The life of the law is in actual cases; the light of the law is in the decisions on those cases. Judicial application and interpretation are meanings beyond the code.

Indeed, the law is not understood unless the rulings are learned too. This Labor Code, explained through numerous court rulings, attempts to meet a standing need of managers and non-managers, students and professionals.

The codal provisions, including the numbering, are based on the 1989 Official Edition of the Labor Code published by the Department of Labor and Employment which contains latest amendments....

Rulings in the pre- and post-Labor Code era are cited if they are significant and still valid. Landmark decisions are quoted lengthily....

Finally, on a personal note, this work culminates decades of interest and involvement in labor laws, labor relations, and human resources management. Here have I also distilled some insights gained from years of working with Labor and with Management in different spaces of time—inside or outside an enterprise, inside or outside the academe. Earnestly, I wish this work would be of some help to its intended users. If this be so, then the hundreds of lengthened days and shortened nights devoted to this work would not be worthless. And my cherished professional aspiration would have been fulfilled.

C.A.A.

Mandaluyong, M.M. and
San Pablo City
June 1991
C. A. AZUCENA, JR.

Eighth Edition
2013

(Articles, beginning with Article 130, are renumbered as directed by R.A. No. 10151)
TABLE OF CONTENTS

Volume I

Structure, viii
Abbreviations, xii
Preface, xiv

Part One
THE LABOR CODE WITH ANNOTATIONS

“Solicitude for Labor”, 2
“Equity Demands Workers’ Share”, 2
“Law and Labor”, 3
“Two Masters”, 4

PRELIMINARY TITLE

Chapter I — GENERAL PROVISIONS

ART. 1. Name of Decree, 7
ART. 2. Date of Effectivity, 7

Comments
1. Labor Legislation; Definitions, 7
2. Labor Law and Social Legislation, 9
3. Social Justice as the Aim, 10
4. Constitutional Rights and Mandates, 11
5. Balancing of Rights in Private Enterprise System, 14
   5.1 Shared Responsibility, 14
6. Police Power as the Basis, 15
7. Birth of the Labor Code, 15
8. Principles Underlying the Code, 16
9. Some Labor Laws Before the Passage of the Code, 17
   9.1 Significance of Foreign Decisions, 18
10. What is the Labor Code?, 18
11. Related Laws, 21
   11.1 The Civil Code, 21
   11.2 The Revised Penal Code, 22
   11.3 Special Laws, 22
12. International Aspect, 22
   12.1 International Commitments, 23
   12.2 ILO Core Conventions, 24
   12.3 Ratification Generally Needed; Exception, 24
ART. 3. Declaration of Basic Policy, 25

Comments
1. Labor Laws and Social-Economic Goals, 25
2. Interdependence, 26

ART. 4. Construction in Favor of Labor, 26

Comments and Cases
1. Interpretation and Construction, 26
   1.1 Laborer’s Welfare; Liberal Approach, 26
   1.2 Concern for Lowly Worker, 27
   1.3 Reason for According Greater Protection to Employees, 27
   1.4 Justice, the Intention of the Law, 27
2. Management Rights, Broadly, 28
   2.1 Right to ROI, 28
   2.2 Right to Prescribe Rules, 28
   2.3 Right to Select Employees, 29
   2.4 Right to Transfer or Discharge Employees, 30

ART. 5. Rules and Regulations, 30

Comments
1. Rules and Regulations to Implement the Code, 30
   1.1 When Invalid, 31

ART. 6. Applicability, 31

Comments
1. Applicability to Government Corporations, 31
   1.1 PNOC-EDC, FTI, NHA, 32
2. Non-applicability to Government Agencies, 32
3. Applicability Without Employer-Employee Relationship, 33
   Law as Social Control, 34
   Growth Rates of Workers’ Wage vs. Corporate Income, 34
   Wealth Concentration, 35

Chapter II — EMANCIPATION OF TENANTS

ART. 7. Statement of Objectives, 36
ART. 8. Transfer of Lands to Tenant-Workers, 36
ART. 9. Determination of Land Value, 36
ART. 10. Conditions of Ownership, 37
ART. 11. Implementing Agency, 37

Comments, 37

BOOK ONE — PRE-EMPLOYMENT

“The Greatest Exploiter”, 40
“Seven Million Abroad”, 41
“An Exploited Class”, 41
“Krimen na Karumaldumal”, 42
ART. 12. Statement of Objectives, 43

Comments
1. The Unemployment Problem, 43
2. The DOLE: Its Responsibility, 44

Title I — RECRUITMENT AND PLACEMENT OF WORKERS

Chapter I — GENERAL PROVISIONS

ART. 13. Definitions, 45

Comments and Cases
Article 15(B) Construed; What Constitutes Recruitment and Placement, 46

ART. 14. Employment Promotion, 47

Comments
Employment Promotion, 47

ART. 15. Bureau of Employment Services, 48

Comments
1. Local Employment, 49
   1.1 PRPA, 49
   1.2 Service Fee Chargeable to Employer, 50
   1.3 The Peso, 50

ART. 16. Private Recruitment, 50

Comments
Authorized Entities, 51

ART. 17. Overseas Employment Development Board, 51

Comments and Cases
1. Overseas Employment, A Brief History, 52
2. Legislative Background of Overseas Employment, 53
   Deployed Overseas Filipino Workers, Total, Growth Rate and Average Deployment Per Day, 2001-2011, 54
   Key Labor Force Indicators, April 2011 and 2012, 54
3. Overseas Employment Policy, 55
   3.1 Policies on Migrant Workers, 56
   3.2 OFWs: Land-based or Sea-based, 57
   3.3 Selective Deployment, 57
4. The POEA; Overview of Its Functions and Powers, 58
5. Realignment of POEA Jurisdiction, 58
   5.1 Modification: Employer-Employee Relations Cases: Transferred to NLRC, 59
6. Jurisdiction Retained with POEA, 60
   6.1 POEA Jurisdiction over Administrative or Regulatory Cases, 60
6.2 POEA Jurisdiction over Disciplinary Cases, 60
6.3 Grounds for Disciplinary Action, 61
6.4 To Whom Appealable, 61
7. Outside of POEA Jurisdiction, 61
7.1 No Jurisdiction to Enforce Foreign Judgment, 61
7.2 No Jurisdiction Over Torts, 62

ART. 18. Ban on Direct-Hiring, 62
Comments, 63

ART. 19. Office of Emigrant Affairs, 63
Comments, 64

ART. 20. National Seamen Board, 64
Comments and Cases
1. NSB now POEA, 64
2. Article 20 Construed; Seamen’s Employment Contracts and the International Transport Federation (ITF), 65
3. Invalid Side Agreement, 68
4. Delay in Filing Claim, 69
5. Minimum Employment Conditions, 70
6. Freedom to Stipulate, 70

ART. 21. Foreign Service Role and Participation, 70
Comments
1. Protection and Assistance by Government Agencies, 71
2. The RPM Center, 72
3. The OWWA, 72
4. Repatriation, 73
   4.1 Of the Remains, 73
   4.2 Worker at Fault, 73
   4.3 In case of Disaster, 73
   4.4 Validity, 74
   4.5 Mandatory Repatriation of Underage Worker, 75

ART. 22. Mandatory Remittance of Foreign Exchange Earnings, 75
Comments
Remittance, 75

ART. 23. Composition of the Boards, 75
Comments
Composition of the POEA, 76

ART. 24. Boards to Issue Rules and Collect fees, 76
Outsourcing Trend, Medical Tourism, 77
Chapter II — REGULATIONS OF RECRUITMENT AND PLACEMENT ACTIVITIES

ART. 25. Private Sector Participation in the Recruitment and Placement of Workers, 78

Comments
1. POEA’s Retained Jurisdiction, 78
2. Validity of POEA Regulations, 79

ART. 26. Travel Agencies Prohibited to Recruit, 79

Comments, 79

ART. 27. Citizenship Requirement, 80

ART. 28. Capitalization, 80

Comments, 80

ART. 29. Non-transferability of License or Authority, 80

Comments
Place of Recruitment, 80

ART. 30. Registration Fees, 81

ART. 31. Bonds, 81

Comments and Cases
1. Amount of Bond, 81
   1.1 Recruitment or Manning Agency for Overseas Employment, 81
2. Enforcement, 82
3. Apart from Appeal Bond, 82
4. Garnishment of Bonds, 83
5. Effect of a Valid Garnishment, 83
6. Release of Cash Bond/Deposit in Escrow, 83
   6.1 Recruitment Agency for Local Employment, 83
   6.2 Recruitment or Manning Agency for Overseas Employment, 84
7. Law as Part of the Bond, 84

ART. 32. Fees to be Paid by Workers, 84

Comments
1. Chargeable Fees, 84
   1.1 Placement and Documentation Fees for Overseas Employment, 84
   1.2 For Recruitment or Manning Agency for Overseas Employment, 85
2. Refund of Fees, 85

ART. 33. Reports on Employment Status, 86
ART. 34. Prohibited Practices, 86

Comments
Prohibited Practices, 87

ART. 35. Suspension and/or Cancellation of License or Authority, 88

Comments and Cases
1. Suspension or Cancellation of License, 88
   1.1 Concurrent Jurisdiction to Suspend or Cancel a License, 88
2. Persons Liable; Duration of Liability, 89
3. Solidary Liability Assumed by Recruitment Agent, 90
   3.1 Required Undertaking by Agent, 90
   3.2 Contract by Principal, 91
   3.3 Proper Party, 91
   3.4 Exceptions, 91
   3.5 Liability for Moral Damages, 92
4. Suitability of a Foreign Corporation which Hires Filipino Workers, 93

Chapter III — MISCELLANEOUS PROVISIONS

ART. 36. Regulatory Power, 94

Comments
Attempted Deregulation and Phase-out, 94

ART. 37. Visitorial Power, 95

ART. 38. Illegal Recruitment, 95

Comments and Cases
1. Illegal Recruitment Defined as Amended, 96
   1.1 Two Kinds of Illegal Recruiter, 97
   1.2 Essential Element, 98
   1.3 Illegal Recruitment as Economic Sabotage, 98
      Separate Categories, 98
   1.4 Lack of Receipts, 99
2. Estafa, 99
3. Other Prohibited Acts, 100
4. Persons Liable for Illegal Recruitment, 100
   4.1 Employee, When Liable, 101
   4.2 Foreign Employer, 101
5. Power to Issue Search or Arrest Warrants; Article 38(C) Unconstitutional, 101
6. Illegal Recruiters Still Subject to Arrest, 102
7. Closure; Other Anti-Illegal Recruitment Activities of POEA, 103

ART. 39. Penalties, 107

Comments and Cases
1. Penalties, 108
2. Venue, 108
3. Mandatory Periods, 108
4. Prescriptive Periods, 109
5. Illustrative Cases of Illegal Recruitment, 109
   Loss of Comparative Advantage, 113

Title II — EMPLOYMENT OF NON-RESIDENT ALIENS

ART. 40. Employment Permit of Non-Resident Aliens, 114
ART. 41. Prohibition Against Transfer of Employment, 114
ART. 42. Submission of List, 114

Comments and Cases
1. Employment of Aliens, 115
   1.1 Department Order No. 75-06, 115
2. Legality of Limiting Employment of Aliens, 120

BOOK TWO — HUMAN RESOURCES DEVELOPMENT

“Determinants of National Advantage”, 122
“The Competitive Edge”, 123
“Focus on Skills”, 124
“Human Resource Development — A Crucial Tool”, 125
“The Manager as Developer of People”, 126

Title I — NATIONAL MANPOWER DEVELOPMENT PROGRAM

Chapter I — NATIONAL POLICIES AND ADMINISTRATIVE MACHINERY FOR THEIR IMPLEMENTATION

ART. 43. Statement of Objective, 127
ART. 44. Definitions, 127
ART. 45. National Manpower and Youth Council, Composition, 127
ART. 46. National Manpower Plan, 128
ART. 47. National Manpower Skills Center, 128
ART. 48. Establishment and Formulation of Skills Standards, 128
ART. 49. Administration of Training Programs, 129
ART. 50. Industry Boards, 129
ART. 51. Employment Service Training Functions, 129
ART. 52. Incentive Scheme, 130
ART. 53. Council Secretariat, 130
ART. 54. Regional Manpower Development Offices, 131
ART. 55. Consultants and Technical Assistance, Publication and Research, 131
ART. 56. Rules and Regulations, 131

Title II — TRAINING AND EMPLOYMENT OF SPECIAL WORKERS

Chapter I — APPRENTICES

ART. 57. Statement of Objectives, 132
ART. 58. Definition of Terms, 132
ART. 59. Qualifications of Apprentice, 132
ART. 60. Employment of Apprentices, 133

Comments
1. General Policy and Guidelines in the Implementation of Apprenticeship Program, 133
2. TESDA Implements the Apprenticeship Program, 134
3. Requisites for Employment of Apprentices, 134
4. Apprenticeable Age, 134

ART. 61. Contents of Apprenticeship Agreements, 134

Comments and Cases
Apprenticeship Needs DOLE’s Prior Approval, or Apprentice Becomes Regular Employee, 135

ART. 62. Signing of Apprenticeship Agreement, 136
ART. 63. Venue of Apprenticeship Programs, 136
ART. 64. Sponsoring of Apprenticeship Program, 136
ART. 65. Investigation of Violation of Apprenticeship Agreement, 137
ART. 66. Appeal to the Secretary of Labor, 137
ART. 67. Exhaustion of Administrative Remedies, 137
ART. 68. Aptitude Testing of Applicants, 137
ART. 69. Responsibility for Theoretical Instruction, 137
ART. 70. Voluntary Organization of Apprenticeship Programs; Exemptions, 137
ART. 71. Deductibility of Training Costs, 138
ART. 72. Apprentices Without Compensation, 138

Comments and Cases
Working Scholar; Liability of School, 138

Chapter II — LEARNERS

ART. 73. Learners Defined, 141
ART. 74. When Learners May Be Hired, 141
ART. 75. Learnership Agreement, 141
ART. 76. Learners in Piecework, 141
ART. 77. Penalty Clause, 141

Comments
Learnership vs. Apprenticeship, 142

Chapter III — HANDICAPPED WORKERS

ART. 78. Definition, 143
ART. 79. When Employable, 143
ART. 80. Employment Agreement, 143
ART. 81. Eligibility for Apprenticeship, 143

Comments
1. The Magna Carta for Disabled Persons, 143
2. Qualified Disabled Persons as Regular Employees, 145
BOOK THREE — CONDITIONS OF EMPLOYMENT

“Basic Duties of Workers and Employers”, 148
“Productivity First”, 149
“Shifting Wealth to Brainpower Industries”, 150
“Free Market – But Not Too Free”, 152
“Touch Labor” — “Knowledge Worker”, 152

Title I — WORKING CONDITIONS AND REST PERIODS

Chapter I — HOURS OF WORK

ART. 82. Coverage, 153

Comments and Cases
1. Essentiality of Employment Relationship, 154
   1.1 Question of Law, Question of Fact, 154
   1.2 Core or Non-core Jobs, 155
   1.3 Futile Circumlocutory Definitions, 156
2. Elements or “Test” of Employment Relationship, 156
   2.1 Four-fold Test, 156
   2.2 Two-tiered Approach; the Economic Dependence Test, 159
   2.3 Evidence of Employment: ID Card, Vouchers, SSS Registration, Memorandum, 161
      2.3a Absence of Name in the Payroll, 163
   2.4 Mode of Compensation, Not a Test of Employment Status, 163
   2.5 Existence of Employment Relationship Determined by Law, Not by Contract, 164
3. When Employment Relationship Present, 165
   3.1 Employment Relationship: Salaried Insurance Agent, 165
   3.2 Employment Relationship: School Teachers, 166
   3.3 Employment Relationship: Jeepney Driver, Taxi Driver, Barber, 167
      3.3a Boundary-Hulog, 168
      3.3b Truck Driver: Employee, not Partner, 170
   3.4 Employment Relationship: Piece-Rate Workers, 170
   3.5 Street-hired Cargadores, 172
   3.6 Workers in Movie Projects, 172
4. Labor Union and Unregistered Association as Employer, 174
5. When Employment Relationship Absent; Job Contracting or Independent Contractorship, 176
   5.1 Labor-only Contracting, Prohibited, 176
6. General Right of Employer Over Conditions of Employment, 176
   6.1 Limitations to Stipulations, 178
7. Excluded Employees, 178
7.1 Government Employees, 179  
7.2 Managerial Employees or Staff, 179  
7.3 Supervisors, like managers, not entitled to overtime pay, 179  
7.4 Outside or Field Sales Personnel, 181  
7.5 Employer’s Family Members, 185  
7.6 Domestic Helper and Persons Rendering Personal Service, 185  
7.7 Workers Paid by Result, 186  

ART. 83. Normal Hours of Work, 187  
Comments  
1. Normal Hours of Work, 187  
   1.1 Purpose of the 8-Hour Labor Law, 187  
   1.2 Part-Time Work, 187  
   1.3 Work Hours of Health Personnel, 188  
      1.3a Republic Act No. 5901 Already Repealed, 188  
      1.3b Republic Act No. 7305, 189  
2. Twelve-Hour Workshift with Overtime, 189  

ART. 84. Hours Worked, 190  
Comments and Cases  
1. Hours Worked, 190  
   1.1 Preliminary Activities, 191  
   1.2 Waiting Time: Engaged to Wait or Waiting to be Engaged?, 191  
   1.3 Working While Eating, 192  
   1.4 Working While Sleeping, 192  
   1.5 “On Call”, 193  
      1.5a With Cellular Phone or Other Contact Device, 194  
   1.6 Travel Time, 194  
   1.7 Lectures, Meetings, and Training Programs, 196  
   1.8 Grievance Meeting, 196  
   1.9 Semestral Break, 196  
2. Work Hours of Seamen, 198  
3. Hours Worked: Evidence and Doubt, 198  

ART. 85. Meal Periods, 199  
Comments and Cases  
1. Meal Time, 199  
   1.1 When Meal Time is Time Worked:  
      Continuous Shifts, 199  
   1.2 Meal Time of Less Than 60 Minutes, 200  
   1.3 Shortened Meal Break Upon Employees’ Request, 201  
2. Changing Lunch Break From Paid to Unpaid, 202
ART. 86. Night Shift Differential, 203

Comments and Cases
1. Rationale of Night Shift Differential, 203
2. Night Shift Differential Not Waivable, 203
3. Burden of Proof of Payment, 204

ART. 87. Overtime Work, 204

Comments and Cases
1. Overtime Pay, 205
   1.1 Definition, 205
   1.2 Rationale, 205
   1.3 Night Differential and Overtime Pay, 205
   1.4 Overtime Rate Based on Regular Wage, 205
       Overtime Pay Rates Computation, 206
   1.5 Premium Pay; When Included or Excluded in Computing Overtime Pay, 208
   1.6 CBA May Stipulate Higher Overtime Pay Rate, 208
   1.7 Conversion of Monthly to Daily Rate; Actual Work Days as Divisor, 208
       1.7a Paid Unworked Days of a Monthly-paid Employee, 209
   1.8 How “Work Day” is Counted, 210
   1.9 Factual and Legal Basis of Claim, 211
   1.10 Substantial Evidence; Burden of Proof, 212
   1.11 Overtime Work of Seamen, 213
   1.12 Action to Recover Compensation, 214
   1.13 Waiver or Quitclaim; No Waiver of Overtime Pay, Generally, 215
   1.14 Quitclaim, Why Invalid, 216
   1.15 When Valid; Waiver in Exchange for Certain Benefits, 218
   1.16 Overtime Pay Integrated in Basic Salary, 218
   1.17 Built-in Overtime Pay in Government-Approved Contract, 219
2. Compressed WorkWeek; DOLE Advisory No. 02-04, 220
   2.1 Effects, 220
   2.2 Validity of Waiver in CWW Program, 221
3. Flexible Work Arrangements (FWA), 221

ART. 88. Undertime Not Offset by Overtime, 222

Comments
Undertime Does Not Offset Overtime, 222

ART. 89. Emergency Overtime Work, 223

Comments
Compulsory Overtime Work, 223
ART. 90. Computation of Additional Compensation, 224

Comments, 224

Chapter II — WEEKLY REST PERIODS

ART. 91. Right to Weekly Rest Day, 225
ART. 92. When Employer May Require Work on a Rest Day, 225
ART. 93. Compensation for Rest Day, Sunday or Holiday Work, 226

Comments
1. Holiday, Generally, 226
2. Special (Non-working) Days, 227
3. Special (Working) Days, 227
4. Premium Pay Rates, 228

Chapter III — HOLIDAYS, SERVICE INCENTIVE LEAVES
AND SERVICE CHARGES

ART. 94. Right to Holiday Pay, 229

Comments and Cases
1. Holiday Pay for only Twelve Regular Holidays, 229
   1.1 The Twelve Regular Holidays, 231
   1.2 Coverage of Holiday Pay Law, 231
   1.3 Muslim Holidays, 232
   1.4 Relation to Agreements, 234
   1.5 Formulas to Compute Wages on Holidays;
      M.C. No. 10, Series of 2004, 234
   1.6 ECOLA on Regular Holiday, 235
2. Holiday Pay; Entitlement of Monthly-Paid Employees, 236
   2.1 Divisor, 237
   2.2 Divisor Should be Explained, 238
   2.3 Start of Entitlement of Monthly-Paid Employees, 238
   2.4 Holiday Falling on a Sunday, 239
   2.5 Double Holiday: Two Regular Holidays on the
      Same Day, 241
      2.5a Double Holiday Rule for Monthly-Paid
         Employees, 242
   2.6 Successive Regular Holidays, 242
   2.7 Hourly-Paid Teachers: No Pay on Regular Holiday,
      but with Pay on Special Public Holidays and other
      No-class Days, 242
   2.8 Holiday Pay; Field Personnel Not Covered, 243
   2.9 Holiday Pay of a Part-timer, 244
   2.10 Holiday Pay: Piece-Rate Workers, 244
3. Exemption of Retail and Service Establishments, 244

ART. 95. Right to Service Incentive Leave, 245

Comments and Cases
1. Right to Service Incentive Leave (S.I.L.), 245
1.1 Meaning of “One Year of Service”, 245
1.2 SIL of Part-Time Workers, 245
1.3 “On Contract” Workers, 246
1.4 Piece-Rate Workers, 246
1.5 Excluded Employer; Burden of Proof, 247
2. Commutation of S.I.L., 247
2.1 Questionable Commutation Rule, 247
2.2 Basis of Computation, 247
2.3 SIL of Kasambahay not Commutable, 248
3. Sick Leave and Vacation Leave as Voluntary Benefits, 248
  3.1 Commutation of Sick Leave, 249
  3.2 Rationale for accumulation and conversion, 250
4. Paternity and Maternity Leave, 250
5. Parental (Solo Parent) Leave, 250
6. Other Leaves, 251

ART. 96. Service Charges, 251
Comments
1. Coverage and Distribution, 251
2. Rule if Collection of Service Charge is Abolished, 252
3. Tips, 252

Title II — WAGES

Chapter I — PRELIMINARY MATTERS

ART. 97. Definition, 253
Comments and Cases
1. “Wage” and “Salary” Defined, 254
   1.1 “Wage” includes Sales Commissions, 254
   1.2 Wage Includes Facilities or Commodities, 256
2. “Facilities” distinguished from “Supplements”, 257
   2.1 Requirements for Deducting Value of Facilities, 258
   2.2 Salary Excludes Allowances, 259
3. Salary Distinguished from Gratuity, 259
4. Fair Day’s Wage for Fair Day’s Labor, 260
5. Equal Pay for Equal Work, 260
6. “Agricultural” Work, 262

ART. 98. Application of Title, 263

Chapter II — MINIMUM WAGE RATES

ART. 99. Regional Minimum Wages, 264
Comments and Cases
1. Minimum Wage Definition; Rationale, 264
   1.1 Minimum Wage; Need for Margin Over the Minimum Wage, 265
2. Ability to Pay Immaterial, 266
3. Employees Not Estopped to Sue for Difference in Amount of Wages, 266
4. Exemptions, 266
   4.1 Exceptions Under the Implementing Rules, 266
   4.1a Cooperatives May Still be Exempted from Minimum Wage Law, 267
   4.2 Exemption of BMBEs, 267
   4.3 Exemption of Retail and Service Establishments, 268
   4.3a “Retail/Service,” Definitions, 269
   4.3b “Regularly Employing,” 270
   4.3c Additional Exemptions, 270
   4.4 Other Exemptions, 270

ART. 100. Prohibition Against Elimination or Diminution of Benefits, 271

Comments and Cases
1. Nondiminution of Benefits, 271
   1.1 Food or Meal Allowance, 272
   1.2 Noncontributory Retirement Plan, 272
   1.3 Monthly ECOLA, 272
   1.4 Full Thirteenth Month Pay, 273
3. Exceptions to the Nondiminution Rule, 275
   3.1 Not Established Practice, Mistake in Application of Law, 275
   3.2 Negotiated Benefits, 276
      3.2a Diminution Suggested by Employees, 277
   3.3 Wage Order Compliance, 277
   3.4 Benefit on Reimbursement Basis, 278
   3.5 Reclassification of Position; Promotion, 278
   3.6 Contingent or Conditional Benefits; Bonus, 279
      3.6a Bonus Stipulated in CBA, 281
      3.6b Equity or Long Practice as Basis of Bonus, 282
      3.6c Services Rendered as Basis of Bonus, 284
      3.6d No Profit, No Bonus, 286
      3.6e Reiteration in Manilabank, 287
   3.7 Productivity Incentives, 288

ART. 101. Payment by Results, 289

Comments and Cases
1. Workers Paid By Results, In General, 289
   1.1 Illustrative Case, 290
2. Basis of Output Pay Rate, 290
   2.1 Legal Sufficiency of the Piece Rate, 291
3. Entitlement of Piece-Rate Workers to Night Differential and Service Incentive Leave, 292
4. Entitlement to Holiday Pay, 293
5. Entitlement to 13th-Month Pay, 293
   6.1 A Second Look: The Labor Congress Case, 296
   6.2 Summation: Benefits Payable to Piece-Rate Workers, 298
7. Failure to Reach Quota, 299
   North-South Seesaw, 299

Chapter III — Payment of Wages

ART. 102. Forms of Payment, 300
   Comments
   Proof of Wage Payment, 300

ART. 103. Time of Payment, 301
ART. 104. Place of Payment, 301
   Comments
   1. Place of Payment, 301
   2. Payment Through Banks, 302

ART. 105. Direct Payment of Wages, 302
ART. 106. Contractor or Subcontractor, 303
ART. 107. Indirect Employer, 303
ART. 108. Posting of Bond, 303
ART. 109. Solidary Liability, 304
   Comments and Cases
   1. Contracting and Subcontracting In General, 304
      1.1 D.O. No. 18-A Replaces D.O. No. 18-02, 304
      1.2 Guiding Principles and Definition, 305
      1.3 Trilateral Relationship, 305
   2. First Set of Prohibition: Labor-only Contracting (Section 6 of D.O. No. 18-A), 306
      2.1 What is Substantial Capital?, 309
      2.2 What is “Control”?, 310
      2.3 Control over Former Employees, 311
      2.4 A Cooperative as a Labor Contractor, 312
         2.4a When is a Cooperative a Labor-only Contractor?, 312
         2.4b When is a Cooperative a Contractor-Employer?, 314
         2.4c Summing Up, 315
         2.4d Emergent Questions, 315
      2.4e Workers Cooperative Cannot Engage in Job Contracting, 316
   2.5 Consequence of LOC: Worker Supplied by Agency Becomes Employee of Client Company, 316
2.6 Consequence of LOC: Agency-Hired Employee Becomes Entitled to Benefits under the CBA of the Client Company, 318

3. Second Set of Prohibitions: Arrangements that Violate Public Policy (Section 7 of D.O. No. 18-A), 320
   3.1 Good Faith, 321

4. Extent of Employer’s Liability in Invalid Contracting and Violation of Other Prohibitions, 322

5. Legitimate Contracting: Independent Contractor/Job Contracting, 323
   5.1 Judicial Notice of Job Contracting, 324

6. A Manpower Company May Be a Labor-Only Contractor in One Case But an Independent Contractor in Another, 325

7. Extent of Principal’s Liability in Legitimate Contracting, 327
   7.1 For Wages and Money Claims, 327
      7.1a Reimbursement, 328
      7.1b Payment before Reimbursement, 329
      7.1c In Construction or Service Contracting, Principal’s Liability Limited to the Wage Increase Only, 330
   7.2 For Other Violations, 331

8. Rights of Contractual Employees, 333
   8.1 Security of Tenure, 334
   8.2 Duties of the Principal, 335
   8.3 Effect of Termination of Employment, 335

9. Registration of Contractors, 335
   9.1 Effect of Registration or Nonregistration, 336

ART. 110. Worker Preference in Case of Bankruptcy, 337

Comments
   1. Preference of Workers’ Money Claim, 338
      1.1 Dissent, 339
   2. Coverage of the Preference, 340

ART. 111. Attorney’s Fees, 340

Comments and Cases
   1. Two Concepts of Attorney’s Fee, 340
   2. Awarded Attorney’s Fee May Not Exceed Ten Percent, But Between Lawyer and Client Quantum Meruit May Apply, 340
   3. Award of Attorney’s Fee Not Limited to Cases of Wage Recovery, 342
   4. Non-Lawyers Not Entitled to Attorney’s Fees, 343
   5. PAO Lawyers, 343
Chapter IV — PROHIBITIONS REGARDING WAGES

ART. 112. Non-Interference in Disposal of Wages, 344
Comments
1. Civil Code Provisions, 344
2. Penalty for Violation of Article 112, 344

ART. 113. Wage Deduction, 345
Comments
1. Deductions Authorized by Law, 345
   1.1 Payment to Third Person, 346
2. Prohibitions Regarding Wages; Wage Deductions, 346
3. Deductions for Absences, 346
4. Reduced Pay Because of Reduced Work Days, 347
   4.1 Reduction of Workdays: Effect on Wages, 347
   4.2 Unjustified Work Reduction: Constructive Dismissal, 348
   4.2a Unjustified Work Reduction: Constructive Dismissal and ULP, 348

ART. 114. Deposits for Loss or Damage, 349

ART. 115. Limitations, 349
Comments
1. Illegal Deposit, 349
2. Deduction for Loss or Damage, 350

ART. 116. Withholding of Wages and Kickbacks Prohibited, 350
Comments, 350

ART. 117. Deduction to Ensure Employment, 351
Comments, 351

ART. 118. Retaliatory Measures, 351
Comments
1. Dismissal as Retaliation, 351
2. Is Violation of Article 118 Strikeable?, 352
3. Reprisal for Silent Testimony, 352

ART. 119. False Reporting, 353
Comments
Records an Employer must Keep, 353
It’s People that Build a Business, 353

Chapter V — WAGE STUDIES, WAGE AGREEMENTS AND WAGE DETERMINATION

ART. 120. Creation of National Wages and Productivity Commission, 354
Comments
The NWPC, 354
ART. 121. Powers and Functions of the Commission, 354
ART. 122. Creation of Regional Tripartite Wages and Productivity Boards, 356

Comments
Purpose of Creating the RTWPB, 357

ART. 123. Wage Order, 357

Comments and Cases
1. Wage Fixing Procedure, 357
2. RTWPB, Not NWPC, Approves a Wage Order, 359
3. Appeal, 359
4. Guidelines from RTWPB, 360
5. Public Hearings and Publication, Mandatory, 360

ART. 124. Standards/Criteria for Minimum Wage fixing, 361

Comments and Cases
1. Two Methods of Minimum Wage Adjustment, 363
   1.1 “Floor Wage” Wage Order Does not Require Across-the-Board Pay Increase, 363
2. Reasons for Having a Minimum Wage, 364
3. Wage Distortion, 364
   3.1 When is there a Distortion?, 364
   3.2 Salary Restructuring; What is Not Distortion, 366
      3.2a Jobs in Same Region, 367
   3.3 Union to Prove Distortion, 367
   3.4 Ways to Correct Distortion, 367
   3.5 Distortion Adjustment Formula, 368
   3.6 Rectification Need Not Be Across-the-Board, 369
   3.7 Summation of Principles About Salary Distortion, 370
   3.8 Wage Distortion: Nonstrikeable, 370
4. Liability of Contractor’s Principal in Certain Industries, 371
5. Inspection, 371

ART. 125. Freedom to Bargain, 372
ART. 126. Prohibition Against Injunction, 372
ART. 127. Non-Diminution of Benefits, 372

Progress at Nobody’s Expense, 372

Chapter VI — ADMINISTRATION AND ENFORCEMENT

ART. 128. Visitorial and Enforcement Power, 373

Comments and Cases
1. Regional Administration and Enforcement of Labor Laws, 374
2. The Enforcement Framework; D.O. No. 57-04, 375
3. Scope of Visitorial-Enforcement Power Under Article 128, 376
4. Who Determines the Existence of Employer-Employee Relationship: The Bombo Radyo Rulings, 377
   4.1 Later Decision: DOLE Director has Quasi-judicial Power, 378
   4.2 Bombo Radyo Revisited and Modified in 2012, 379
5. Work Relationship Still Existing, 379
6. Subjects of Enforcement, 380
   6.1 Unless Agreed Otherwise, Statutory Benefits are Apart from Contractual Benefits, 381
   6.2 Teachers’ Share in Tuition Fee Increase, 382
   6.3 CBA Salary Increase Charged to the 70% Share, 384
7. Disposition of Labor Standard Cases, 385
   7.1 Inspection Report, 385
   7.2 Coverage of Complaint Inspection, 385
   7.3 Restitution, 385
   7.4 Compromise Agreement, 386
   7.5 Hearing, 386
   7.6 Complaint Inspection Under Article 128; Illustrative Case, 386
8. Suspension of Operations, 387
9. Appeal, 388
   9.1 Who Benefits from Rectification, 389
   9.2 Bond, 389
10. Enforcement of Wage Order, 389
   10.1 Penalty for Non-compliance; Double Indemnity, 390
   10.2 CBA Anniversary Wage Increase as Compliance with Wage Order; Sec. 8 of R.A. No. 6640 Invalid, 391
   10.3 CBA Increase and Statutory Increases, Intention of Parties, 392

ART. 129. Recovery of Wages, Simple Money Claims and Other Benefits, 393

Comments and Cases
1. Money Claims Adjudication Under Article 129, 393
   1.1 When claim exceeds P5,000.00, 394
2. Nature of Proceedings, 394
   2.1 Due Process in Administrative Proceedings, 395
   2.2 Due Process, Principle of Jurisdiction by Estoppel, 395
3. Articles 128 and 129 Compared, 396
4. Employees’ Claims Only, 397
5. SEnA (Single Entry Approach), 398
6. Mandatory Conciliation-Mediation, 398

Title III — WORKING CONDITIONS FOR SPECIAL GROUPS OF EMPLOYEES

Chapter I — EMPLOYMENT OF WOMEN
R.A. No. 10151, 399
Perspective: Laws Protecting Women Workers, 400

xli
ART. [130]. [Repealed]. Nightwork Prohibition, 399
ART. [131]. [Repealed]. Exceptions, 399
ART. 130 [132]. Facilities for Women, 401
ART. 131 [133]. Maternity Leave Benefits, 402

Comments
1. Maternity Leave Under SSS Law, 402
2. "Battered Woman Leave", 402
3. Two Months Leave Under the Magna Carta of Women, 403
More Absent Than Present?, 404

ART. 132 [134]. Family Planning Services; Incentives for Family Planning, 404
ART. 133 [135]. Discrimination Prohibited, 404

Comments
1. BFOQ, 405
2. Woman as Equal Partner, 406

ART. 134 [136]. Stipulation Against Marriage, 406

Comments and Cases
Nondiscrimination; Policy against Married Status, 407

ART. 135 [137]. Prohibited Acts, 410
ART. 136 [138]. Classification of Certain Women Workers, 410

Comments
Sexual Harassment, 410
Persons Who may be Liable for Sexual Harassment, 411
No Sex Barrier, 411
Feminization and Defemalization, 412

Chapter II — EMPLOYMENT OF MINORS

ART. 137 [139]. Minimum Employable Age, 413
ART. 138 [140]. Prohibition Against Child Discrimination, 413

Comments
1. Hazardous Work, 413
2. Child Abuse and Child Labor, 414
3. Employment of Poor but Deserving Students, 414

Chapter III — EMPLOYMENT OF HOUSEHELPERS

ART. 139 [141]. Coverage, 415
ART. 140 [142]. Contract of Domestic Service, 415

Comments, 415

ART. 141 [143]. Minimum Wage, 415

Comments, 416

ART. 142 [144]. Minimum Cash Wage, 416
ART. 143 [145]. Assignment to Non-Household Work, 416
ART. 144 [146]. Opportunity for Education, 416
ART. 145 [147]. Treatment of Househelpers, 416
ART. 146 [148]. Board, Lodging and Medical Attendance, 416

Comments, 416

ART. 147 [149]. Indemnity for Unjust Termination of Services, 417

Comments, 417

ART. 148 [150]. Service of Termination Notice, 417
ART. 149 [151]. Employment Certification, 417
ART. 150 [152]. Employment Records, 417

Comments and Cases
1. Househelper: Who is and Who is Not, 418

Chapter IV — EMPLOYMENT OF HOMEWORKERS

ART. 151 [153]. Regulation of Industrial Homeworkers, 420
ART. 152 [154]. Regulations of Secretary of Labor, 420
ART. 153 [155]. Distribution of Homework, 420

Comments
1. Industrial Homework, 420
2. New Rule XIV, 421
What is “Good Judgment”?, 421

Chapter V — Employment of Night Workers

ART. 154. Coverage, 422
ART. 155. Health Assessment, 422
ART. 156. Mandatory Facilities, 422
ART. 157. Transfer, 423
ART. 158. Women Night Workers, 423
ART. 159. Compensation, 424
ART. 160. Social Services, 424
ART. 161. Night Work Schedules, 424
1. Rationale, 424
2. Definitions, 424
3. Unfitness, 425

BOOK FOUR — HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS

“Workers’ Health and Safety: A Responsibility of Society”, 429
“Machine Design and Human Design”, 430
“Welfare Benefits”, 431
“Socialism: Alive and Needed”, 432
Title I — MEDICAL, DENTAL AND OCCUPATIONAL SAFETY

Chapter I — MEDICAL AND DENTAL SERVICES

ART. 162 [156]. First-Aid Treatment, 433
ART. 163 [157]. Emergency Medical and Dental Services, 433

Comments
Physician or Dentist not Necessarily Employees, 434

ART. 164 [158]. When Emergency Hospital Not Required, 434

Comments, 434

ART. 165 [159]. Health Program, 434
ART. 166 [160]. Qualifications of Health Personnel, 435
ART. 167 [161]. Assistance of Employer, 435

Comments and Cases
Meaning of Article 161: “Left to the Employer”? , 435

Chapter II — OCCUPATIONAL HEALTH AND SAFETY

ART. 168 [162]. Safety and Health Standards, 437
ART. 169 [163]. Research, 437
ART. 170 [164]. Training Programs, 437
ART. 171 [165]. Administration of Safety and Health Law, 437

Comments, 438

Title II — EMPLOYEES’ COMPENSATION AND STATE INSURANCE FUND

Chapter I — POLICY AND DEFINITIONS

ART. 172 [166]. Policy, 439

Comments and Cases

1. Overview: Workmen’s Compensation Program and the S.I.F., 439
   1.1 Source of Compensation; the S.I.F., 441
   1.2 Forms of Compensation, 441
   1.3 Process, 442
2. P.D. No. 626 and Its Effectivity Date, 442
3. Validity of P.D. No. 626; Nature of the State Insurance Fund, 442
   3.1 Trust Fund, 444
   3.2 Social Insurance, 444
4. Workmen’s Compensation Act Distinguished from Employees’ Compensation Law, 445
   4.1 Presumptive Compensability for AFP Members and Policemen, 446
5. Liberal Interpretation, 446

ART. 173 [167]. Definition of Terms, 447

Comments and Cases
1. Compensable Work-Related Injury Defined, 450
2. Meaning of “Arising Out of” and “in the Course of” the Employment, 450
3. Proximate Cause, 452
   3.1 Illustrative Case: Proximate Cause, 453
   3.2 Arising Out/In the Course of Employment, 454
   3.3 The “24-Hour Duty” Doctrine and Its Qualifications; Moonlighting Policemen, 455
   3.4 The “24-Hour Duty” Doctrine Requires Work-Connection; “Police Service” Activities, 459
4. Ingress-Egress/Proximity Rule, 460
5. “Going to or Coming from Work” Rule, 462
   5.1 Accident on the Way to Work, 462
   5.2 Accident on the Way Home, 463
6. Injury at Place of Employment Not Necessary Element of Compensability, 464
7. Incidents of Employment, 465
   8.1 Rest or Refreshment, 466
   8.2 Lunch Period, 466
   8.2a Union Meeting, 466
9. Acts for the Benefit of Employer, 467
  9.1 While Working at Home, 468
10. Acts During Emergency, 468
11. Extra-Premises Rule, 468
12. Special Errand Rule, 469
13. While Living, Boarding, or Lodging on Premises of Employer, or at Working Place, 469
14. While Traveling, 469
   14.1 Where Employee Uses Own Vehicle Which He also Uses in Performance of Duties, 470
   14.2 Effect of Deviation from Route, Schedule, or Mode of Travel, 470
   14.3 Effect of Mingling of Purposes of Employer and Employee; Dual Purpose Doctrine, 470
15. Employer-Sponsored Activities, 471
17. Assault, 473
   17.1 “Increased Risk” Jobs, 475
18. “Accident” and “Injury”, 476
19. NPA Victims; Presumptive Compensability, 477
   19.1 “Presumptive Compensability” Not Applicable, 478
20. Effects of Violation of Rules, 479
   20.1 When Not Compensable, 480
21. Sickness, Defined; Occupational or Compensable Disease, 480
   21.1 Occupational Disease, 480
21.2 Duties of Employer Regarding Occupational Diseases, 482

22. Theory of Increased Risk, 482
   22.1 Illustrative Case: Increased Risk Shown, 482
   22.2 Illustrative Cases: Increased Risk Not Shown, 483

23. Specific Diseases/Ailments, 487
   23.1 Adenocarcinoma of the Ileocaecal Junction, 487
   23.2 Asbestosis, 487
   23.3 Bangungot, 488
   23.4 Bells Palsy, Anxiety Neurosis, Peripheral Neuritis, 488
   23.5 Cancer of the Pancreas, 488
   23.6 Cancer of the Stomach, 489
   23.7 Carcinoma of the Breast with Metastases to the Gastrointestinal Tract, 489
   23.8 Cardiovascular Failure, 489
   23.9 Chronic Glomerulonephritis, 490
   23.10 Chronic Osteomyelitis, 490
   23.11 Chronic Pylonephritis, Diabetes Mellitus, Anemia, Pulmonary Metastases (Cancer), 490
   23.12 Gallstone, 490
   23.13 Incomplete Abortion, 491
   23.14 Intestinal Obstruction Partial, 493
   23.15 Leprosy, 493
   23.16 Parotid Carcinoma, 493
   23.17 Peptic Ulcer, 494
   23.18 Rheumatoid Arthritis, 494
   23.19 Schistosomiasis, 495
   23.20 Senile Cataract, 495
   23.21 Tuberculosis, 495
   23.22 Varicose Veins, 496

24. Evidence; Degree of Proof, 497

25. Cancer: Old Doctrine: Proof is Required Only if Cause is Known, 497


Chapter II — COVERAGE AND LIABILITY

ART. 174 [168]. Compulsory Coverage, 501
ART. 175 [169]. Foreign Employment, 501
ART. 176 [170]. Effective Date of Coverage, 501
ART. 177 [171]. Registration, 501

Comments
   1. Coverage, 501
   2. Foreign Employment, 502

ART. 178 [172]. Limitations of Liability, 502

Comments and Cases
   1. Exclusions, 502
1.1 Intoxication or Drunkenness, 502
1.2 Self-inflicted Injuries, 503
   1.2a Suicide or Provoked Death Not Compensable, 503
   1.2b Death Not the Result of Worker’s Willful Act, 503
   1.2c Suicide, When Compensable, 504
1.3 Notorious Negligence, 505

ART. 179 [173]. Extent of Liability, 508

Comments and Cases
1. Options Available: Benefits Under the Compensation
   Law or Under the Civil Code, 508
2. Recovery Under the Labor Code and the Social
   Security Law, 509

ART. 180 [174]. Liability of Third Parties, 510
ART. 181 [175]. Deprivation of Benefits, 510

Chapter III — ADMINISTRATION

ART. 182 [176]. Employees’ Compensation Commission, 511
ART. 183 [177]. Powers and Duties, 512
ART. 184 [178]. Management of Funds, 513
ART. 185 [179]. Investment of Funds, 513
ART. 186 [180]. Settlement of Claims, 513
ART. 187 [181]. Review, 514
ART. 188 [182]. Enforcement of Decisions, 514

Comments
1. Structure and Functions, 514
2. Two Separate Funds, 515

Chapter IV — CONTRIBUTIONS

ART. 189 [183]. Employer’s Contributions, 516
ART. 190 [184]. Government Guarantee, 516

Comments, 516

Chapter V — MEDICAL BENEFITS

ART. 191 [185]. Medical Services, 518
ART. 192 [186]. Liability, 518
ART. 193 [187]. Attending Physician, 518
ART. 194 [188]. Refusal of Examination or Treatment, 518
ART. 195 [189]. Fees and Other Charges, 519
ART. 196 [190]. Rehabilitation Services, 519

Comments and Cases
1. E.C. Benefits Summarized, 519
2. Medical Benefits, 520
   2.1 Duration of Medical Liability, 520
   2.2 Reimbursement of Medical Expenses, 520
3. Rehabilitation Services, 521
Chapter VI — DISABILITY BENEFITS

ART. 197 [191]. Temporary Total Disability, 523
ART. 198 [192]. Permanent Total Disability, 523
ART. 199 [193]. Permanent Partial Disability, 524

Comments and Cases
1. Disability, 525
2. Categories of Disability, 526
3. Temporary Total, 526
   3.1 Amount of Benefits, 526
   3.2 Period of Entitlement, 526
   3.3 Relapse, 527
4. Permanent Total, 527
   4.1 Period of Entitlement, 528
   4.2 Suspension, 528
   4.3 Amount of Benefits, 528
5. Permanent Partial, 529
   5.1 Amount of Benefits, 529
   5.2 Effect of Gainful Employment, 529
   5.3 Distinguished from Permanent Total, 529
6. Illustrative Cases: Permanent Total Disability, 529
   6.1 Conversion from Permanent Partial Disability to Permanent Total Disability, 531
7. Is Earning Capacity “Impaired” if Earning is Higher After the Injury?, 532
8. Should Previous Compensation for Lesser Disability Be Deducted?, 533

Chapter VII — DEATH BENEFITS

ART. 200 [194]. Death, 535

Comments and Cases
1. Dependents and Dependency, 536
2. Spouse as Dependent, 537
3. Two Wives as Claimants, 538
   3.1 Two Muslim Wives, 538
4. Separated Spouse, 540
5. Parents as Dependents, 541
6. Death Benefit and Beneficiaries, 541
7. Death Benefit After Retirement, 541
8. Benefits for Death of Pensioner, 543
9. A Burning Issue: Is the Period of Entitlement Five Years Only or Even Beyond?, 543

Chapter VIII — PROVISIONS COMMON TO INCOME BENEFITS

ART. 201 [195]. Relationship and Dependency, 544
ART. 202 [196]. Delinquent Contributions, 544
ART. 203 [197]. Second Injuries, 544
ART. 204 [198]. Assignment of Benefits, 545
   Comments
   Benefits Not Transferable, 545

ART. 205 [199]. Earned Benefits, 545
ART. 206 [200]. Safety Devices, 545
ART. 207 [201]. Prescriptive Period, 545
   Comments and Cases
   1. Period to File Claim: Three Years or Ten?, 546
   2. Constructive Filing, 547
      2.1 Mailing Date of Claim Considered Date of Filing, 548
      2.2 Period to File Claim of Minors and the Mentally Deficient, 549

ART. 208 [202]. Erroneous Payment, 549
ART. 209 [203]. Prohibition, 550
   Comments
   1. Attorney’s Fee, 550
   2. Parties, 550

ART. 210 [204]. Exemption from Levy, Tax, Etc., 551

Chapter IX — RECORDS, REPORTS AND PENAL PROVISIONS

ART. 211 [205]. Record of Death or Disability, 552
ART. 212 [206]. Notice of Sickness, Injury or Death, 553
ART. 213 [207]. Penal Provisions, 553
ART. 214 [208]. Applicability, 553
ART. 215 [208-A]. Repeal, 553
   Comments and Cases
   1. Notice to Employer, 554
   2. When Notice to Employer Not Needed, 554
   3. Effect of Quitclaim, 556
   4. Evidence, 557
      4.1 Physician’s Report, 558
   5. Foreign Law, 558
   6. Foreign Currency, 560
   7. Appeal, 560
   8. Applicable Law, 561

Title III — MEDICARE

ART. 216 [209]. Medical Care, 562
   Comments, 562

Title IV — ADULT EDUCATION

ART. 217 [210]. Adult Education, 562
Preliminary Provisions

A. Local Employment
   Rule I. Definition of Terms, 573
   Rule II. Application/Renewal of License of Private Recruitment and Placement Agency, 575
   Rule III. Granting/Renewal of Authority to Recruit, Recruitment Procedure, Placement and Other Related Activities, 577
   Rule IV. Establishment of Branch Office/Renewal of Authority to Operate Branch Office, 579
   Rule V. Placement Fee, Service Fee and Other Charges, 580
   Rule VI. Suspension, Revocation/Cancellation of License, 581
   Rule VII. Hearing and Disposition of Recruitment Violation and Related Cases, 583
   Rule VIII. Cessation of Operation of the Agency/Branch, 586
   Rule IX. Inspectorate and Enforcement Functions, 586
   Rule X. Repealing Clause and Effectivity Date, 587

B. Overseas Employment

   Part I: General Provisions
   Rule I. Statement of Policy, 587
   Rule II. Definition of Terms, 588

   Part II: Licensing and Regulation
   Rule I. Participation of the Private Sector in the Overseas Employment Program, 591
   Rule II. Issuance of License, 592
   Rule III. Inspection of Agencies, 598
   Rule IV. Licensing of POCB-Registered Companies, 599
   Rule V. Fees, Costs and Contributions, 600
   Rule VI. Recruitment Outside Registered Office, 600
   Rule VII. Advertisement for Overseas Jobs, 601
   Rule VIII. Skills Test and Medical Examination for Overseas Employment, 602
Rule IX. Department and Arrival of Overseas Filipino Workers, 602
Rule X. Legal Assistance and Enforcement Measures, 603

Part III: Placement by the Private Sector
Rule I. Verification of Documents and Registration of Foreign Principals, Employments and Projects, 606
Rule II. Accreditation of Foreign Principals, Employers and Projects, 609
Rule III. Documentation of Landbased Workers by the Private Sectors, 610

Part IV: Placement by the Administration
Rule I. Recruitment and Placement Through the Administration, 612

Part V: Employment Standards
Rule I. Formulation of Employment Standards, 612

Part VI: Recruitment Violation and Related Cases
Rule I. Jurisdiction and Venue, 613
Rule II. Filling of Complaints, 616
Rule III. Action Upon Complaint, 617
Rule IV. Classification of Offenses and Schedule of Penalties, 619
Rule V. Appeal/Petition for Review, 625
Rule VI. Execution of Decisions, 626

Part VII: Disciplinary Action Cases
Rule I. Jurisdiction and Venue, 628
Rule II. Disciplinary Actions Against Principals/Employers, 628
Rule III. Disciplinary Action Against Overseas Workers, 629
Rule IV. Classification of Offenses and Schedule of Penalties, 630
Rule V. Appeal/Petition for Review, 632
Rule VI. Common Provisions, 632

Part VIII: Welfare Services
Rule I. Assistance to Workers, 633
Rule II. Conciliation of Complaints, 633
Rule III. Repatriation of Workers, 634
Rule IV. War Risk Areas and Insurance, 635
Rule V. Education Program on Overseas Employment, 635
Rule VI. Manpower Registration, 636
Rule VII. Manpower Research and Development, 636

Part IX: Transitory Provisions, 636
Part X: General and Miscellaneous Provisions, 636

Annex “A” — POEA Inspection Manual, 637

IMPLEMENTING RULES OF BOOK II
Rule VI. Apprenticeship Training and Employment of Special Workers, 643
Rule VII. Learners, 650
Rule VIII. Handicapped Workers, 651

IMPLEMENTING RULES OF BOOK III

Rule I. Hours of Work, 653
Rule I-A. Hours of Work of Hospital and Clinic Personnel, 656
Rule II. Night Shift Differential, 658
Rule III. Weekly Rest Periods, 659
Rule IV. Holidays with Pay, 661
Rule V. Service Incentive Leave, 663
Rule VI. Service Charges, 664
Rule VII. Wages, 665
Rule VII-A Wages (Memo. Cir. No. 2, November 4, 1992), 666
Rule VIII. Payment of Wages, 667
Department Order No. 18-A, Series of 2011
(Rules Implementing Arts. 106-109), 670
Department Circular No. 01, Series of 2012, 688
Rule IX. Wage Studies and Determination, 691
Rule X. Administration and Enforcement, 693
Rule X-A. Administration and Enforcement (Department Order
No. 7-4, Series of 1995), 697
Rule XI. Adjudicatory Powers, 699
Rule XII. Employment of Women and Minors, 700
Rule XIII. Employment of Househelpers, 703
Rule XIV. Employment of Homeworkers, 705
Department Order No. 119-12, Series of 2012, 709
Rule XV. Employment of Night Workers, 710

IMPLEMENTING RULES OF BOOK IV

Rule I. Medical and Dental Services, 713
Rule II. Occupational Health and Safety, 716
Amended Rules on Employees’ Compensation, 719
Annex “A” – Occupational Diseases, 744
Annex “B” – Prescribed Minimum Standards for Periodic
Medical Examinations Designed for the Early
Detection of Occupational Diseases, 752
Annex “C” – Medical Benefits, 754
Annex “D” – Suppletory Rules, 757

APPENDICES

Appendix to Book I
I-1: Migrant Workers Act (R.A. No. 8042, as amended by R.A. No. 10022), 761
I.1.1 Rules Implementing R.A. No. 8042, as amended by R.A. No. 10022, 786

Appendix to Book II
II-1: The TESDA Act of 1994, 827
II-1.1 Implementing Rules of the TESDA Act of 1994, 841
Appendix to Book III
III-1: Kasambahay Law (R.A. No. 10361), 859

Appendix to Book IV
IV-1: Guidelines for Drug Free Work Place Programs
     (D.O. No. 53-03), 869

Books V to VII of the Labor Code and the corresponding Implementing Rules are
     in Volumes II-A and II-B of this work.
Part One

THE LABOR CODE
WITH ANNOTATIONS
SOLICITUDE FOR LABOR

We have insisted that, since it is the end of Society to make men better, the chief good that Society can be possessed of is virtue. Nevertheless, in all well-constituted States it is by no means unimportant matter to provide those bodily and external commodities, “the use of which is necessary to virtuous action.” And in the provision of material well-being, the labor of the poor — the exercise of their skill and the employment of their strength in the culture of the land and the workshops to trade — is most efficacious and altogether indispensable. Indeed, their cooperation in this respect is so important that it may be truly said that it is only by the labor of the working man that States grow. Justice, therefore, demands that the interests of the poorer population be carefully watched over by the Administration, so that they who contribute so largely to the advantage of the community may themselves share in the benefits they create — that being housed, clothed, and enabled to support life, they may find their existence less hard and more endurable. It follows that whatever shall appear to be conducive to the well-being of those who work should receive favorable consideration. Let it not be feared that solicitude of this kind will injure any interests; on the contrary, it will be to the advantage of all; for it cannot but be good for the commonwealth to secure from misery those on whom it so largely depends....

POPE LEO XIII
Rerum Novarum (1891)

EQUITY DEMANDS WORKERS’ SHARE

No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It is but equity, besides, that they who food, clothe, and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, clothed, and lodged.

ADAM SMITH
The Wealth of Nations (1776)
LAW AND LABOR

Law: an ordinance of reason for the common good, made by him who has care of the community.

ST. THOMAS AQUINAS
*Summa Theologica*

Few laws are of general application. It is of the nature of our law that it has dealt not with man in general, but with him in relationships.

Nearly all legislation involves a weighing of public needs as against private desires; and, likewise, a weighing of relative social values.

LOUIS D. BRANDEIS
Dissent, *Traux vs. Corrigan*, 257 U.S. 312 (1921)

Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once?

HENRY DAVID THOREAU
*On the Duty of Civil Disobedience* (1949)

Let me not be understood as saying that there are no bad laws, or that grievances may not arise for the redress of which no legal provisions have been made. I mean to say no such thing. But I do mean to say that although bad laws, if they exist, should be repealed as soon as possible, still, while they continue in force, for the sake of example they should be religiously observed.

ABRAHAM LINCOLN
Address at Springfield, Illinois (1837)

Labor is the great producer of wealth: it moves all other causes.

DANIEL WEBSTER
House of Representatives (1824)
TWO MASTERS

Equality of right exists between the employer and the employee. The right of a laborer to sell his labor to such persons as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom he chooses. The employer and the employee have an equality of right guaranteed by the Constitution. If the employer can compel the employee to work against the latter’s will, this is servitude. If the employee can compel the employer to give him work against the employer’s will, this is oppression.

CHIEF JUSTICE MARCELO B. FERNAN

International Catholic Migration
Commission vs. NLRC, G.R. No. 72222,
January 30, 1989

Labor laws, like human resource management, have human and economic ends. They must support, if not propel, productive performance of the enterprise while protecting, if not providing, human dignity and human necessities.

In relation to capital, labor laws must respect the logic, the fairness and the need for realizing reasonable return on investment. In relation to labor, labor laws must safeguard the logic, the fairness and the need for rewarding one’s contribution to the harvests of the investment.

Indeed, labor laws should support two masters.

Laws, especially labor laws, are passed to address social inequities, to minimize social frictions, to uplift the common man. They are needed not to equalize poverty but to distribute wealth. A law that does not help improve social conditions is either an irrelevancy, an artifice, or a burden. It may even be a cause of the people’s poverty.

C. A. AZUCENA, JR.
PRELIMINARY TITLE
PRELIMINARY TITLE

Chapter I
GENERAL PROVISIONS

Overview/Key Questions:
Box 1

1. What is labor law and what does it aim to achieve?
2. What are the constitutional mandates pertaining to labor and labor-management relations?
3. Do Philippine labor laws meet international labor standards?
4. Are Philippine labor laws pro-labor?

ARTICLE 1. NAME OF DECREES
This Decree shall be known as the “Labor Code of the Philippines.”

ART. 2. DATE OF EFFECTIVITY
This Code shall take effect six (6) months after its promulgation.

COMMENTS

1. LABOR LEGISLATION; DEFINITIONS

Labor legislation consists of statutes, regulations and jurisprudence governing the relations between capital and labor, by providing for certain employment standards and a legal framework for negotiating, adjusting and administering those standards and other incidents of employment.

The above definition shows that labor legislation is broadly divided into labor standards and labor relations. We define labor standards law as that which provide the least terms and conditions of employment that employers must comply with and to which employees are entitled as a matter of legal right. Labor standards, as defined more specifically by jurisprudence, are the minimum requirements prescribed by existing laws, rules and regulations relating to wages, hours of work, cost-of-living allowance, and other monetary and welfare benefits, including occupational, safety, and health standards.¹

¹Maternity Children’s Hospital vs. Secretary of Labor, G.R. No. 78909, June 30, 1989.
Labor relations law, on the other hand, defines the status, rights and duties, and the institutional mechanisms that govern the individual and collective interactions, of employers, employees or their representatives.

Although the distinction between labor standards and labor relations is useful for academic purposes, they in reality overlap. For instance, the grievance machinery (the in-house method to resolve usually an employee’s complaint) is a labor relations mechanism, but very often the subject of the complaint is labor standards such as unpaid overtime work or a disciplinary action. Figuratively, one may think of labor standards as the material or the substance to be processed while labor relations is the mechanism that processes the substance.

Thus defined, Books One to Four of the Labor Code deal largely with labor standards while Books Five and Six cover labor relations.

Issues about employment tenure and termination fall in the area of labor relations. The Supreme Court itself, in a decision penned by a former labor secretary, said; “It is an elementary rule in the law on labor relations that even a probationary employee is entitled to security of tenure.” Even prior to the Labor Code, when labor laws were scattered in more than sixty statutes, employment termination was treated academically as a subject in labor relations. For instance, writers Perfecto V. Fernandez and Camilo D. Quiazon took up the subject of employee dismissal in their Volume I titled “Labor Relations” and not in Volume II “Labor Standards” (1963 and 1964 editions). In practice in many private business firms the line between labor standards and labor relations is not an issue except perhaps to identify the specialization of staff in the human resource department. To cover both labor standards and labor relations, including motivational programs, the name “employment relations” is used.

The Philippines’ “labor relations law” is simply called “labor law” in most US universities; our “labor standards law” roughly corresponds to US “employment law.”

Is “labor” different from “industrial” relations? Again, the question is largely theoretical. Some academics use labor relations to refer to situations involving unionized companies and industrial relations for non-unionized ones, or labor relations to refer to matters internal to the labor sector and industrial relations to management-labor interactions. The two terms are, practically, interchangeable.

---

1 Sameer Overseas Placement Agency, Inc. vs. NLRC and P. Endozo, G.R. No. 132564, October 20, 1999.

2 Whether “human resource management” is subsumed in “industrial relations,” or the other way around, is a long standing debate between the practitioners composing PMAP (People Management Association of the Philippines) and the academics at U.P. SOLAIR (School of Labor and Industrial Relations). The debate cordially continues.
“Labor,” in ordinary signification, is understood as physical toil although it does not necessarily exclude the application of skill, thus there is skilled and unskilled labor. “Skill,” by dictionary definition, is the familiar knowledge of any art or science, united with readiness and dexterity in execution or performance or in the application of the art or science to practical purposes.

“Work” is broader than “labor” as “work” covers all forms of physical or mental exertion, or both combined, for the attainment of some object other than recreation or amusement per se.

For this reason “worker” is broader than “employee,” as “workers” may refer to self-employed people and those working in the service and under the control of another, regardless of rank, title, or nature of work. A messenger, as well as a manager, is a worker. In fact, under Article 13 of the Labor Code, any member of the labor force, whether employed or unemployed, is a “worker.”

“Employee” is a salaried person working for another who controls or supervises the means, manner or method of doing the work. Employment relationship is expounded in Book III of this work.

2. LABOR LAW AND SOCIAL LEGISLATION

Distinction exists between “labor law” and “social legislation” but it is not easy to delineate. No law dictionary, local or foreign, defines “social legislation.” But a definition is called for. We define social legislation as those laws that provide particular kinds of protection or benefits to society or segments thereof in furtherance of social justice. In that sense, labor laws are necessarily social legislation. Agrarian reform law is a social legislation, so is the law providing for a social security system. The Labor Code provisions on State Insurance Fund to cover work-related injuries and occupational diseases are, likewise, pieces of social legislation.

Insisting to differentiate, some authors contend that “labor laws” directly affect employment while “social legislation” governs effects of employment. This insistence hardly makes things clear. For instance, it is hardly defensible to say that emergency medical treatment rendered at the worksite to a worker is covered by “labor law” but not by social legislation, while medical treatment rendered outside the workplace to the same person for the same injury involves a “social legislation” but not a labor law. Specifically, how can one say that medical treatment under Article 162 of the Labor Code is labor law but not social legislation, while sickness benefit under Section 14 of the Social Security law is social legislation but not labor law?

1These two volumes mean to be gender-free. “He,” “his,” “worker,” or “man” refers to a person, not necessarily male, unless the context obviously means otherwise.
If distinction must be stressed at all, it is simply in the sense that labor laws are social legislation but not all social legislations are labor laws. In other words, in relation to each other, social legislation as a concept is broader, labor laws narrower.

3. SOCIAL JUSTICE AS THE AIM

The aim and the reason and, therefore, the justification of labor laws is social justice.

Social justice, according to Dr. Jose P. Laurel in *Calalang vs. Williams*, 70 Phil. 726 [1940], is “neither communism, nor despotism, nor atomism nor anarchy, but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the component elements of society through the maintenance of proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments, on the time-honored principle of salus populi est suprema lex.”

In essence, social justice is both a juridical principle and a societal goal. As a juridical principle, it prescribes equality of the people, rich or poor, before the law. As a goal, it means the attainment of decent quality of life of the masses through humane productive efforts. The process and the goal are inseparable because one is the synergistic cause and effect of the other — legal equality opens opportunities that strengthen equality which creates more opportunities. The pursuit of social justice does not require making the rich poor but, by lawful process, making the rich share with the government the aim to realize social justice.

This perception proceeds from a forthright pronouncement by our Supreme Court way back in 1949:

Social justice does not champion division of property or equality of economic status; what it and the Constitution do guaranty are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, and equitable sharing of the social and material goods on the basis of efforts exerted in their production. (*Guido vs. Rural Progress Administration*, L-2089, October 31, 1949)

The 1987 Constitution, formulated by the 1986 Constitutional Commission and ratified by the people on February 2, 1987, gives fundamental significance to social justice. The Declaration of State Policies provides that “the State shall promote a just and dynamic social order that will ensure the prosperity and
independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.”

Succinctly, the Constitution says “the State shall promote social justice in all phases of national development.” Furthermore, “the State affirms labor as a primary social economic force.” Therefore, “it shall protect the rights of workers and promote their welfare.”

Not content with these basic State policy declarations, the Commission devotes an entire article — Article XIII with 14 sections — to “Social Justice and Human Rights.” This Article in part provides:

“Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

“Sec. 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.”

It can be seen that the social justice concept in the 1987 Constitution transcends the economic sphere. Political equality is likewise a goal of social justice. Towards this aim, the State is commanded not just to create economic opportunities but also to diffuse economic wealth. “This,” says the constitutionalist Fr. Joaquin Bernas, S.J., “is a recognition of the reality that, in a situation of extreme mass poverty, political rights, no matter how strongly guaranteed by the constitution, become largely rights enjoyed by the upper and middle classes and are a myth for the underprivileged. Without the improvement of economic conditions there can be no real enhancement of the political rights of the people.”

4. CONSTITUTIONAL RIGHTS AND MANDATES

Like other laws initiated by Congress (called “statutes”), the Labor Code is an instrument to carry out constitutional mandates. If there should be conflict between constitutional provisions and those of the Labor Code, the Constitution shall prevail as it is the highest law of the land. The basic policy declared in Article 3 of the Code is pursuant to the constitutional mandates.

1Article II, Sec. 9.
2Article II, Sec. 10.
The 1987 Constitution (Article II, Section 18) declares as a state policy: “The state affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.” Accordingly, in the article on social justice, the Constitution commands: “The State shall afford protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.”

This is a command found in the 1935 Constitution, untouched in the 1973 Constitution as well as in the present (1987) Constitution.

Specifically, the Constitution enumerates the guaranteed basic rights of workers, namely: (1) to organize themselves; (2) to conduct collective bargaining or negotiation with management; (3) to engage in peaceful concerted activities, including to strike in accordance with law; (4) to enjoy security of tenure; (5) to work under humane conditions; (6) to receive a living wage; and (7) to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.¹

Other provisions in the new Constitution protect the rights or promote the welfare of workers. Among these provisions are:

1) The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.²

2) The right of self-organization shall not be denied to government employees. No officer or employee of the civil service shall be removed or suspended except for cause provided by law. Temporary employees of the Government shall be given such protection as may be provided by law.³

3) Regular farmworkers shall have the right to own directly or collectively the lands they till. Other farmworkers shall receive a just share of the fruits of the land they till. The State recognizes the right of farmworkers, along with other groups, to take part in the planning, organization and management of the agrarian reform program. Landless farmworkers may be resettled by the Government in its own agricultural estates.⁴

4) The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens.⁵

¹Sec. 3, Article XIII.
²Article III, Bill of Rights, Sec. 8.
³Article IX-B, The Civil Service Commission, Sec. 2[3], [5] and [6].
⁴Article XIII, Secs. 4, 5 and 6, Social Justice and Human Rights.
⁵Article XIII, Sec. 9.
5) The State shall protect working women by providing safe and healthful working conditions taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.1

6) Along with other sectors, labor is entitled to seats allotted to party-list representatives for three consecutive terms after the ratification of the Constitution.2

7) The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged. The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources.3

8) Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.4

9) At the earliest possible time, the Government shall increase the salary scales of the other officials and employees of the National Government.5

10) Career civil service employees separated from the service not for cause but as a result of the reorganization shall be entitled to appropriate separation pay and to retirement and other benefits under existing laws. In lieu thereof, they may also be considered for reemployment in the Government. Those whose resignations have been accepted in line with the existing policy shall also have this right.6

A constitutional commissioner has characterized the 1987 Constitution as “especially pro-labor,” for the rights of workers and employees have acquired new dimensions while some concepts have been constitutionalized.7

---

1Article XIII, Sec. 14.
2Article VI, The Legislative Department.
3Article XII, National Economy and Patrimony, Sec. 1.
4Article XII, Sec. 15.
5Article XVIII, Transitory Provisions, Sec. 18.
6Article XVIII, Transitory Provisions, Sec. 16.
5. BALANCING OF RIGHTS IN PRIVATE ENTERPRISE SYSTEM

Yet the Constitution has not overlooked the rights of capital. It provides that “the State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.” The State is mandated to regulate the relations between workers and employers. While labor is entitled to a just share in the fruits of production, the enterprise has an equally important right not only to reasonable returns on investment but also to expansion and growth.

Neither the Constitution (1987) nor the Labor Code (1974) defines private enterprise, but in 1994, a legislative definition was formally stated in R.A. No. 7796, the TESDA Law, which seeks active participation of private enterprises in providing and developing technical education and skills. “Private enterprises,” Section 4 of the TESDA Law says, is an “economic system under which property of all kinds can be privately owned and in which individuals, alone or in association with another, can embark on a business activity. This includes industrial, agricultural, or agro-industrial establishments engaged in the production, manufacturing, processing, repacking or assembly of goods, including service-oriented enterprises.” This definition is applicable to private business operations, in general, throughout the country.

The Constitution recognizes that the private sector plays an “indispensable” role, something the state cannot do without. At the same breath, labor is called a primary social economic force. Because one is “indispensable” and the other is “primary,” how can it be said that one is more important, or deserves greater protection, than the other? Government, Bernas says, is the delicate art of balancing the power of government and the freedom of the governed. So also, labor relations is the challenging task of balancing the rights and interests of the employer and the employee. The constitutional outlook suggests a balanced treatment of workers and employers.

5.1 Shared Responsibility

The Constitution commands the State to promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes of settling disputes, including conciliation, and (to) enforce their mutual compliance therewith to foster industrial peace.

No one sector is to be unjustly favored. The Court, in a decision denying the employees’ appeal for a wage increase, said:

In fine, it must be emphasized that in the resolution of labor cases, this Court has always been guided by the State policy enshrined in the

---

1Article II, Sec. 20.
3Article XIII, Sec. 3.
Constitution that the rights of workers and the promotion of their welfare shall be protected. However, consistent with such policy, the court cannot favor one party, be it labor or management, in arriving at a just solution to a controversy if the party concerned has no valid support to its claim, like respondents [supervisors and foremen] here. (PI. Manufacturing, Inc. vs. P.I. Manufacturing Supervisors and Foremen Association and the National Labor Union, G.R. No. 167217, February 4, 2008)

6. POLICE POWER AS THE BASIS

While social justice is the raison d’être of labor laws, their basis or foundation is the police power of the State. It is the power of Government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of society.1

It is settled that state legislatures may enact laws for the protection of the safety and health of employees as an exercise of the police power, and this is true even though such laws affect, not the health of the community generally, but the health or welfare of operatives in any given situation.2

It has been ruled that the right of every person to pursue a business, occupation, or profession is subject to the paramount right of the government as a part of its police power to impose such restrictions and regulations as the protection of the public may require. The Constitution does not secure the liberty to conduct a business so as to injure the public at large or any substantial group. The right of reasonable regulation is a modification of the sweeping generalization that every person has a right to pursue any lawful calling.

And yet, police power itself has to respect the Constitution. The classic People vs. Pomar, 46 Phil. 455, says;

But the state, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to and is controlled by the paramount authority of the constitution of the state, and will not be permitted to violate rights secured or guaranteed by that instrument or interfere with the execution of the powers and rights guaranteed to the people under their law — the constitution. (Mugler vs. Kansas, 123 U.S., 623)

7. BIRTH OF THE LABOR CODE

The writing of a labor code began in 1968 under the leadership of the then Minister of Labor, Mr. Blas F. Ople, who deserves being regarded as the “Father of the Labor Code.”3 The objective was not merely to consolidate the then

---

1People vs. Vera Reyes, 67 Phil. 190.
231 Am. Jur., p. 945.
3See his speech before PMAP on April 26, 1968.
existing pieces of labor legislation — of which there were about sixty scattered in laws passed before, during and after the Commonwealth — but also to reorient them to the needs of economic development and justice. This aim was in line with the prescription of the Comprehensive Employment Strategy Mission of the International Labor Organization (Ranis Report) that the elevation of real wages, incomes and living standards was a function of employment generation and economic expansion.

The road to the approval of the Code was long and tortuous. The project had to gather invaluable contributions from the different bureaus of the Department of Labor, the Department of Industry and the Board of Investments, the UP Law Center, the Integrated Bar of the Philippines, the Personnel Management Association of the Philippines (PMAP), the National Economic and Development Authority, and the various trade union centers. After about seven times of drafting and redrafting, the Code was ratified, albeit quickly, by a National Tripartite Congress on April 28, 1973 and submitted to the President on May 1, 1973. In between Labor Days, it underwent further revisions. On May 1, 1974, it was signed into law as P.D. No. 442.

But at the same time, the Dictator-President announced that the Code would take effect after six months. Months of silence followed. When the Code resurfaced, it was loaded with extensive changes through P.D. No. 570-A. This decree was made public, signed, and declared to take effect on one and the same day – November 1, 1974. No prior announcement, no prior publication. That was an instance of dictatorial lawmaking during the Dictator’s twenty-year rule.

8. PRINCIPLES UNDERLYING THE CODE

When the Labor Code was issued in 1974, the Minister of Labor (who was never a pawn or clone of the martial law president) explained that seven innovative principles permeated the entire composition of the Labor Code, namely:

1) Labor relations must be made both responsive and responsible to national development.

2) Labor laws or labor relations during a period of national emergency must substitute rationality for confrontation; therefore, strikes or lockouts give away to a rational process which is arbitration.

3) Laggard justice in the labor field is injurious to the workers, the employers and the public; labor justice can be made expeditious without sacrificing due process.

4) Manpower development and employment must be regarded as a major dimension of labor policy, for there can be no real equality of bargaining power under conditions of severe mass unemployment.
5) There is a global labor market available to qualified Filipinos, especially those who are unemployed or whose employment is tantamount to unemployment because of their very little earnings.

6) Labor laws must command adequate resources and acquire a capable machinery for effective and sustained implementation; otherwise, they merely breed resentment not only of the workers but also of the employers. When labor laws cannot be enforced, both the employers and the workers are penalized, and only a corrupt few — those who are in charge of implementation — may get the reward they do not deserve.

7) There should be popular participation in national policy-making through what is now called tripartism.¹

9. SOME LABOR LAWS BEFORE THE PASSAGE OF THE CODE

There were some sixty pieces of labor laws in effect when the Labor Code project began. Although most of them are already abrogated by the Code, some are still relevant because the rationale or policy behind them has been carried over to the Code, and many court rulings about them remain controlling to this day.

The oldest was Act No. 1874, or the Employer’s Liability Act enacted on June 19, 1908 by the Philippine Legislature. There were also Act No. 2549 (enacted on January 21, 1916) which prohibited payment of wages in non-cash form; Act No. 2071 prohibiting slavery or involuntary servitude; R.A. No. 1054, requiring emergency medical treatment for employees; and C.A. No. 444 or the Eight-Hour Labor Law.

Commonwealth Act No. 103 created the Court of Industrial Relations (CIR), precursor of the National Labor Relations Commission under P.D. No. 21 (passed in the early years of the Martial Law regime) and the present NLRC. Its task, much like the present, was to investigate, decide and settle all disputes between employers and employees.

The Industrial Peace Act (R.A. No. 875), passed in 1953, was the law governing labor-management relations. Hailed as the Magna Carta of Labor, it was modelled after the US Labor-Management Relations Act of 1947, also known as the Taft-Hartley Act which, in turn, amended the National Labor Relations Act or the Wagner Act. Most of the basic principles of the National Labor Relations Act of the United States have been carried over to the Industrial Peace Act and now, indirectly, to the Labor Code.

The “Blue Sunday Law” (R.A. No. 946) used to forbid commercial, industrial or agricultural enterprises to open on any Sunday, Christmas Day, New Year’s Day, Holy Thursday, and Good Friday. The rationale was noted thus: “Sundays and legal holidays are set aside by law as days of rest. The life, existence, and happiness of a person do not depend only on the satisfaction of his physical needs. There are moral, intellectual, and spiritual needs as imperative as the physical ones.” Yet the Labor Code has made Sunday an ordinary working day.

The Termination Pay Law (R.A. No. 1052 as amended by R.A. No. 1787) enumerated the “just causes” for terminating an employment without a definite period and allowed employers to separate an employee by simply serving a 15-day notice per year of service or, instead of notice, by paying an equivalent separation pay. Security of tenure, now protected by the Constitution and the Labor Code, was nonexistent.

9.1. Significance of Foreign Decisions

The fact that the Industrial Peace Act, precursor of the present labor relations law, was modelled after US laws is significant because American court decisions influence our courts’ rulings. The Philippine Supreme Court has ruled that where our labor statutes are based upon or patterned after statutes in foreign jurisdiction, the “decisions of the high courts in those jurisdictions construing and interpreting the Act should receive the careful attention of this court in the application of our own law.” “Naturally, American authorities interpreting said American labor legislation are applicable and may be considered by us with profit.”

Numerous Labor Code provisions, such as those relating to employer-employee relations, unfair labor practices, bargaining unit, duty to bargain, and strikes and lockouts, are substantially similar to those of the Industrial Peace Act. It follows that the court rulings construing the pertinent Industrial Peace Act provisions are still applicable to the Labor Code provisions, unless there is substantial statutory departure. It should be remembered in this regard that “judicial decisions applying or interpreting the laws or the Constitution (shall) form part of the legal system of the Philippines.”

10. WHAT IS THE LABOR CODE?

The Labor Code (P.D. No. 442, as amended) is a set of substantive and procedural laws that prescribe the principal rights and responsibilities of employers, employees and other industrial participants, as well as the role of Government, in employment and related activities, so as to institute social justice. The Labor Code lays down the fundamental rights and correlative obligations of employers and employees to each other, such as those about work days

---

1Manila Electric Co. vs. Public Utilities Employees Assn., 79 Phil. 40.
2Cerezo vs. Atlantic Gulf and Pacific Co., 33 Phil. 425.
4Article 8, Civil Code.
and work hours, wage and wage protection, validity of dismissal as well as the processes of unionization and collective bargaining. Those substantive rights are enforceable through procedures prescribed in the Code, devised by either the parties themselves or the government in its role as regulator of employment relations.

The Labor Code is not one-sided. It is not meant to protect a sector to oppress another. All throughout the Code, the rights and responsibilities not only of employees but also of employers are recognized. Indeed, the Labor Code has to protect the interests of both employees and employers, for if it does not, it would be unconstitutional. The very first article of the Constitution’s Bill of Rights refers to all persons — rich or poor, aliens or citizens, artificial or natural — when it states: “No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” It is unjustified to view the Labor Code as a law of and for workers only, if this term refers only to hired workers.

“Labor” in “Labor Code” is better viewed in its broad ordinary sense as work and work relationship, referring to any economically productive application of physical, mental and material resources. In this sense, the term “labor” simply means work and does not exclude the work of business owners and managers. Labor Code articles repeatedly show the interplay of owners of mental, physical and material resources. Their interdependence permeates the Code.1

Thus, the Labor Code speaks of myriad concepts such as employment relationship, collective bargaining, and employment termination. Even only on these three matters, it is obvious that the employee is not alone — he is employed by and he bargains with another. That other is the employer. The Labor Code will become unintelligible if it is concerned only with the needs and rights of employees as if there were no employers. Indeed, as Harvard’s John Dunlop confirms, in any industrial relations system there are three actors: the employers,

---
1As Gill of Harvard asserts: “Economic development is not a mechanical process; it is not a simple adding up of assorted factors. Ultimately, it is a human enterprise. And like all human enterprises, its outcome will depend finally on the skill, quality, and attitudes of the men who undertake it… There must be what economists call entrepreneurs: men who possess the drive, ambition, foresight, and imagination to break through traditional barriers, overcome social inertia, and transform theory into practice… Capital accumulation is indispensable for expanding production and providing employment for the growing labor force.” (Richard T. Gill, Economic Development, [Prentice-Hall, 1963], pp. 12 and 19). Conformably, Sharp, et al., in their very successful book, affirm that “all goods and services that make up an economy’s real GDP are produced from labor and capital resources. Without labor and capital, production could not take place.” (Ansel M. Sharp, Charles A. Register, and Paul W. Grimes, Economics of Social Issues [McGraw-Hill, 2006, 17th Edition], p. 359)
the employees, and the government agencies. The Labor Code, which embodies our industrial law, deals with the concerns of the three industrial actors.

The context of the Labor Code is societal: the problems arising from inequality and scarcity in natural or processed resources. Although the Code’s language is legal, in terms of prescriptions, prohibitions, and exceptions, its objective is socio-economic: the well-being of the people. This has to be so because the Labor Code and the labor laws are instruments of socio-economic development. The state is concerned that wages are distributed evenly and, more importantly, that social justice is subserved. The Labor Code is hardly relevant if it is not imbued with the mission to uplift the living condition of the masses. It is definitely not meant to make the rich richer and leave the poor floundering in poverty.

True, labor law should not punish the rich just because they are rich, but the law should temper greed or rechannel excessive wealth. It should help spread economic opportunities and equality. We now know that one of the elements of the New Consensus on economic development is “shared growth” by reducing poverty and ensuring that the poor share substantially in the benefits of economic growth.

Indeed, any ardent student of law will realize that law cannot be divorced from economics and ethics. While economics is concerned with scarce resources or the production and distribution of goods and services, law is concerned with the dispensation of justice or the vanishment of iniquities of any form in societal life. As Lord Lloyd asserts, “Law without justice is a mockery, if not a contradiction.” What justice is there if one to ten percent of the people increasingly wallow in wealth while others sink deeper and deeper in destitution? Of what good is law if it does not address the maldistribution of wealth? Economic injustice is likewise a matter of ethics or morality.

Studying the Labor Code therefore requires a liberal dose of social awareness particularly of the problems of the working people. It should be studied not as cold and lifeless set of rules but as dynamic humanistic prescriptions for achieving a decent quality of life — decent for both the rich and the poor. The

---

2. ECOP vs. NWPC, etc., G.R. No. 96169, September 24, 1991.
5. I have not forgotten this reminder from Kilpatrick, the noted educator and co-professor of John Dewey: In no controversial issue should the teacher assume to give “the answer,” and so close off the necessity for further study. Instead, the aim is to encourage each learner to do his own thinking, but not in such a way as to direct the process toward our answer. No indoctrination truly educates to democratic independence of personality, and it is this true democratic education we seek…

20
true task of labor law students, therefore, is to examine how the law hinders or helps the attainment of socio-economic goals, how it helps or fails to help improve the quality of life of the masses. This task perfectly accords with a school’s mission to form men and women “imbued with a burning passion for justice and the fervent desire to serve others.” Hopefully, when their proper time comes, these students will make a difference, as they remember their graduation pledge to be guided “not only by what is legal but by what is moral, not only by what is permissible but by what is equitable.”

11. RELATED LAWS

Although the Labor Code contains most of the laws on labor, there are other labor laws that are not found in the Code. The most pertinent ones are mentioned below to serve as background in viewing the Labor Code.

11.1 The Civil Code

The Civil Code, not the Labor Code, describes basically the nature of labor-management relations. It states:

“The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.”

(Article 1700) This being so, “Neither capital nor labor shall act oppressively against the other, or impair the interest or convenience of the public.”

(Article 1701)

Similarly, no provision in the Labor Code requires that employment relationship should be voluntary. This is not needed in the Labor Code because involuntary servitude is already proscribed in the Constitution’s Bill of Rights and in Article 1703 of the Civil Code. It states: “No contract which practically amounts to involuntary servitude, under any guise whatsoever, shall be valid.” Because of this law, an employer cannot forbid an employee from resigning from his job, subject to the observance of the terms of the employment contract itself and the procedure on resignation under Article 299 of the Labor Code.

The Civil Code further contains provisions regarding wages, househelpers, and injuries sustained by employees. These provisions will be mentioned in the pertinent chapters.

Other labor-related issues call for application of the Civil Code such as those relating to awards of damages, interpretation of a collective bargaining agreement, validity of a waiver, preference of workers’ claims, and fixed-period employment.

What the students are to think, what decisions they will reach in these controversial areas, is for them to decide. The result we seek is a person able and disposed to think himself and act in accordance with his best thinking. (William Kilpatrick, Philosophy of Education, pp. 418-419)
11.2 The Revised Penal Code

The laws that define and penalize offenses are general laws and therefore apply to all human interactions, whether the persons involved are employers, employees, or otherwise. Of those named in the Revised Penal Code, the crimes against public order, against persons, against property, or against honor come into play, alongside labor laws, especially in case of labor disputes.

Article 289 of the Revised Penal Code punishes the use of violence or threats by either employer or employee. It says: “The penalty of arresto mayor and a fine not exceeding P300 pesos shall be imposed upon any person who, for the purpose of organizing, maintaining or preventing coalitions of capital or labor, strike of laborers or lockout of employers, shall employ violence or threats in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work, if the act shall not constitute a more serious offense in accordance with the provisions of this Code.”

11.3 Special Laws

Other laws related to the subject of the Labor Code include the SSS law, the GSIS law, the Agrarian Reform law, the 13th-month pay law, the Magna Carta for Public Health Workers, and so forth.

12. INTERNATIONAL ASPECT

Not to be overlooked is the international aspect of our labor laws, considering that the Philippines is a member of the ILO.

The International Labour Organization (ILO) is the UN specialized agency which seeks the promotion of social justice and internationally recognized human and labour rights.

The ILO was created in 1919, at the end of the First World War, at the time of the Peace Conference which convened first in Paris, then at Versailles. The need for such an organization had been advocated in the nineteenth century by two industrialists, Robert Owen (1771-1853) of Wales and Daniel Legrand (1783-1859) of France.

ILO is the only surviving major creation of the treaty of Versailles which brought the League of Nations into being and it became the first specialized agency of the UN in 1946.

The ILO formulates international labour standards in the form of Conventions and Recommendations setting minimum standards of basic labour rights: freedom of association, the right to organize, collective bargaining, abolition of forced labour, equality of opportunity and treatment, and other standards regulating conditions across the entire spectrum of work-related issues.
An essential characteristic of ILO is tripartism, that is, it is composed not only of government representatives but also of employers’ and workers’ organizations. The principle of tripartism permeates the composition of ILO’s deliberative bodies and influences in many respects the contents of ILO instruments.\footnote{N. Valticos and G. von Potobsky, \textit{International Labour Law} (Kluwer Law and Taxation, 1995), p. 34. Also: Neville Rubin (ed.), \textit{Code of International Labour Law} (Cambridge, 2005), p. 28.}

The route to Philippine membership in the ILO started with its membership in the UN on June 26, 1945. On March 19, 1948, the Philippine Senate passed Resolution No. 44 concurring to the country’s acceptance of obligations under the ILO Constitution and By-laws. Succeeding President Roxas, President Quirino formally accepted such obligation by signing Proclamation No. 67 on May 19, 1948. Finally, during the ILO Conference in San Francisco, the Philippines signed in as a member of the ILO on June, 15, 1948.

\textbf{12.1 International Commitments}

Being an ILO member, the Philippines subscribes to the fundamental principles on which the ILO is based and, in particular, that —

(a) labor is not a commodity;

(b) freedom of expression and of association are essential to sustained progress;

(c) that poverty anywhere constitutes a danger to prosperity everywhere;

(d) the war against want requires to be carried on with unrelenting vigor within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

Furthermore, as ILO member, the Philippines is committed to pursue programmes that will achieve certain objectives, including:

(a) full employment and the raising of standards of living;

(b) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;

(c) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
(d) the extension of social security measures to provide a basic income to all in need of such protection.

The principle and objectives quoted above are recited in the Declaration adopted by the General Conference in Philadelphia on May 10, 1944, which is annexed to the ILO Constitution.

12.2 ILO Core Conventions

In May 1995, a campaign to achieve universal ratification of seven core Conventions was launched by the ILO. An eighth Convention was added in 1999. As identified by the Governing Body, these eight core Conventions are deemed fundamental to the rights of human beings at work, irrespective of the level of development of member States. These rights are in fact a precondition for all other rights. It is deemed the responsibility of each member-State to ensure that the “necessary implements” for the improvement of individual and collective conditions of work are embedded in their respective national legislation.1

The eight core Conventions are as follows:

- Forced Labour Convention, 1930 (No. 29);
- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87);
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98);
- Equal Remuneration Convention, 1951 (No. 100);
- Abolition of Forced Labour Convention, 1957 (No. 105);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Minimum Age Convention, 1973 (No. 138); and
- Worst Forms of Child Labour Convention, 1999 (No. 182).

12.3 Ratification Generally Needed; Exception

As a rule, ILO conventions are binding only for those member-states that ratify them. In 1999, however, the ILO adopted a Declaration on Fundamental Principles and Rights at Work concerning an obligation of all ILO members to respect and promote the fundamental rights even if they have not ratified the conventions.2

---


The Philippines has ratified more than thirty ILO Conventions, including, significantly, the eight “core” conventions mentioned above.

Accordingly, Froilan C. Bacungan, a labor law expert, asserts that the Philippines can claim with some pride that it belongs to the upper 25% of the ILO members on the basis of governmental efforts taken to approximate the international labor standards.

**ART. 3. DECLARATION OF BASIC POLICY**

The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

**COMMENTS**

1. **LABOR LAWS AND SOCIAL-ECONOMIC GOALS**

   The issues mentioned in this article — employment, protection to labor, labor-management relations — are social issues. They are concerns of labor laws because labor laws are devices for social equity. Labor laws, depending on their provisions and thrusts, may make the rich richer and the poor simply poor.

   Article 3 is not a statement of goals but a statement of policy directions towards the goals.

   The goals of the national economy, says the Constitution, are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people. The national economy definitely needs to expand productivity as the key to raising the quality of life for all, especially the underprivileged. Those goals are the route to social justice, a route directed by laws, especially those about labor and employment.

   Labor laws, in other words, are a significant factor in a nation’s economy. They explain, partly but weightily, why a nation is poor or prosperous, why a country is competitive or not in the global market. Thus, the needs, the faults, and the goals of the economy cannot be ignored in formulating the labor laws, otherwise, the labor laws become purposeless, socially irrelevant, or economically damaging.

   The classic *The Idea of Law* asserts that any attempt by law to regulate restrictive practices by industry and trade unions is likely to prove unconstructive if the inquiries and evidence of economists and sociologists are disregarded.
2. INTERDEPENDENCE

The two-sentence declaration of basic policy in Article 3 hardly mentions the employer except in the phrase “regulate the relations between workers and employers.” All other phrases pertain to rights of workers. But it should not be deduced that the basic policy is to favor labor to prejudice capital. The plain reality is that both sectors need each other. They are interdependent — one is inutile without the other. Hence, the better understanding is that the basic policy is to balance or to coordinate the rights and interests of both workers and employers. Article 3 of the Code, written in the early 1970s, should be viewed in the perspective of the 1987 Constitution which, as already stated, explicitly recognizes shared responsibility of employers and workers and the right of enterprise to reasonable returns on investment and to expansion and growth.

ART. 4. CONSTRUCTION IN FAVOR OF LABOR

All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

COMMENTS AND CASES

1. INTERPRETATION AND CONSTRUCTION

1.1 Laborer’s Welfare; Liberal Approach

In carrying out and interpreting the Labor Code’s provisions and its implementing regulations, the working man’s welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided for in Article 4 of the New Labor Code. The policy is to extend the decree’s applicability to a greater number of employees to enable them to avail of the benefits under the law, in consonance with the State’s avowed policy to give maximum aid and protection to labor.1

In interpreting the Constitution’s protection to labor and social justice provisions and the labor laws and rules and regulations implementing the constitutional mandate, the Supreme Court adopts the liberal approach which favors the exercise of labor rights.2


1.2 Concern for Lowly Worker

The Supreme Court reaffirms its concern for the lowly worker who, often at his employer’s mercy, must look up to the law for his protection. That law regards him with tenderness and even favor and always with faith and hope in his capacity to help in shaping the nation’s future. He must not be taken for granted. He deserves abiding respect. How society treats him determines whether the knife in his hands shall be a caring tool for beauty and progress or an angry weapon of defiance and revenge. If we cherish him as we should, we must resolve to lighten “the weight of centuries of exploitation and disdain that bends his back but does not bow his head.”

1.3 Reason for According Greater Protection to Employees

In the matter of employment bargaining, there is no doubt that the employer stands on higher footing than the employee. First of all, there is greater supply than demand for labor. Secondly, the need for employment by labor comes from vital, and even desperate, necessity. Consequently, the law must protect labor, at least, to the extent of raising him to equal footing in bargaining relations with capital and to shield him from abuses brought about by the necessity for survival. It is safe to presume, therefore, that an employee or laborer who waives in advance any benefit granted him by law does so, certainly not in his interest or through generosity but under the forceful intimidation of urgent need, and hence, he could not have so acted freely and voluntarily.

1.4 Justice, the Intention of the Law

Protection to labor and resolution of doubts in favor of labor cannot be pursued to the point of deliberately committing a miscarriage of justice. The right to obtain justice is enjoyed by all members of society, rich or poor, worker or manager, alien or citizen. Justice belongs to every one. It is not to be blinded or immobilized by the fact of one’s being economically underprivileged. This Article 4, it is submitted, cannot be taken to have superseded Article 10 of the Civil Code (R.A. No. 386) that states: “In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.” Justice, not expediency, is the higher end of law. And law does not favor favoritism amounting to injustice.

---


2. MANAGEMENT RIGHTS, BROADLY

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, the Supreme Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.\(^1\)

The Secretary of Labor is duly mandated to equally protect and respect not only the laborer or worker’s side but also the management and/or employer’s side. The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer.\(^2\) Management prerogatives, however, are subject to limitations provided by (1) law, (2) contract or collective bargaining agreements, and (3) general principles of fair play and justice.\(^3\)

Briefly introduced below are the most fundamental of the management rights.

2.1 Right to ROI

The employer has the right to return of investments and to make profit. There is nothing dirty about profit \emph{per se} — it is profit that creates jobs and improves the workers’ lot. The Constitution provides: “The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.”

Consistent with the policy of the State to bridge the gap between the underprivileged workingman and the more affluent employers, the balance in favor of the workingman should be tilted without being blind to the concomitant right of the employer to the protection of his property.\(^4\)

2.2 Right to Prescribe Rules

Employers have the right to make reasonable rules and regulations for the government of their employees, and when employees, with knowledge of an established rule, enter the service, the rule becomes a part of the contract of


\(^3\)Mendoza vs. Rural Bank of Lucban, G.R. No. 155421, July 7, 2004.

employment.\(^1\) Company policies and regulations are, unless shown to be grossly oppressive or contrary to law, generally binding and valid on the parties.\(^2\)

Thus in a certain case, the evidence showed that the chauffeur of the autocalesas, without the consent of the respondent company, allowed another chauffeur to drive the autocalesa which was under his charge, in violation of the regulations of the company. The Court held that such act of the chauffeur constituted a sufficient cause for his dismissal as provided for in the regulations of the company.\(^3\)

### 2.3 Right to Select Employees

An employer has a right to select his employees and to decide when to engage them. He has a right under the law to full freedom in employing any person free to accept employment from him, and this, except as restricted by valid statute or valid contract, at a wage and under conditions agreeable to them. On the one hand, he may refuse to employ whomever he may wish, irrespective of his motive, and on the other hand, he has the right to prescribe the terms upon which he will consent to the relationship, and to have them fairly understood and expressed in advance. The state has no right to interfere in a private employment and stipulate the terms of the services to be rendered; it cannot interfere with the liberty of contract with respect to labor except in the exercise of the police power.\(^4\)

For instance, the Court of Industrial Relations issued an order directing the employer to recruit from the union, the employees needed to replace union members who may be dismissed. This order, in substance and in effect, compels the company, against its will, to employ preferentially the members of the union.

The Supreme Court held that the Court of Industrial Relations had no authority to issue such compulsory order. “The general right to make a contract in relation to one’s business is an essential part of the liberty of the citizens protected by the due process clause of the Constitution. The right of a laborer to sell his labor to such person as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom it chooses. The employer and the employee have thus an equality of right guaranteed by the Constitution. If the employer can compel the employee to work against the latter’s will, this is servitude. If the employee can compel the employer to give him work against the employer’s will, this is oppression.”\(^5\)

---

\(^1\)31 Am. Jur., Sec. 12, p. 839; Lagatic vs. NLRC, G.R. No. 121004, January 28, 1988.


\(^4\)31 Am. Jur., Sec. 9, p. 837.

The ruling may be different, however, if the company and the union have entered into a closed-shop agreement, as will be explained in Book V of the Code.

2.4 Right to Transfer or Discharge Employees

An employer has the perfect right to transfer, reduce or lay off personnel in order to minimize expenses and to insure the stability of the business, and even to close the business. This right to transfer of discharge has been consistently upheld even in the present era of multifarious reforms in the relationship of capital and labor, provided the transfer or dismissal is not abused but is done in good faith and is due to causes beyond control. To hold otherwise would be oppressive and inhuman.1

The rights of employers and employees will be detailed in ensuing chapters, particularly in Books III through VI.

ART. 5. RULES AND REGULATIONS

The Department of Labor and Employment and other government agencies charged with the administration and enforcement of this Code or any of its parts shall promulgate the necessary implementing rules and regulations. Such rules and regulations shall become effective fifteen (15) days after announcement of their adoption in newspapers of general circulation.

COMMENTS

1. RULES AND REGULATIONS TO IMPLEMENT THE CODE

Under Article 5, the Department of Labor and Employment shall make rules and regulations to implement the Code. (Those rules are reproduced in Part Two of the present work). It has been ruled that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce have the force of law, and are entitled to great respect.2

Thus, Department Order No. 1, Series of 1988, of the Department of Labor and Employment providing for “Guidelines Governing the Temporary Suspension of Employment of Filipino Domestic and Household Workers,” does not constitute an invalid exercise of legislative power. It is true that police power is the domain of legislature, but it does not mean that such an authority may not

---

be lawfully delegated. The Labor Code itself in Article 5 vests the Department of Labor and Employment with rule-making powers in the enforcement thereof.\(^1\)

1.1 **When Invalid**

A rule or regulation promulgated by an administrative body, such as the Department of Labor, to implement a law, in excess of its rule-making authority, is void.

For instance, the Rules and Regulations implementing Article 94 of the Labor Code, and the accompanying Policy Instructions No. 9 limited the entitlement to holiday pay to daily-paid employees only thereby excluding monthly-paid employees. But the law itself states that “every worker” shall be entitled to holiday pay.

The Court declared that those rules and regulations as well as the policy instructions are null and void. By disenabling the monthly employees, the Labor Secretary exceeded his rule-making authority. An administrative interpretation which takes away a benefit granted in the law is *ultra vires*, that is, beyond one’s power.\(^2\)

**ART. 6. APPLICABILITY**

All rights and benefits granted to workers under this Code shall, except as may otherwise be provided herein, apply alike to all workers, whether agricultural or non-agricultural.

**COMMENTS**

1. **APPLICABILITY TO GOVERNMENT CORPORATIONS**

   The question has arisen whether the Code applies, and the jurisdiction of the Department of Labor extends, to government corporations. The ruling now is that the Labor Code applies to a government corporation incorporated under the Corporation Code. Earlier, in the 1985 ruling in *National Housing Corporation vs. Juco*, 134 SCRA 172, the Supreme Court laid down the doctrine that employees of government-owned and/or controlled corporations, whether chartered by Congress or formed under the general Corporation Law, were governed by the Civil Service Law and not by the Labor Code. This doctrine is now obsolete as it has been supplanted by the present [1987] Constitution, which provides: “The Civil Service embraces all branches, subdivisions, instrumentalities and agencies of the Government, *including* government-owned or controlled corporations with original charters.”

---

\(^1\) Philippine Association of Service Exporters, Inc. vs. Drilon, G.R. No. 81958, June 30, 1988.

\(^2\) CBTC Employees Union vs. Clave, G.R. No. 49582, January 7, 1986.
The government-owned and controlled corporations “with original charter” refer to corporations chartered by special law from Congress as distinguished from corporations organized under our general incorporation statute, the Corporation Code. Thus, under the present state of the law, the test in determining whether a government-owned or controlled corporation is subject to the Civil Service Law is the manner of its creation. Government corporations created by Congress are subject to Civil Service rules, while those incorporated under the general Corporation Law are covered by the Labor Code.1

1.1 PNOC-EDC, FTI, NHA

The PNOC-EDC, (Philippine National Oil Corp. Energy Development Corp.) having been incorporated under the general Corporation Law, is a government-owned or controlled corporation. Its employees are subject to the provisions of the Labor Code, among which are those on the rights to unionize and to strike.

Similarly, the Food Terminal, Inc. is a government-owned and controlled corporation without original charter. The Department of Labor and Employment, and not the Civil Service Commission has jurisdiction over the dispute arising from employment with FTI. The terms and conditions of such employment are governed by the Labor Code and not by the Civil Service Rules and Regulations.

Finally, considering that the NHA (National Housing Corp.) was incorporated under Act 1459, the former corporation law, it is a government-owned or controlled corporation whose employees are subject to the provisions of the Labor Code. The NHA is within the jurisdiction of the Department of Labor and Employment, it being a government-owned and/or controlled corporation without an original charter. The workers or employees of the NHC (now NHA) have the right to form unions or employees’ organizations.2

2. NON-APPLICABILITY TO GOVERNMENT AGENCIES

The terms governmental “agency” or “instrumentality” are synonymous in the sense that either of them is a means by which a government acts, or by which a certain government act or function is performed. The word “instrumentality,” with respect to the state, contemplates an authority to which the state delegates government power for the performance of a state function.3

1See National Service Corp. vs. NLRC, No. L-69870, November 29, 1988.
2Juco vs. NLRC and National Housing Corp., G.R. No. 98107, August 18, 1997.
For instance, the National Parks Development Committee is an agency of the government, not a government-owned or controlled corporation. Its employees are covered by civil service rules and regulations, since they are civil service employees.¹

While the National Parks Development Committee employees are allowed under the 1987 Constitution to organize and join unions of their choice, there is no law permitting them to strike. In case of a labor dispute between the employees and the government, Section 15 of E.O. No. 180, dated June 1, 1987 provides that the Public Sector Labor-Management Council, not the Department of Labor and Employment, shall hear the dispute.²

Similarly, employees of the Social Security System (SSS) are civil service employees. When they went on strike, the Regional Trial Court, not the National Labor Relations Commission, had jurisdiction to hear the petition to enjoin the strike. And, again, E.O. No. 180 applies, not the Labor Code.³

Note: Notwithstanding the above rulings, it should be noted that the Labor Code provisions on the State Insurance Fund (Article 172, et seq.) do apply to government personnel covered by the GSIS.

3. APPLICABILITY WITHOUT EMPLOYER-EMPLOYEE RELATIONSHIP

The Labor Code may apply even if the parties are not employers and employees of each other. In other words, it is not correct to say that employment relationship is a pre-condition to the applicability of the Code.

When one speaks of employment benefits (e.g., overtime pay or rest day premium) or of unionization, then surely employment relationship is an essential element. But when the issue, for instance, is an indirect employer’s liability, or illegal recruitment, or misuse of POEA license, there is no employer-employee relationship between the complainant and the respondent, and yet the pertinent Labor Code provisions may be invoked. In short, the Labor Code applies with or without employment relationship between the disputants, depending on the kind of issue involved.

The presence or absence of employer-employee relationship is itself a labor law question. It is resolved by applying Labor Code provisions, the implementing rules, and interpretative court rulings. Employment relationship is explained in Article 82 and contrasted to labor contracting in Articles 106 to 109.

¹Sec. 2, Article 2, 1987 Constitution; Executive Order No. 180, Sec. 14.
The new global, technologically based economy is leading us in directions we can only dimly foresee. Does not uncertain future call for strengthened government controls, or are we wisest to let the market sort out our lives on a case-by-case basis? As scholar Robert Heilbroner noted, we are in an era of “warp-speed capitalism” fired by unprecedented faith in market-based decision-making. That faith in the market is being severely tested, however.

Experts differ about the nature and impact of globalization: but we certainly see compelling evidence that international trade is breaching national boundaries, technology is shrinking the globe, and multinationals are increasingly viewing the globe as one giant market.

Today’s debate is no longer about capitalism versus communism but about the mixed economy — that is, about what combination of capitalism and government best serves the world’s needs.

The law serves as a primary method of social control.

TONY McADAMS, NANCY NESLUND, KIREN DOSANJH ZUCKER


### Growth Rates of Workers’ Wage vs. Corporate Income

Average Daily Basic Pay of Wage and Salary Workers and Estimated Daily Net Income of Top 1000 Corporation by Industry Group, Growth Rates, 2009-2010 (in %)

<table>
<thead>
<tr>
<th>Industry Group</th>
<th>Average Daily Basic Pay of Wage and Salary Workers</th>
<th>Estimated Daily Net Income of Top 1000 Corporations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity, Gas and Water Supply</td>
<td>5.6</td>
<td>33.1</td>
</tr>
<tr>
<td>Wholesale and Retail Trade, Repair of Motor Vehicles, Motorcycles and Personal and Households Goods</td>
<td>6.5</td>
<td>40.6</td>
</tr>
<tr>
<td>Transport, Storage and Communications</td>
<td>3.9</td>
<td>2.8</td>
</tr>
</tbody>
</table>
Notes:

Figures for the estimated daily net income are based on the annual net income figures of the top 1000 corporations divided by 261 days or the total number of working days in a year based on a standard 5-day workweek.

For the purpose of comparison, the industry groups of the top 1000 corporations were grouped according to the industry groups used for the average daily basic pay of wage and salary workers.


WEALTH CONCENTRATION

Sources of economic growth have not delivered in terms of job generation. Also, growth has not translated to meaningful increases in wages and reduction in poverty. However, there is noticeable increase in the wealth of the rich and profits of the biggest corporations.

Net worth of the 40 richest families in the Philippines increased by 40% from 2011 to 2012. Combined net worth in 2012 is US$34 billion which, for comparison, is equivalent to 27% of the country’s gross national income in 2011. In 2012, the number of Filipino billionaires increased from 11 to 15. This shows that there is extreme wealth concentration. Interestingly, the corporations of most of these billionaires have also benefited from greater opportunities in government contracts especially those in relation to public-private infrastructure projects. Their corporations have also benefited by capturing water, electricity and oil thus practicing monopoly pricing. (Mid-year 2012: Exclusionary Economics, Elite Politics [IBON Foundation Economic and Political Briefing, 12-13 July 2012], p. 19)
Chapter II

EMANCIPATION OF TENANTS\(^1\)

Overview/Key Questions:

1. What law governs agrarian reform?
2. What are the objectives of agrarian reform?
3. What process and conditions are observed to make a tenant-farmer an owner under the agrarian reform program?

ART. 7. STATEMENT OF OBJECTIVES

Inasmuch as the old concept of land ownership by a few has spawned valid and legitimate grievances that gave rise to violent conflict and social tension and the redress of such legitimate grievances being one of the fundamental objectives of the New Society, it has become imperative to start reformation with the emancipation of the tiller of the soil from his bondage.

ART. 8. TRANSFER OF LANDS TO TENANT-WORKERS

Being a valid part of the labor force, tenant-farmers on private agricultural lands primarily devoted to rice and corn under a system of share crop or lease tenancy whether classified as landed estate or not shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated.

In all cases, the landowners may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it.

ART. 9. DETERMINATION OF LAND VALUE

For the purpose of determining the cost of the land to be transferred to the tenant-farmer, the value of the land shall be equivalent to two and one-half (2-1/2) times the average harvest of three (3) normal crop years immediately preceding the promulgation of Presidential Decree No. 27 on October 21, 1972.

---

\(^1\)Amended by R.A. No. 6657, June 10, 1988.
The total cost of the land, including interest at the rate of six percent (6%) per annum, shall be paid by the tenant in fifteen (15) years of fifteen (15) equal annual amortizations.

In case of default, the amortizations due shall be paid by the farmers’ cooperative in which the defaulting tenant-farmer is a member, with the cooperative having a right of recourse against him.

The government shall guarantee such amortizations with shares of stock in government-owned and government-controlled corporations.

ART. 10. CONDITIONS OF OWNERSHIP

No title to the land acquired by the tenant-farmer under Presidential Decree No. 27 shall be actually issued to him unless and until he has become a full-fledged member of a duly recognized farmers’ cooperative.

Title to the land acquired pursuant to Presidential Decree No. 27 or the Land Reform Program of the Government shall not be transferable except by hereditary succession or to the Government in accordance with the provisions of Presidential Decree No. 27, the Code of Agrarian Reforms and other existing laws and regulations.

ART. 11. IMPLEMENTING AGENCY

The Department of Agrarian Reform shall promulgate the necessary rules and regulations to implement the provisions of this Chapter.

COMMENTS

The Labor Code touches agrarian reform inadequately in five articles only because it is a subject governed principally by R.A. No. 6657 (Comprehensive Agrarian Reform Law of 1988). It is better studied as a separate book and is not included in the LEB-prescribed labor law curriculum. Thus, this work does not cover agrarian reform.

You will not mistake my meaning or suppose that I depreciate any of the great humane studies if I say that we cannot learn law by learning law. If it is to be anything more than just a technique, it is to be so much more than itself: a part of history, a part of economics and sociology, a part of ethics and a philosophy of life.

LORD RADCLIFFE

The Law and Its Compass (1961), pp. 92-93

EMANCIPATION OF TENANTS

ARTS. 7-11
THE GREATEST EXPLOITER

Unemployment is the greatest exploiter of labor. For huge surpluses of unskilled labor cannot but hold down the limit of improvements in the real wages and working conditions of the vast majority of workers.

At the same time, it cannot be denied that precisely because mass unemployment tends to leave the employer all-powerful and the worker defenseless, there must be stronger safeguards against the exploitation of labor. This is especially true in many developing countries where feudalism in both agriculture and industry continues to exert a dominant influence. In such countries the whole apparatus of power — economic, political, military and judicial — is trained against the worker aspiring to a standard of decency, security and dignity in his work. It is during this stage of development, when the labor market itself penalizes the worker, that governments are called on to take strong measures to redress the social imbalance.

BLAS F. OPLE
*Frontiers of Labor and Social Policy*
(Manila, 1979), p. 14

MORE CAPITAL MEANS MORE JOBS

The demand for those who live by wages, it is evident, cannot increase but in proportion to the increase of the funds which are destined for the payment of wages. These funds are of two kinds: first, the revenue which is over and above what is necessary for the maintenance; and secondly, the stock which is over and above what is necessary for the employment of their masters.

The demand for those who live by wages, therefore, necessarily increases with the increase of the revenue and stock of every country, and cannot possibly increase without it. The increase of revenue and stock is the increase of national wealth. The demand for those who live by wages, therefore naturally increases with the increase of national wealth, and cannot possibly increase without it.

ADAM SMITH
*The Wealth of Nations*, (1776)
SEVEN MILLION ABROAD

What started as a trickle became a wave. From the initial hundreds of engineers, technicians and skilled workers, about 900 thousand Filipinos now leave for overseas jobs annually. This flow accounts for a stock over seven million workers located in 190 countries all over the world, occupying jobs ranging from caregiver to nuclear scientist.

Hong Kong alone has more than 100,000 Filipinos, most of them females, most of them domestic helpers. Earning an average wage of US$400, a month, they work six days a week, often from 12-15 hours daily and remit no less than US$10 million monthly to their families in the Philippines. This pays for the education of children, amortizations on low-cost dwellings and the purchase of consumer goods, among others. This has its attendant social costs, of course.

Family separation can lead to marital breakup. Child without parents can go into drug addiction, profligate spending, or early pregnancies. On the other hand, loneliness in a strange place can lead to infidelity, depression, even despondency and suicide.

PATRICIA A. STO. TOMAS
(Secretary, Department of Labor and Employment)
People’s Journal, May 17, 2004

AN EXPLOITED CLASS

Our overseas workers constitute an exploited class. Most of them come from the poorest sector of our society. They are thoroughly disadvantaged. Their profile shows they live in suffocating slums, trapped in an environment of crime. Hardly literate and in ill health, their only hope lies in jobs they can hardly find in our country. Their unfortunate circumstance makes them easy prey to avaricious employers. They will climb mountains, cross the seas, endure slave treatment in foreign lands just to survive. Out of despondence, they will work under subhuman conditions and accept salaries below the minimum. The least we can do is to protect them with our laws in our land. Regretfully, respondent public officials who should sympathize with the working class appear to have a different orientation.

CHIEF JUSTICE REYNATO S. PUNO
Esalyn Chavez vs. Bonto Perez, et al., G.R. No. 109808, March 1, 1995
KRIMEN NA KARUMALDUMAL

In these difficult times, many Filipinos pin their hopes for an abundant future on overseas employment. In several cases, however, illegal recruiters have taken undue advantage of simple folk desperate to work abroad. This Court cannot let these vultures roam the countryside and prey on the gullibility of our people.

CHIEF JUSTICE ARTEMIO V. PANGANIBAN

People vs. Castillon, G.R. No 130940, April 21, 1999


Kadalasan ay nangungutang sila o ang mga magulang nila sa ‘sinco-seis,’ o dili kaya’y nagsasangla ng lupain o nagbibili ng mga ari-ariang gaya ng kalabaw. Kanila namang nahihimok ang kamag-anakan nila na tumulong sapagkat nangangakong magpapadala ng higit na maraming kuwarta na pantulad sa kanilang utang o dili kaya’y pamparaal sa mga nakababalang kapatid.

Sa oras na nakapagbitiw ng salapi ang biktima, ang manlilinlang ay dagling nawawala na parang bula. Sapagkat karamihan sa kanila ay ‘illegal recruiter’ at walang lisensya sa Philippine Overseas Employment Administration (POEA), hindi na matutunton ang kanilang bakas.

x x x

Napapanahon nang iparating sa mga salarin na iyan na hindi pahintulutan ng pamahalaan ang gayong malawakang panlolo ko sa mga maralita na masasabing ang kasalan ay ‘naghangad ng kagitna, isang salop ang nawala.’

JUSTICE FLERIDA RUTH P. ROMERO

People vs. Naparan, Jr.
44 SCAD 334, 225 SCRA 714 (1993)
ART. 12. STATEMENT OF OBJECTIVES

It is the policy of the State:

(a) To promote and maintain a state of full employment through improved manpower training, allocation and utilization;
(b) To protect every citizen desiring to work locally or overseas by securing for him the best possible terms and condition of employment;
(c) To facilitate a free choice of available employment by persons seeking work in conformity with the national interest;
(d) To facilitate and regulate the movement of workers in conformity with the national interest;
(e) To regulate the employment of aliens, including the establishment of a registration and/or work permit system;
(f) To strengthen the network of public employment offices and rationalize the participation of the private sector in the recruitment and placement of workers, locally and overseas, to serve national development objectives;
(g) To insure careful selection of Filipino workers for overseas employment in order to protect the good name of the Philippines abroad.

COMMENTS

1. THE UNEMPLOYMENT PROBLEM

This opening article, appropriately enough, addresses itself to employment-related objectives, because, in reality, the country’s unemployment problem is distressing. In a list of 17 countries, 15 of them in Asia-Pacific, the Philippines’ unemployment rate is next to the highest, at 9.8%, meaning more than 3.5 million jobless.

The unemployment problem is exacerbated by population growth that appears unchecked. The intercensal population growth rate which was 2.32% in 1990-1995 escalated to 2.36% in 1995-2000.
The disturbing figures are reflected in poverty incidence. It has worsened, nationwide, from 36.8% in 1997 to 39.4% in 2000.

2. THE DOLE: ITS RESPONSIBILITY

The labor force grows by more than 300,000 every year, but only about half of this number finds employment.

The employment problem is admittedly multi-faceted and its solution is the concern not only of one or two government departments but of the entire governmental system. It is even the concern of the private sector and the civil society. But since there has to be a lead agency, the Administrative Code of 1987 (Executive Order No. 292) names the Department of Labor and Employment as “the primary policy-making, programming, coordinating, and administrative entity of the Executive Branch of the government in the field of labor and employment.” The Administrative Code mandates DOLE to assume “primary responsibility” for:

a) The promotion of gainful employment opportunities and the optimization of the development and utilization of the country’s manpower resources;

b) The advancement of worker’s welfare by providing for just and humane working conditions and terms of employment;

c) The maintenance of industrial peace by promoting harmonious, equitable and stable employment relations that assure protection for the rights of all concerned parties.

These three areas of DOLE’s primary responsibility are detailed in the Labor Code, such as Articles 12 and 14, and a few special laws.

The same primary responsibilities of DOLE provide the rationale for its operational structure. The DOLE agencies, offices, and bureaus are “clustered” correspondingly to DOLE’s areas of responsibility.

The Regional Offices (ROs), headed by Regional Directors (RDs), are the DOLE frontline action centers (see Articles 128-129).
Title I
RECRUITMENT AND PLACEMENT OF WORKERS

Chapter I
GENERAL PROVISIONS

Overview/Key Questions:

<table>
<thead>
<tr>
<th>Box 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What government agencies are created to promote employment opportunities?</td>
</tr>
<tr>
<td>2. How does the POEA protect and assist the OFWs?</td>
</tr>
<tr>
<td>3. Who has adjudicatory jurisdiction over claims by OFWs?</td>
</tr>
<tr>
<td>4. What significant amendments to the Labor Code are introduced by R.A. No. 8042?</td>
</tr>
<tr>
<td>5. Are POEA-approved employment contracts immutable?</td>
</tr>
</tbody>
</table>

ART. 13. DEFINITIONS

(a) “Worker” means any member of the labor force, whether employed or unemployed.

(b) “Recruitment and placement” refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

(c) “Private fee-charging employment agency” means any person or entity engaged in the recruitment and placement of workers for a fee which is charged, directly or indirectly, from the workers or employers or both.

(d) “License” means a document issued by the Department of Labor authorizing a person or entity to operate a private employment agency.

(e) “Private recruitment entity” means any person or association engaged in the recruitment and placement of workers, locally or overseas, without charging, directly or indirectly, any fee from the workers or employers.
(f) “Authority” means a document issued by the Department of Labor authorizing a person or association to engage in recruitment and placement activities as a private recruitment entity.

(g) “Seaman” means any person employed in a vessel engaged in maritime navigation.

(h) “Overseas employment” means employment of a worker outside the Philippines.

(i) “Emigrant” means any person, worker or otherwise, who emigrates to a foreign country by virtue of an immigrant visa or resident permit or its equivalent in the country of destination.

COMMENTS AND CASES

ARTICLE 13(b) CONSTRUED; WHAT CONSTITUTES RECRUITMENT AND PLACEMENT

The definition of “Recruitment and placement” in Article 13(b) is interpreted by the Court in People vs. Panis.

People vs. Panis, 142 SCRA 664 (1986) —

Facts: Four separate criminal complaints were filed against Abug for operating a fee-charging employment agency without first securing a license. But Abug argued that the complaints did not charge an offense as he was charged with illegally recruiting only one person in each of the four informations. Abug claimed that under Article 13(b) there would be illegal recruitment only when two or more persons in any manner were promised or offered any employment for a fee.

Ruling: The Court ruled that the number of persons is not an essential ingredient of the act of recruitment and placement of workers. — “As we see it, the proviso was intended neither to impose a condition on the basic rule nor to provide an exception thereto but merely to create a presumption. The presumption is that the individual or entity is engaged in recruitment and placement whenever he or it is dealing with two or more persons to whom, in consideration of a fee, an offer or promise of employment is made in the course of the “canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring (of) workers.” The number of persons dealt with is not an essential ingredient of the act of recruitment and placement of workers. Any of the acts mentioned in the basic rule in Article 13(b) will constitute recruitment and placement even if only one prospective worker is involved. The proviso merely lays down a rule of evidence that where a fee is collected in consideration of a promise or offer of employment to two or more prospective workers, the individual or entity dealing with them shall be deemed to be engaged in the act of recruitment and placement. The words ‘shall be deemed’ create that presumption.”
The Court laid down the rule in *People vs. Goce*, G.R. No. 113161, August 29, 1995, that to prove that the accused was engaged in recruitment activities, it must be shown that the accused gave the complainant the distinct impression that she had the power or ability to send the complainant abroad for work, such that the latter was convinced to part with her money in order to be so employed. Where such act or representation is not proven, there is no recruitment activity and conviction for illegal recruitment has no basis.

Thus, in *Darvin vs. C.A. and People of the Philippines*, G.R. No. 125044, July 13, 1998, the Court noted the lack of evidence to prove that the accused offered a job to complainant-respondent. It was established, instead, that the complainant gave P150,000.00 to the accused-appellant for payment of air fare and US visa and other expenses. The receipt for the P150,000.00 stated that it was “for Air Fare and visa to USA.” The Court through Justice Romero concluded: “By themselves, procuring a passport, airline tickets and foreign visa for another individual, without more, can hardly qualify as recruitment activities.”

**ART. 14. EMPLOYMENT PROMOTION**

The Secretary of Labor shall have the power and authority:

(a) To organize and establish new employment offices in addition to the existing employment offices under the Department of Labor as the need arises;

(b) To organize and establish a nationwide job clearance and information system to inform applicants registering with a particular employment office of job opportunities in other parts of the country as well as job opportunities abroad;

(c) To develop and organize a program that will facilitate occupational, industrial and geographical mobility of labor and provide assistance in the relocation of workers from one area to another; and

(d) To require any person, establishment, organization or institution to submit such employment information as may be prescribed by the Secretary of Labor.

**COMMENTS**

**EMPLOYMENT PROMOTION**

To pursue its responsibility to promote employment opportunities, the DOLE carries out programs for local and overseas employment. Effective allocation of manpower resources in local employment is assigned to the BLE (Bureau of Local Employment) and to POEA (Philippine Overseas Employment Administration) for overseas employment.
ART. 15. BUREAU OF EMPLOYMENT SERVICES

(a) The Bureau of Employment Services shall be primarily responsible for developing and monitoring a comprehensive employment program. It shall have the power and duty:

1. To formulate and develop plans and programs to implement the employment promotion objectives of this Title;

2. To establish and maintain a registration and/or licensing system to regulate private sector participation in the recruitment and placement of workers, locally and overseas, and to secure the best possible terms and conditions of employment for Filipino contract workers and compliance therewith under such rules and regulations as may be issued by the Department of Labor and Employment;

3. To formulate and develop employment programs designed to benefit disadvantaged groups and communities;

4. To establish and maintain a registration and/or work permit system to regulate the employment of aliens;

5. To develop a labor market information system in aid of proper manpower and development planning;

6. To develop a responsible vocational guidance and testing system in aid of proper human resources allocation; and

7. To maintain a central registry of skills, except seamen.\(^1\)

---

\(^1\)Executive Order No. 797, May 1, 1982, created a Bureau of Local Employment (BLE) to assume the functions of the Bureau of Apprenticeship and the Bureau of Employment Services.

\(^2\)Paragraphs (b) and (c) of Article 15 which have been repealed by E.O. 797, stated:

(b) The regional offices of the Department of Labor shall have the original and exclusive jurisdiction over all matters or cases involving employer-employee relations including money claims, arising out of or by virtue of any law or contracts involving Filipino workers for overseas employment except seamen: Provided, That the Bureau of Employment Services may, in the case of the National Capital Region, exercise such power, whenever the Department of Labor and Employment deems it appropriate. The decisions of the regional offices or the Bureau of Employment Services if so authorized by the Secretary of Labor and Employment as provided in this Article, shall be appealable to the National Labor Relations Commission upon the same grounds provided in Article 223 hereof. The decisions of the National Labor Relations Commission shall be final and unappealable.

(c) The Minister of Labor shall have the power to impose and collect fees, based on rates recommended by the Bureau of Employment Services. Such fee shall be deposited in the National Treasury as a special account of the General Fund, for the promotion of the objectives of the Bureau of Employment Services, subject to the provisions of Section 40 of Presidential Decree No. 1177.
GENERAL PROVISIONS

ART. 15

COMMENTS

1. LOCAL EMPLOYMENT

Pursuing the social justice goal, through availability of jobs, Article 15 requires the Department of Labor and Employment to promote employment opportunities. This crucial task was given by P.D. No. 850 (December 16, 1975) to the Bureau of Employment Services which has been replaced by the Bureau of Local Employment (BLE) through E.O. No. 797 (May 1, 1982).

The same Executive Order created the Philippine Overseas Employment Administration which consolidated the overseas employment functions of the BES as well as those of the Overseas Employment Development Board (OEDB) under Article 17 and the National Seamen Board (NSB) under Article 20.

In the meantime, through Administrative Order No. 186 (September 4, 1987), the Secretary of Labor and Employment devolved to the DOLE regional offices the line functions of the BLE. The regional offices therefore now handles the licensing of local recruitment agencies and the issuance of work permits to non-resident aliens and of employment registration certificates to resident aliens.

The Bureau of Local Employment has issued the Rules and Regulations Governing Local Employment, which is reproduced in Book I of the Implementing Rules in this volume.

1.1 PRPA

An agency that recruits applicants for local employment is known as PRPA (Private Recruitment and Placement Agency). The BLE Rules define PRPA as any individual, partnership, corporation or entity engaged in the recruitment and placement of persons for local employment.

A PRPA secures a license from a DOLE regional office. It is nontransferable to other persons or entities but valid nationwide for two years and renewable. Prior to the approval of license, an applicant for license to operate a private employment agency for local employment shall post cash bond and surety bond.

These bonds are valid for two (2) years and will answer for all valid and legal claims arising from the illegal use of the license and shall likewise guarantee compliance with the provisions of the Labor Code and its Implementing Rules.1

Under existing BLE regulations, a licensed PRPA may charge a worker placement fee which shall not exceed twenty percent (20%) of the worker’s first month’s basic salary, chargeable after actual commencement of employment.2

Note should be taken, however, of the new Kasambahay Law (R.A. No. 10361, approved on January 18, 2013) whose Section 13 states:

1Section 6, Rule II, Rules and Regulations Governing Private Recruitment and Placement Agency for Local Employment.

2Section 29, Rule VIII, Rules and Regulations Governing Private Recruitment and Placement Agency for Local Employment.
Regardless of whether the domestic worker was hired through a private employment agency or a third party, no share in the recruitment or finder’s fee shall be charged against the domestic worker by the said private employment agency or third party.\(^1\)

1.2 **Service Fee Chargeable to Employer**

A licensed private recruitment and placement agency may charge the employer **service fee** which shall not exceed twenty percent (20\%) of the annual salary of the worker. In no case shall the service fee be deducted from the worker’s salary.

Transportation expenses of the worker from the place of origin to the place of work shall be charged against the employer and shall in no case be deducted from the worker’s salary.\(^2\)

1.3 **The PESO**

A significant development in the promotion of local employment is the approval of R.A. No. 8759 on February 4, 2000. It requires the establishment of a public employment service office (PESO) in capital towns, cities and other strategic areas. A PESO is intended to serve as employment service and information center in its area of operation. It regularly obtains lists of job vacancies from employers, publicizes them, invites and evaluates applicants, and refers them for probable hiring. It also provides training and educational guidance and employment counseling services.

The PESO also renders special services to the public such as holding of (job fairs) livelihood and self-employment bazaars; special credit assistance for placed overseas workers; special program for employment of students (SPES) during summer or semestral breaks; work appreciation seminars and conferences; and hiring of workers in infrastructure projects (WHIP.)

The WHIP is a program pursuant to R.A. No. 6885 which requires the Department of Public Works and Highways and private contractors to hire 30 percent of skilled and 50 percent unskilled labor requirements from the area where the project is being undertaken.

(The PESO law and R.A. No. 6885 are reproduced in the *Labor Laws Source Book.*)

**ART. 16. PRIVATE RECRUITMENT**

Except as provided in Chapter II of this Title, no person or entity, other than the public employment offices, shall engage in the recruitment and placement of workers.

\(^1\)R.A. No. 10361 is reproduced in the appendix of this volume.

AUTHORIZED ENTITIES

Although this Article says that only public employment offices shall engage in recruitment and placement of workers, Article 25 provides a broad exception as it states that “the private employment sector shall participate in the recruitment and placement of workers, locally and overseas.” And while Article 18 generally prohibits direct hiring for overseas employment, it also recognizes a number of exceptions. Summing up, based on the Rules Implementing the Code, the following entities are authorized to recruit and place workers for local or overseas employment:

a. public employment offices
b. private recruitment entities
c. private employment agencies
d. shipping or manning agents or representatives
e. the POEA
f. construction contractors if authorized to operate by DOLE and the Construction Industry Authority
g. members of the diplomatic corps although hirings done by them have to be processed through the POEA
h. other persons or entities as may be authorized by the DOLE secretary

ART. 17. OVERSEAS EMPLOYMENT DEVELOPMENT BOARD

An Overseas Employment Development Board is hereby created to undertake, in cooperation with relevant entities and agencies, a systematic program for overseas employment of Filipino workers in excess of domestic needs and to protect their rights to fair and equitable employment practices. It shall have the power and duty:

1. To promote the overseas employment of Filipino workers through a comprehensive market promotion and development program;
2. To secure the best possible terms and conditions of employment of Filipino contract workers on a government-to-government basis and to ensure compliance therewith;
3. To recruit and place workers for overseas employment on a government-to-government arrangement and in such other sectors as policy may dictate; and
4. To act as secretariat for the Board of Trustees of the Welfare and Training Fund for Overseas Workers.
1. OVERSEAS EMPLOYMENT, A BRIEF HISTORY

Labor migration in the Philippines began in the 1900s when Hawaii experienced severe manpower shortage. The two hundred Filipinos that initially went there were followed by many more until they formed about 70 percent of Hawaii’s plantation labor.

Then, Filipinos became in demand in California as apple and orange pickers and gained a reputation as fruit pickers, prompting plantation owners to increase incentives for manpower recruitment in the Philippines.

After World War II, waves of Filipino workers went to Guam, Okinawa and the Wake Islands as constructors and laborers in US military stations. The Filipino overseas contract workers’ participation in US defense and civilian projects was institutionalized when the Korean-Vietnam war broke out.

At about the same time, Canada and Australia had been hiring professional workers, most of them medical workers. Soon after, Asian nations like Borneo, Thailand, Malaysia and Indonesia also opened their labor markets for construction and logging personnel.

But it was in the early 1970s that the overseas employment program grabbed the limelight when, fueled by the prosperity of oil-rich Middle East countries, specifically the Kingdom of Saudi Arabia, Filipino skills flooded their manpower-starved population. From 3,694 workers deployed in 1969, almost half a million Filipino employment contracts were processed for overseas jobs in 1983, mostly for the Middle East particularly the Kingdom of Saudi Arabia.

Of all labor host countries, the Saudi labor market made an overwhelming impact on the Philippine overseas employment program.

Asia, however, particularly the region’s newly industrialized countries (NICs), is fast becoming a potential major labor market for Filipinos. Manpower shortages in Hong Kong — the country’s biggest labor market in Asia — Singapore and Malaysia are opening more employment opportunities for skilled and professional Filipino workers.

Also, the relaxation of Japanese immigration policies and other global political and economic developments are veering the Philippine labor migration tide toward Asia.
2. **LEGISLATIVE BACKGROUND OF OVERSEAS EMPLOYMENT**

*Act No. 2486* was the first law passed by the Philippine Legislature in 1915 related to overseas employment. This law provided for license issuance and license fee and welfare regulations, such as prohibiting minors (under 15 years) to work abroad without the parent’s written consent, prohibiting recruitment of non-Christians for exhibition or display and provision of transportation for returning workers who are physically unfit or have finished serving the contract. This became the basis of the government’s policy on overseas employment from 1915 up to the advent of the Labor Code in 1975.

*P.D. No. 442* (the Labor Code) paved the way for a stricter government regulation of the overseas employment industry. The Overseas Employment Development Board (OEDB) and the National Seamen Board (NSB) were created to implement a more systematic deployment of land-based and sea-based workers to other countries. P.D. No. 442 initially aimed at giving the government complete control of the overseas employment program.

Under *P.D. No. 1412*, to cope with the great demand for workers in the Middle East, the government had to revive private sector participation in the recruitment and placement of Filipino workers. The government’s recruitment role was thus limited to government-to-government arrangements.

*E.O. No. 797* was passed in 1982 aimed at streamlining operations in the overseas employment program. The OEDB, NSB, and the overseas employment program of the Bureau of Employment Services were united in a single structure — the Philippine Overseas Employment Administration (POEA).

*E.O. No. 247*, also known as the Reorganization Act of POEA, was passed in 1987 (after the EDSA revolt) in response to the government’s call for a more efficient delivery of public service. One of the more important provisions of this Order is the strengthening of the worker’s protection and welfare and a tighter regulation of the private sector’s recruitment activities.

*R.A. No. 8042*, approved on June 7, 1995, is known as the “Migrant Workers and Overseas Filipinos Act of 1995.” This law institutes the policies on overseas employment and establishes a higher standard of protection and promotion of the welfare of migrant workers, their families, and of overseas Filipinos in distress.

*R.A. No. 10022*, which lapsed into law on March 8, 2010, further improves the standard of protection and promotion of welfare provided under R.A. No. 8042.
### DEPLOYED OVERSEAS FILIPINO WORKERS, TOTAL, GROWTH RATE AND AVERAGE DEPLOYMENT PER DAY, 2001-2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Deployed OFWs</th>
<th>Growth Rate (In %)</th>
<th>Average Deployment Per Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>867,599</td>
<td>3.1</td>
<td>2,377</td>
</tr>
<tr>
<td>2002</td>
<td>891,908</td>
<td>2.8</td>
<td>2,444</td>
</tr>
<tr>
<td>2003</td>
<td>867,969</td>
<td>(2.7)</td>
<td>2,378</td>
</tr>
<tr>
<td>2004</td>
<td>933,588</td>
<td>7.6</td>
<td>2,551</td>
</tr>
<tr>
<td>2005</td>
<td>988,615</td>
<td>5.9</td>
<td>2,709</td>
</tr>
<tr>
<td>2006</td>
<td>1,062,567</td>
<td>7.5</td>
<td>2,911</td>
</tr>
<tr>
<td>2007</td>
<td>1,077,623</td>
<td>1.4</td>
<td>2,952</td>
</tr>
<tr>
<td>2008</td>
<td>1,236,013</td>
<td>14.7</td>
<td>3,377</td>
</tr>
<tr>
<td>2009</td>
<td>1,422,586</td>
<td>15.1</td>
<td>3,897</td>
</tr>
<tr>
<td>2010</td>
<td>1,470,826</td>
<td>3.4</td>
<td>4,030</td>
</tr>
<tr>
<td>2011(^p)</td>
<td>1,664,118</td>
<td>13.1</td>
<td>4,559</td>
</tr>
</tbody>
</table>

\(^p\) – preliminary

**Source:** Philippine Overseas Employment Administration

### KEY LABOR FORCE INDICATORS, APRIL 2011 AND 2012

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Officially Reported(^a)</th>
<th>IBON Estimates(^b)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 2011</td>
<td>April 2012(^c)</td>
</tr>
<tr>
<td>Levels (In ’000)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total 15 years old and over</td>
<td>61,778</td>
<td>62,842</td>
</tr>
<tr>
<td>Labor Force</td>
<td>39,691</td>
<td>40,644</td>
</tr>
<tr>
<td>Employed</td>
<td>36,820</td>
<td>37,841</td>
</tr>
<tr>
<td>Underemployed</td>
<td>7,127</td>
<td>7,312</td>
</tr>
<tr>
<td>Unemployed</td>
<td>2,871</td>
<td>2,803</td>
</tr>
<tr>
<td>Not in the Labor Force</td>
<td>22,087</td>
<td>22,198</td>
</tr>
<tr>
<td>Rates (In %)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participation Rate</td>
<td>64.2</td>
<td>64.7</td>
</tr>
</tbody>
</table>
### GENERAL PROVISIONS

<table>
<thead>
<tr>
<th>Employment Rate</th>
<th>92.8</th>
<th>93.1</th>
<th>89.4</th>
<th>89.7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Underemployment Rate</td>
<td>19.4</td>
<td>19.3</td>
<td>19.4</td>
<td>19.3</td>
</tr>
<tr>
<td>Unemployment Rate</td>
<td>7.2</td>
<td>6.9</td>
<td>10.6</td>
<td>10.3</td>
</tr>
</tbody>
</table>

*Note:* Totals may not add due to rounding.

\(a\) – Based on revised LFS definitions used since April 2005 (official data based on old definition unavailable)

\(b\) – Since figures according to the old LFS unemployment definition since 2008 are unavailable even from the NSO, IBON made rough estimates for labor force by assuming a labor force participation rate (LFPR) of 65.6% in 2008, 66.5% in 2009, 66.1% in 2010, 66.7% in 2011 and 67.2% in 2012, and correspondingly for unemployment by assuming an unemployment rate of 11.4% in 2008, 10.9% in 2009, 11.4% in 2010, 10.6% in 2011 and 10.3% in 2012. These assumed LFPR and unemployment rate were derived by applying the changes in official reported annual average LFPR and unemployment rate in 2008, 2009, 2010, 2011 and 2012 from the said rates in 2007 that was still computed using the old unemployment definition – i.e., 1.3 percentage point reduction in 2008, 0.9 increase in 2009, 0.4 reduction in 2010, 0.7 increase in 2011, 0.4 in 2012 with the LFPR, and 0.6 increase in 2008, 0.5 reduction in 2009, 0.6 increase in 2010, 0.8 reduction in 2011, 0.3 reduction in 2012 with the unemployment rate. These estimates are revised figures from the previous periods.

\(p\) – preliminary

*Source:* National Statistics Office *Labor Force Survey*

#### 3. OVERSEAS EMPLOYMENT POLICY

The export of Filipino labor is an offspring of national poverty. Particularly during the dark, debauched, and deplorable years of the Marcos martial law regime, manpower export had to happen to alleviate the twin problems of unemployment and the deficit in the balance of trade. The dictatorial government required homeward remittance of overseas workers’ earnings. Because of the remittances, the overseas employment, meant only to be a stopgap measure, became a top dollar-earning industry. Indeed, the export of people brought in good sums of money, and the dictator enjoyed it.

But he hardly cared that it was bloody money. The remittances were accompanied by accounts of horrendous abuses suffered by Filipino workers in the hands of some foreign employers. The people realized that the demagogic government had not even bothered to formulate its courses of action if misfortune would happen to its citizens abroad. The fate of the Contemplacions, the Magas and the Balabagans woke the Government up. Out of these tales of
woe, condemned in widespread street demonstrations, the “Migrant Workers and Overseas Filipinos Act of 1995” (R.A. No. 8042) was passed during the Ramos Administration.

### 3.1 Policies on Migrant Workers

R.A. No. 8042 as amended by R.A. No. 10022 states the policies on overseas Filipinos and migrant workers in particular. Summarized, they are as follows:

(a) The State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular, and endeavor to enter into bilateral agreements with countries hosting overseas Filipino workers.

(b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

(c) While recognizing the significant contributions of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development. The State, therefore, shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development.

(d) The State affirms the fundamental equality before the law of women and men and the significant role of women in nation-building. The State shall apply gender-sensitive criteria in the formulation and implementation of policies and programs.

(e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. The rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, whether regular/documented or irregular/undocumented, shall be adequately protected and safeguarded.

(f) Filipino migrant workers and all overseas Filipinos have the right to participate in the democratic decision-making processes of the State and to be represented in institutions relevant to overseas employment.

(g) The State recognizes that the most effective tool for empowerment is the possession of skills by migrant workers. The government shall provide them free and accessible skills development and enhancement programs. The government shall deploy and/or allow the deployment only of skilled Filipino workers. *(As amended by R.A. No. 10022)*
(h) The State recognizes [that] non-governmental organizations, trade unions, workers associations, recruitment and manning agencies and similar entities duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare.

(i) Government fees and other administrative costs of recruitment, introduction, placement and assistance to migrant workers shall be rendered free without prejudice to the provision of Section 36 of R.A. No. 8042.

Nonetheless, the deployment of Filipino overseas workers, whether land-based or sea-based, by local service contractors and manning agencies employing them shall be encouraged. Appropriate incentives may be extended to them.

It is important to note that under paragraph (e) above even undocumented or “irregular” overseas Filipinos, migrant workers in particular, are entitled to legal assistance and adequate protection.

3.2 OFWs: Land-based or Sea-based

Officially, OFW’s are classified by DOLE as either land-based or sea-based. Sea-Based OFW’s (or seamen) are those employed in a vessel engaged in maritime navigation. Sea-based work pertains to ship operations like navigation, engineering, maintenance, including a variety of occupations from kitchen staff to on-board entertainment in large vessel ships. Land-Based OFW’s are contract workers other than a seaman including workers engaged in offshore activities whose occupation requires that majority of his working/gainful hours are spent on land. Occupations in the land-based categories are broader, covering all the skill areas one can think of from house cleaners to entertainers to managers. The land-based group constitutes the great majority of OFWs.

3.3 Selective Deployment

The dictatorial Marcos government did not bother to say what places the OFWs could safely go to. R.A. No. 8042, in stark contrast, requires certain guarantee of protection in country destinations of OFWs. For this purpose, the government recognizes any of the following as a guarantee of the receiving country for the protection of overseas Filipino workers:

(a) It has existing labor and social laws protecting the rights of workers, including migrant workers;

(b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and

(c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers:

Provided, That the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b) and (c) hereof.
In the absence of a clear showing that any of the aforementioned guarantees exists in the country of destination of the migrant workers, no permit for deployment shall be issued by the Philippine Overseas Employment Administration (POEA).

For this purpose, the Department of Foreign Affairs, through its foreign posts, shall issue a certification to the POEA, specifying therein the pertinent provisions of the receiving country’s labor/social law, or the convention/declaration/resolution, or the bilateral agreement/arrangement which protect the rights of migrant workers.

The members of the POEA Governing Board who actually voted in favor of an order allowing the deployment of migrant workers without any of the aforementioned guarantees shall suffer the penalties of removal or dismissal from service with disqualification to hold any appointive public office for five (5) years. Further, the government official or employee responsible for the issuance of the permit or for allowing the deployment of migrant workers in violation of this section and in direct contravention of an order by the POEA Governing Board prohibiting deployment shall be meted the same penalties in this section.

When public welfare so requires, the POEA Governing Board, after consultation with the Department of Foreign Affairs, may, at any time, terminate or impose a ban on the deployment of migrant workers.

4. **THE POEA; OVERVIEW OF ITS FUNCTIONS AND POWERS**

As already noted, the Philippine Overseas Employment Administration has taken over the functions of OEDB and the NSB. Created by E.O. No. 797 (May 1, 1982), POEA was reorganized by E.O. No. 247 (July 24, 1987). The principal functions of the POEA include the formulation, implementation, and monitoring of policies and programs on overseas employment of Filipino workers. POEA is the protector of overseas workers’ rights to fair and equitable employment practices. An additional function of POEA is the deployment of Filipino workers through government-to-government hiring. POEA has extended its services nationally through its regional extension units to process vacationing workers, register sea-based workers, and participate in government hiring through manpower pooling.

POEA performs administrative, regulatory and enforcement, as well as limited adjudicatory functions. Accordingly, the POEA has issued and amended the rules and regulations governing overseas employment. These form part of the Implementing Rules, Book I, in this volume.

5. **REALIGNMENT OF POEA JURISDICTION**

Before the passage of R.A. No. 8042 in 1995, POEA had original and exclusive jurisdiction to hear and decide the following kinds of cases:
a. Recruitment Violation and Related cases consisting of all preemployment cases which are administrative in character, involving or arising out of recruitment laws, rules and regulations, including money claims therefrom or violations of the conditions for issuance of license to recruit workers.\(^1\)

b. Employer-Employee Relations cases consisting of all claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers in overseas employment, such as but not limited to:

1. violation of the terms and conditions of employment;
2. disputes relating to the implementation and interpretation of employment contracts;
3. money claims of workers against their employers and duly authorized agents in the Philippines or vice versa;
4. claims for death, disability and other benefits arising out of employment; and
5. violation/s of or noncompliance with any compromise agreement entered into by and between the parties in an overseas employment contract.

c. Disciplinary Action cases consisting of all complaints against a contract worker for breach of discipline.\(^2\) The disciplinary action may take the form of warning, repatriation, suspension, or disqualification from the overseas employment program, or inclusion in the POEA blacklist. (See further comments below.)

5.1 Modification: Employer-Employee Relations Cases: Transferred to NLRC

The allocation of jurisdiction enumerated above has been significantly modified by R.A. No. 8042 (“Migrant Workers and Overseas Filipinos Act of 1995”). This law has transferred to the NLRC the jurisdiction over employer-employee relations cases. Among the cases now in the hands of labor arbiters are money claims arising from pretermination of the employment contract without valid cause. In such a case, Sec. 10 of R.A. No. 8042 entitles the OFW to “reimbursement of his placement fee with interest plus his salary for either (1) the unexpired portion of the employment contract or (2) for three months for every year of the unexpired term, whichever is less.”

This quoted provision has been the subject of cases that will be taken up under Article 224. But it is important to note here that the three-month option has been declared unconstitutional in a Supreme Court ruling in 2009.

NLRC’s jurisdiction is taken up in volume two of this work.

---

\(^1\)Book VI, Rule I.

\(^2\)Book VII, Rule VII of POEA Rules.
6. **JURISDICTION RETAINED WITH POEA**

After the passage of R.A. No. 8042, the POEA retains original and exclusive jurisdiction to hear and decide:

(a) all cases which are administrative in character, involving or arising out of violations of rules and regulations relating to licensing and registration of recruitment and employment agencies or entities; and

(b) disciplinary action cases and other special cases which are administrative in character, involving employers, principals, contracting partners and Filipino migrant workers.¹

6.1 **POEA Jurisdiction over Administrative or Regulatory Cases**

POEA retains the power to regulate the private sector participation in the recruitment and overseas placement of workers through its licensing and registration system. This function is taken up further under Article 25.

6.2 **POEA Jurisdiction over Disciplinary Cases**

POEA has also retained its jurisdiction over disciplinary action cases. Rule VII of Book VII of the POEA Rules provides that complaints for breach of discipline against a contract worker shall be filed with the Adjudication Office or Regional Office of the POEA, as the case may be. The POEA may *motu proprio* undertake disciplinary action against a worker for breach of discipline. It shall establish a system of watching and blacklisting of overseas contract workers.² Secs. 6 and 7, Rule VII, Book VII of the POEA Rules and Regulations (1991) provide:

“Sec. 6. Disqualification of Contract Workers. Contract workers, including seamen, against whom have been imposed or with pending obligations imposed upon them through an order, decision, or resolution shall be included in the POEA Blacklist. Workers shall be disqualified from overseas employment unless properly cleared by Administrator or until their suspension is served or lifted.

Sec. 7. Delisting of the Contract Worker’s Name from the POEA Watchlist. The name of an overseas worker may be excluded, deleted and removed from the POEA Watchlist only after disposition of the case by the Administration.”

¹Sec. 28, Rules Implementing the Migrant Workers’ Act dated February 29, 1996.

6.3 **Grounds for Disciplinary Action**

Commission by the worker of any of the offenses enumerated below or of similar offenses while working overseas shall be subject to appropriate disciplinary actions as the POEA may deem necessary:

a. Commission of a felony punishable by Philippine laws or by the laws of the host country;
b. Drug addiction or possession or trafficking of prohibited drugs;
c. Desertion or abandonment;
d. Drunkenness, especially where the laws of the host country prohibit intoxicating drinks;
e. Gambling, especially where the laws of the host country prohibit the same;
f. Initiating or joining a strike or work stoppage where the laws of the host country prohibit strikes or similar actions;
g. Creating trouble at the worksite or in the vessel;
h. Embezzlement of company funds or of moneys and properties of a fellow worker entrusted for delivery to kins or relatives in the Philippines;
i. Theft or robbery;
j. Prostitution;
k. Vandalism or destroying company property;
l. Gunrunning or possession of deadly weapons;
m. Unjust refusal to depart for the worksite after all employment and travel documents have been duly approved by the appropriate government agency/ies; and
n. Violation/s of the laws and sacred practices of the host country and unjustified breach of government-approved employment contract by a worker.

6.4 **To Whom Appealable**

POEA decisions on cases within its jurisdiction are appealable not to the NLRC nor directly to the Court of Appeals but to the Secretary of Labor. As specifically provided in the POEA Rules and Regulations of 2003: “The Secretary shall have the exclusive and original jurisdiction to act on appeals or petition for review of disciplinary action cases decided by the Administration [POEA].”


7. **OUTSIDE OF POEA JURISDICTION**

7.1 **No Jurisdiction to Enforce Foreign Judgment**

POEA has no jurisdiction to hear and decide a claim for enforcement of a foreign judgment. Such a claim must be brought before the regular courts.
The POEA is not a court, it is an administrative agency, exercising, *inter alia*, adjudicatory or quasi-judicial functions. Neither the rules of procedure nor the rules of evidence which are mandatorily applicable in proceedings before courts, are observed in proceedings before the POEA.¹

### 7.2 No Jurisdiction Over Torts

*McKenzie, et al. vs. Cui, G.R. No. 48831, February 6, 1989 —*

**Facts:** Aguedo, a licensed seaman, filed with the Regional Trial Court a complaint for recovery of certain sums of money, with damages against Kenneth and Kraamer as Administrative Manager and master of *M.V. Carbay*, and its operator Wallem Philippines, pursuant to Article 2180 of the Civil Code. He alleged that while *M.V. Carbay* was dry-docked in Japan, he was attacked by his co-worker, an alleged protege of Kraamer; that without investigation, Kraamer summarily dismissed him without paying his salary and thereafter compelled him to return to Manila, incurring expenses in the amount of $320.

Defendants moved to dismiss for lack of jurisdiction and alleged that the National Seamen’s Board (POEA now) has the exclusive jurisdiction over cases in connection with the employment of Filipino seamen on board vessels engaged in overseas trade.

The trial judge denied the motion.

**Ruling:** The Supreme Court affirmed the order of the trial court, that is, the court (not POEA) has jurisdiction over the case. Aguedo’s complaint reveals his intention to seek and claim protection under the Civil Code and not under the Labor Code. The items demanded are not labor benefits such as wages, overtime, or separation pay, but are items claimed as natural consequences of such dismissal. His complaint is denominated as “damages” as a consequence of his alleged summary dismissal by Kraamer. Moreover, in his opposition to the motion to dismiss, he cites Articles 2197, 2200, 2219 and adds the relevant articles on Human Relations: Articles 19, 21, 24 and 32 of the Civil Code to support his claim for damages. [This kind of case is not within POEA’s jurisdiction].

*ART. 18. BAN ON DIRECT-HIRING*

No employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Department of Labor and Employment. Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Department of Labor and Employment is exempted from this provision.

---

GENERAL PROVISIONS

ART. 19

COMMENTS

Direct hiring of Filipino workers by a foreign employer is not allowed except direct hiring by members of the diplomatic corps and others mentioned in this Article. Also excepted are “name hirees” or those individual workers who are able to secure contracts for overseas employment on their own efforts and representation without the assistance or participation of any agency. Their hiring, nonetheless, has to be processed through the POEA.1

Name hirees should register with the POEA by submitting the following documents:

(a) Employment contract;
(b) Valid passport;
(c) Employment visa or work permit, or equivalent document;
(d) Certificate of medical fitness; and
(e) Certificate of attendance to the required employment orientation/briefing.2

ART. 19. OFFICE OF EMIGRANT AFFAIRS

(a) Pursuant to the national policy to maintain close ties with Filipino migrant communities and promote their welfare as well as establish a data bank in aid of national manpower policy formulation, an Office of Emigrant Affairs is hereby created in the Department of Labor. The Office shall be a unit at the Office of the Secretary and shall initially be manned, and operated by such personnel and through such funding as are available within the Department and its attached agencies. Thereafter, its appropriation shall be made part of the regular General Appropriations Decree.

(b) The office shall, among others, promote the well-being of emigrants and maintain their close link to the homeland by:

1) serving as a liaison with migrant communities;
2) providing welfare and cultural services;
3) promoting and facilitating re-international of migrants into the national mainstream;
4) promoting economic, political and cultural ties with the communities; and
5) undertaking such activities as may be appropriate to enhance such cooperative links.

---

2Part III, Rule III, Sec. 6, POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers (2002).
ART. 20

COMMENTS

The Office of Emigrant Affairs has been abolished and its pertinent functions were transferred to the Commission on Filipinos Overseas by B.P. Blg. 79, approved on June 16, 1980. Among other functions, the CFO provides advice and assistance to the President of the Philippines and the Congress in the formulation of policies and measures affecting Filipinos overseas. It also formulates, in coordination with agencies concerned, an integrated program for the promotion of the welfare of Filipinos overseas for implementation by suitable existing agencies.

Attached to the Department of Foreign Affairs, the CFO has five members appointed by the President, one of whom is the Minister of Foreign Affairs as ex-officio member. Other ministers may be appointed as ex-officio members. From among them, the President designates the chairman and the vice-chairman.

ART. 20. NATIONAL SEAMEN BOARD

(a) A National Seamen Board is hereby created which shall develop and maintain a comprehensive program for Filipino seamen employed overseas. It shall have the power and duty:

1. To provide free placement services for seamen;
2. To regulate and supervise the activities of agents or representatives of shipping companies in the hiring of seamen for overseas employment; and secure the best possible terms of employment for contract seamen workers and secure compliance therewith;
3. To maintain a complete registry of all Filipino seamen.

(b) The Board shall have original and exclusive jurisdiction over all matters or cases including money claims, involving employer-employee relations, arising out of or by virtue of any law or contracts involving Filipino seamen for overseas employment. The decision of the Board shall be appealable to the National Labor Relations Commission upon the same grounds provided in Article 223 hereof. The decisions of the National Labor Relations Commission shall be final and unappealable.

COMMENTS AND CASES

1. NSB NOW POEA

Executive Order No. 797 (issued on May 1, 1982) abolished the National Seamen Board and transferred its functions to the POEA which the Order created. The NSB’s “original and exclusive jurisdiction” mentioned in paragraph (b) of this Article has since been exercised by the POEA (See E.O. No. 797, Sec. 4[a] and the POEA Rules Governing Overseas Employment). But, as already pointed out in comments under Article 17, this adjudicatory jurisdiction of the POEA has been moved to the NLRC by R.A. No. 8042 since 1995.
2. ARTICLE 20 CONSTRUED; SEAMEN’S EMPLOYMENT CONTRACTS AND THE INTERNATIONAL TRANSPORT FEDERATION (ITF)

Article 20, no. 2, requires the National Seamen Board (now POEA) to “secure the best possible terms of employment for contract seamen workers and secure compliance therewith.” The implications of this article are illustrated in the following cases which also rule on the question of immutability (changeability) of seamen’s standard contract.

In the landmark case of Wallem Shipping, Inc. vs. Ministry of Labor, 102 SCRA 835 [1981], some seamen who were hired for ten months were dismissed before the expiration of the period. The employer defended the dismissal by alleging that the seamen had conspired with the International Transport Federation (ITF) in coercing the ship authorities to pay the seamen the worldwide rate, instead of the lower Far East rate as provided in their contracts of employment. It further charged that the seamen threatened the ship authorities that unless they would agree to the increased wages, the ship would not be able to leave port; it would be picketed or boycotted and declared a “hot” ship by the ITF. The employer therefore claimed that the dismissal of the seamen was justified because the latter, in threatening the ship authorities in acceding to their demands, were guilty of serious misconduct.

The Supreme Court ruled against the employer, noting that the records failed to establish clearly the commission of any threat. The Court added:

“But even if there had been such a threat, respondents’ (the seamen’s) behavior should not be censured because it is but natural for them to employ some means of pressing their demands on the petitioner, who refused to abide with the terms of the Special Agreement, to honor and respect the same. They were only acting in the exercise of their rights, and to deprive them of their freedom of expression is contrary to law and public policy. There is no serious misconduct to speak of in the case at bar which would justify respondents’ dismissal just because of their firmness in their demand for the fulfillment by petitioner of the obligation it entered into without any coercion, especially on the part of private respondents.”

“On the other hand, it is the petitioner [employer] who is guilty of breach of contract when it dismissed the respondents without just cause and prior to the expiration of the employment contracts. As the records clearly show, petitioner voluntarily entered into the Special Agreement with ITF and by virtue thereof the crew men were actually given their salary differentials in view of the new rates. It cannot be said that it was because of respondents’ fault that petitioner made a sudden turnabout and refuse to honor the Special Agreement.” (See also: Philgrecian vs. NLRC, 139 SCRA 285 [1985].)

The Wallem ruling, penned by Justice De Castro, was reiterated by Justice Gutierrez, Jr. in the next case of Vir-Jen Shipping.
Vir-Jen Shipping and Marine Services vs. NLRC, 115 SCRA 347 (1982), 125 SCRA 577 (1983) —

Facts: Certain seamen entered into a contract of employment for a 12-month period. Some three months after the commencement of their employment, the seamen demanded a 50% increase of their salaries and benefits. The seamen demanded this increase while their vessel was en route to a port in Australia controlled by the International Transport Workers’ Federation (ITF) where the ITF could detain the vessel unless it paid its seamen the ITF rates.

The agent of the owner of the vessel agreed to pay a 25% increase, but when the vessel arrived in Japan shortly afterwards, the seamen were repatriated to Manila and their contracts were terminated.

The NSB upheld the cancellation of the contracts of employment of the seamen, but on appeal the NLRC ruled that the termination was illegal.

Subsequently, the Second Division of the Supreme Court reversed the NLRC decision, that is, the seamen’s dismissal was held legal. The Division denied the two motions for reconsideration but another motion for reconsideration was filed with the Supreme Court en banc which gave it due course because there was a need to reconcile the decision of the Second Division with that of the First Division in Wallem Shipping, Inc. vs. Minister of Labor [see above], which had ruled that the termination of the seamen was illegal.

Ruling: Taking a position similar to that of the First Division, the Supreme Court en banc found the termination of the seamen’s contract illegal. Through Mr. Justice Gutierrez, the Court, in patriotic language declared:

The contention that manning industries in the Philippines would not survive if the instant case is not decided in favor of the petitioner is not supported by evidence. The Wallem case was decided on February 20, 1981. There have been no severe repercussions, no drying up of employment opportunities for seamen, and none of the dire consequences repeatedly emphasized by the petitioner. Why should Vir-Jen be an exception?

Filipino seamen are admittedly as competent and reliable as seamen from any other country in the world; otherwise, there would not be so many of them in the vessels sailing in every ocean and sea on this globe. It is competence and reliability, not cheap labor, that makes our seamen so greatly in demand. Filipino seamen have never demanded the same high salaries as seamen from the United States, the United Kingdom, Japan and other developed nations. But certainly they are entitled to government protection when they ask for fair and decent treatment by their employers and when they exercise the right to petition for improved terms of employment, especially when they feel that these are substandard or are capable of improvement according to internationally accepted rules.

Prescinding from the above, we now hold that neither the National Seamen Board nor the National Labor Relations Commission should as a matter of official policy, legitimize and enforce dubious arrangements where shipowners and seamen
enter into fictitious contracts similar to the addendum agreements or side contracts in this case whose purpose is to deceive. The Republic of the Philippines and its ministries and agencies should present a more honorable and proper posture in official acts to the whole world, notwithstanding our desire to have as many job openings both here and abroad for our workingmen, no less than our dignity as a people and the welfare of our workingmen must proceed from the Batasang Pambansa in the form of policy legislation, not from administrative rule making or adjudication.

Another issue raised by the movants is whether or not the seamen violated their contracts of employment.

The form contracts approved by the National Seamen Board [now POEA] are designed to protect Filipinos, not foreign shipowners who can take care of themselves. The standard forms embody the basic minimums which must be incorporated as parts of the employment contract. They are not collective bargaining agreements or immutable contracts which the parties cannot improve upon or modify in the course of the agreed peril of time. To state, therefore, that the affected seamen cannot petition their employer for higher salaries during the 12-month duration of the contract runs counter to established principles of labor legislation. The National Labor Relations Commission, as the appellate tribunal from the decision of the National Seamen Board, correctly ruled that the seamen did not violate their contracts to warrant their dismissal.

---

Suzara vs. Benipayo, G.R. No. 57999; Suzara vs. National Labor Relations Commission, August 1, 1989 —

**Facts:** A group of Filipino seamen entered into separate contracts of employment with Magsaysay Lines at specified salary rates. When they arrived at Vancouver, Canada, the seamen demanded and received additional wages prescribed by the International Transport Workers Federation (ITF) in amounts over and above the rates appearing in their employment contract approved earlier by the National Seamen Board.

When the vessel docked at Nagoya, an NSB representative boarded the vessel. He called a meeting among the seamen, and urged them to sign an agreement, which they did. It turned out that in the agreement the following statement was inserted: “the amounts were received and held by crew members in trust for shipowners.”

When the vessel reached Manila, Magsaysay Lines demanded from the seamen the “overpayments” made to them in Canada. When they refused, it filed charges against them before the NSB.

NSB declared the seamen guilty of breach of their employment contracts and suspended the seamen for three years, prompting the workers to bring the case up to the Supreme Court.

---

1Sec. 15, Rule V, Rules and Regulations Implementing the Labor Code.
Ruling: The Supreme Court reversed and set aside the decisions of the NSB and the NLRC. It held that the seamen were not guilty of the offenses for which they were charged and ordered Magsaysay Lines to pay the seamen their earned but unpaid wages and overtime pay according to the rates in the Special Agreement that the parties entered into in Vancouver. The criminal cases were ordered dismissed. The Court reiterated the *Vir-jen* pronouncements.

3. INVALID SIDE AGREEMENT

An agreement that diminishes the employee’s pay and benefits as contained in a POEA-approved contract is void, unless such subsequent agreement is approved by POEA.

*Chavez vs. Bonto-Perez, Rayala, et al.,* G.R. No. 109808, March 1, 1995 —

**Facts:** Petitioner Chavez, hired as an entertainment dancer in Japan, entered into a standard employment contract through a Philippine placement agency for two (2) to six (6) months, at a monthly compensation of US$1,500.00. The POEA approved the contract. Subsequently, however, petitioner executed a side agreement with her Japanese employer stipulating a monthly salary of $750, and authorizing the employer to deduct $250 as commission of her manager. The salary therefore became Five hundred dollars ($500) only.

She returned to the Philippines on June 14, 1989.

On February 21, 1991, she filed a complaint, seeking payment of US$6,000.00, representing the unpaid portion of her basic salary for six months.

The POEA Administrator dismissed the complaint, holding that the agreement for a monthly salary of $750 was valid. Moreover, the POEA adjudged the complainant-petitioner guilty of laches or delay in filing her complaint about two years after her employment. On appeal, the NLRC upheld the POEA’s decision. Chavez petitioned for review.

**Ruling:** The Supreme Court, in a decision penned by Mr. Justice Puno, reversed those of the POEA and the NLRC, and ruled:

Firstly, we hold that the managerial commission agreement executed by petitioner [Chavez] to authorize her Japanese employer to deduct US$250.00 from her monthly basic salary is void because it is against our existing laws, morals and public policy. It cannot supersede the standard employment contract of December 1, 1988 approved by the POEA with the following stipulation appended thereto:

“It is understood that the terms and conditions stated in this Employment Contract are in conformance with the Standard Employment Contract for Entertainers prescribed by the POEA under Memorandum Circular No. 2, Series of 1986. Any alterations or changes made in any part of this contract without prior approval by the POEA shall be null and void.” (Emphasis supplied.)
Clearly, the basic salary of US$1,500.00 guaranteed to petitioner under the parties’ standard employment contract is in accordance with the minimum employment standards with respect to wages set by the POEA. Thus, the side agreement which reduced petitioner’s basic wage to US$750.00 is null and void for violating the POEA’s minimum employment standards, and for not having been approved by the POEA.

Secondly, the doctrine of laches or “stale demands” cannot be applied to petitioner.

4. DELAY IN FILING CLAIM

In the above-cited case of Chavez, the Court explained why the claim, although filed two years after the employment, could still prosper. The laches doctrine did not apply.

Laches is defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it. It is not concerned with mere lapse of time; the fact of delay, standing alone, is insufficient to constitute laches. Laches refers to deliberate lack of interest or lack of action to pursue a claim.

The doctrine of laches is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims, and is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted. There is no absolute rule as to what constitutes laches; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court, and since it is an equitable doctrine, its application is controlled by equitable considerations. It cannot be worked to defeat justice or to perpetrate fraud and injustice.

In the case of Esalyn Chavez, she filed her claim well within the three-year prescriptive period for the filing of money claims set forth in Article 291 [now 305] of the Labor Code. For this reason, the Court held the doctrine of laches inapplicable to petitioner. As ruled in Imperial Victory Shipping Agency vs. NLRC, 200 SCRA 178 (1991):

“x x x Laches is a doctrine in equity while prescription is based on law. Our courts are basically courts of law, not courts of equity. Thus, laches cannot be invoked to resist the enforcement of an existing legal right.xxx

“Thus, where the claim was filed within the three-year statutory period, recovery therefor cannot be barred by laches. Courts should never apply the doctrine of laches earlier than the expiration of time limited for the commencement of actions at law.”
5. **MINIMUM EMPLOYMENT CONDITIONS**

The POEA Regulations Governing Overseas Employment (amended in 2002) in Part V, Rule I, Sec. 2 prescribes the following minimum provisions of employment contracts:

a. Guaranteed wages for regular working hours and overtime pay, as appropriate, which shall not be lower than the prescribed minimum wage in the host country, nor lower than the appropriate minimum wage standard set forth in a bilateral agreement or international convention duly ratified by the host country and the Philippines or not lower than the minimum wage in the Philippines, whichever is highest;

b. Free transportation to and from the worksite, or offsetting benefit;

c. Free food and accommodation, or offsetting benefit;

d. Just/authorized causes for termination of the contract or of the services of the workers taking into consideration the customs, traditions, norms, mores, practices, company policies and the labor laws and social legislations of the host country;

e. The Administration may also consider the following as basis for other provisions of the contract:

1. Existing labor and social laws of the host country;

2. Relevant agreements, conventions, delegations or resolutions;

3. Relevant bilateral and multilateral agreements or arrangements with the host country; and

4. Prevailing condition/realities in the market.

6. **FREEDOM TO STIPULATE**

Parties to overseas employment contracts are allowed to stipulate other terms and conditions and other benefits not provided under these minimum requirements; provided the whole employment package should be more beneficial to the worker than the minimum; provided that the same shall not be contrary to law, public policy and morals, and provided further, that Philippine agencies shall make foreign employers aware of the standards of employment adopted by the Administration.¹

**ART. 21. FOREIGN SERVICE ROLE AND PARTICIPATION**

To provide ample protection to Filipino workers abroad, the labor attaches, the labor reporting officers duly designated by the Secretary of

¹Part V, Rule I, Sec. 3 of the POEA Rules and Regulation, 2002.
Labor and the Philippine diplomatic or consular officials concerned shall, even without prior instruction or advice from the home office, exercise the power and duty:

(a) To provide all Filipino workers within their jurisdiction assistance on all matters arising out of employment;
(b) To insure that Filipino workers are not exploited or discriminated against;
(c) To verify and certify as requisite to authentication that the terms and conditions of employment in contracts involving Filipino workers are in accordance with the Labor Code and rules and regulations of the Overseas Employment Development Board and National Seamen Board;
(d) To make continuing studies or researches and recommendations on the various aspects of the employment market within their jurisdiction;
(e) To gather and analyze information on the employment situation and its probable trends, and to make such information available to the Department of Labor and Employment and the Department of Foreign Affairs; and
(f) To perform such other duties as may be required of them from time to time.

COMMENTS

1. PROTECTION AND ASSISTANCE BY GOVERNMENT AGENCIES

In addition to the officials mentioned in Article 21, R.A. No. 8042 (Sec. 23) assigns four government agencies to promote the welfare and protect the rights of migrant workers and, as far as applicable, of all overseas Filipinos. The agencies are the Department of Foreign Affairs (DFA), the Department of Labor and Employment (DOLE), the Philippine Overseas Employment Administration (POEA), and the Overseas Workers Welfare Administration (OWWA).

(a) **Department of Foreign Affairs.** — The Department, through its home office or foreign posts, shall take priority action or make representation with the foreign authority concerned to protect the rights of migrant workers and other overseas Filipinos and extend immediate assistance including the repatriation of distressed or beleaguered migrant workers and other overseas Filipinos.

Furthermore, R.A. No. 8042 created the position of Legal Assistant for Migrant Worker’s Affairs [LAMWA] under the Department of Foreign Affairs. Its primary responsibility is to provide and coordinate all legal assistance services to Filipinos in distress. It also administers the Legal Assistance Fund for Migrant Workers.
Finally, R.A. No. 8042 establishes a “Migrant Workers and Other Overseas Filipinos Resource Center” in Philippine Embassies in countries where there are at least 20,000 migrant workers. The resource center is envisioned to provide such services as counseling and legal assistance, welfare assistance including procurement of medical and hospitalization services, registration of undocumented workers, and conciliation of disputes arising from employer-employee relationship. The resource center is to be established and operated jointly by the government agencies mentioned, although its operation is to be managed by the Labor Attaché.

(b) *Department of Labor and Employment.* — The Department of Labor and Employment shall see to it that labor and social welfare laws in the foreign countries are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos including the grant of legal assistance and referral to proper medical centers or hospitals.

(c) *Philippine Overseas Employment Administration.* — The POEA shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements.

(d) *Overseas Workers Welfare Administration.* — The Welfare Officer or in his absence, the coordinating officer, shall provide the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or their principals. In the performance of this function, he shall make representation and may call on the agencies or entities concerned to conferences or conciliation meetings for the purpose of setting the complaints or problems brought to his attention.

2. **THE RPM CENTER**

A migrant worker returning to the country has to be reintegrated into the Philippine society. To serve as a promotion house for local employment of these returning workers and to tap their skills for national development, R.A. No. 8042 created in the Department of Labor and Employment the “RPM (Re-Placement and Monitoring) Center.” Coordinating with the private sector, the RPM Center is expected to develop livelihood programs for the returning workers and formulate a computer-based information system on skilled Filipino migrant workers.

3. **THE OWWA**

The Welfare Fund for Overseas Workers Administration was created by P.D. No. 1694 (May 1, 1980) as amended by P.D. No. 1809 (January 16, 1981). Known as the Welfund, it was intended to provide social and welfare services, including
insurance coverage, legal assistance, placement assistance and remittance services to Filipino overseas workers. The Welfund was funded with contributions from the workers themselves and the fees and charges imposed by the POEA and the BLE. The Welfund was (and still is) administered by a Board of Trustees chaired by the Secretary of Labor and Employment. In 1987, Executive Order No. 126 renamed the Welfund the Overseas Workers Welfare Administration or OWWA.

4. **REPARTIATION**

The OWWA has a role to play even in cases where a worker has to be sent or brought back to the Philippines, as shown in the dramatic repatriation of thousands of OFWs trapped in Israel-Lebanon war in July 2006.

The repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation shall be borne by or charged to the agency concerned and/or its principal.¹

In no case shall an employment agency require any bond or cash deposit from the worker to guarantee his/her repatriation. The mandatory repatriation bond is abolished as of June 17, 1995 pursuant to Section 36 of R.A. No. 8042.

4.1 **Of the Remains**

The repatriation of remains and transport of personal belongings of a deceased worker and all costs attendant thereto shall be borne by the principal and/or the local agency.²

4.2 **Worker at Fault**

In cases where the termination of employment is due solely to the fault of the worker, the principal/employer, or agency shall not in any manner be responsible for the repatriation of the former and/or his belongings.³

4.3 **In Case of Disasters**

The OWWA (Overseas Workers Welfare Administration), in coordination with appropriate international agencies, shall undertake the repatriation of workers in cases of war, epidemic, disasters or calamities, natural or man-made, and other similar events, without prejudice to reimbursement by the responsible principal or agency. However, in cases where the principal or recruitment agency cannot be identified, all costs attendant to repatriation shall be borne by the OWWA.⁴

The law has created and established an emergency repatriation fund under the control of OWWA.

---

¹Sec. 15, R.A. No. 8042 as amended by R.A. No. 10022.
²Ibid.
³Ibid.
⁴Ibid.
4.4 Validity

A recruitment agency has questioned the validity of Section 15 of R.A. No. 8042 and of Secs. 52 to 55 of the implementing rules on the ground that they violate the agency’s right to due process.

The Court upheld the validity of the law and the rules which provide that “the repatriation of remains and transport of the personal belongings of a deceased worker and all costs attendant thereto shall be borne by the principal and/or the local agency.” The mandatory nature of said obligation is characterized by the legislature’s use of the word “shall.” That the concerned government agencies opted to demand the performance of said responsibility solely upon petitioner does not make said directives invalid as the law plainly obliges a local placement agency such as herein petitioner to bear the burden of repatriating the remains of a deceased OFW with or without recourse to the principal abroad. In this regard, we [the Court] see no reason to invalidate Sec. 52 of the omnibus rules as R.A. No. 8042 itself permits the situation wherein a local recruitment agency can be held exclusively responsible for the repatriation of a deceased OFW.¹

The placement agency may try to establish the worker’s fault, but while doing so the agency must repatriate the OFW. Said the Court:

Section 15 of Republic Act No. 8042, however, certainly does not preclude a placement agency from establishing the circumstances surrounding an OFW’s dismissal from service in an appropriate proceeding. As such determination would most likely take some time, it is only proper that an OFW be brought back here in our country at the soonest possible time lest he remains stranded in a foreign land during the whole time that recruitment agency contests its liability for repatriation. As aptly pointed out by the Solicitor General —

Such a situation is unacceptable.

This is the same reason why repatriation is made by law an obligation of the agency and/or its principal without the need of first determining the cause of the termination of the worker’s employment. Repatriation is in effect an unconditional responsibility of the agency and/or its principal that cannot be delayed by an investigation of why the worker was terminated from employment. To be left stranded in a foreign land without the financial means to return home and being at the mercy of unscrupulous individuals is a violation of the OFW’s dignity and his human rights. These are the same rights R.A. No. 8042 seeks to protect. (Equi-Asia Placement, Inc. vs. Department of Foreign Affairs, et al., G.R. No. 152214, September 19, 2006)

4.5 Mandatory Repatriation of Underage Worker

Section 16 of R.A. No. 8042, as amended states:

Upon discovery or being informed of the presence of migrant workers whose ages fall below the minimum age requirement for overseas deployment, the responsible officers in the foreign service shall without delay repatriate said workers and advise the Department of Foreign Affairs through the fastest means of communication available of such discovery and other relevant information. The license of a recruitment/manning agency which recruited or deployed an underage migrant worker shall be automatically revoked and shall be imposed a fine of not less than five hundred thousand pesos (P500,000.00) but not more than one million pesos (P1,000,000.00). All fees pertinent to the processing of papers or documents in the recruitment or deployment shall be refunded in full by the responsible recruitment/manning agency, without need of notice, to the underage migrant worker or to his parents or guardian. The refund shall be independent of and in addition to the indemnification for the damages sustained by the underage migrant worker. The refund shall be paid within thirty (30) days from the date of the mandatory repatriation as provided for in this Act.1

ART. 22. MANDATORY REMITTANCE OF FOREIGN EXCHANGE EARNINGS

It shall be mandatory for all Filipino workers abroad to remit a portion of their foreign exchange earnings to their families, dependents, and/or beneficiaries in the country in accordance with rules and regulations prescribed by the Secretary of Labor and Employment.

COMMENTS

REMITTANCE

Executive Order No. 857, as amended, prescribes the percentages of foreign exchange remittance ranging from 50% to 80% of the basic salary, depending on the worker’s kind of job. DOLE figures for 1998-2000 show that the annual remittances have breached the US$6 billion level, inspiring the government to call the OFWs “Mga Bagong Bayani” (New Heroes).

ART. 23. COMPOSITION OF THE BOARDS

(a) The Overseas Employment Development Board shall be composed of the Secretary of Labor as Chairman, the Undersecretary of Labor as Vice-Chairman, and a representative each of the Department of Foreign Affairs, the Department of National Defense, the Central Bank, the Department of Education and Culture, the National Manpower and Youth Council, the Bureau of Employment Services, a workers’ organization and an employers organization, and the Executive Director of the OEDB as members.

1R.A. No. 8042, as amended by R.A. No. 10022.
(b) The National Seamen Board shall be composed of the Secretary of Labor as Chairman, the Undersecretary of Labor as Vice-Chairman, the Commandant of the Philippine Coast Guard, and a representative each of the Department of Education and Culture, the Central Bank, the Maritime Industry Authority, the Bureau of Employment Services, a national shipping association and the Executive Director of the NSB as members.

The members of the Boards shall receive allowances to be determined by the Boards which shall not be more than P2,000 per month.

(c) The Boards shall be attached to the Department of Labor for policy and program coordination. They shall each be assisted by a Secretariat headed by an Executive Director who shall be a Filipino citizen with sufficient experience in manpower administration, including overseas employment activities. The Executive Director shall be appointed by the President of the Philippines upon the recommendation of the Secretary of Labor and shall receive an annual salary as fixed by law. The Secretary of Labor shall appoint the other members of the Secretariat.

(d) The Auditor General shall appoint his representative to the Boards to audit their respective accounts in accordance with auditing laws and pertinent rules and regulations.

COMMENTS

COMPOSITION OF THE POEA

As reorganized by E.O. No. 247 (July 24, 1987), after the end of the Marcos Dictatorship, the Philippine Overseas Employment Administration consists of the Governing Board, the Office of the Administrator, the Offices of such number of Deputy Administrators as may be necessary, and Office of the Director for each of the principal subdivisions of its internal structure.

The Governing Board is composed of the Secretary of Labor and Employment as Chairman, the Administrator, and a third member, considered well-versed in the field of overseas employment who shall be appointed by the President to serve for a term of two (2) years.

The Administrator and such Deputy Administrator and Directors as may be necessary are appointed by the President upon recommendation of the Secretary.

The functional structure of the Administration is established along the areas of market development, employment, welfare, licensing, regulation and adjudication, each headed by a Director.

ART. 24. BOARDS TO ISSUE RULES AND COLLECT FEES

The Boards shall issue appropriate rules and regulations to carry out their functions. They shall have the power to impose and collect fees from employers concerned, which shall be deposited in the respective accounts of said Boards and be used by them exclusively to promote their objectives.
OUTSOURCING TREND: MEDICAL TOURISM

In 2002, an Indian radiologist working at the prestigious Massachusetts General Hospital, Dr. Sanjay Saini, thought he had found a clever way to deal with the shortage and expense [of radiologists in the US]. [He would] beam medical images [X-ray, CT scans, etc.] over the internet to India where they could be interpreted by radiologists. This would reduce the workload on America’s radiologists and also cut costs. A radiologist in India might earn one-tenth of his or her U.S. counterpart. Plus, because India is on the opposite side of the globe, the images could be interpreted while it was nighttime in the U.S., and be ready for the attending physician when he or she arrived for work the following morning.

As for the surgery, here too we are witnessing the beginnings of an outsourcing trend. In October 2004, for example, Howard Staab, a 53-year old uninsured self-employed carpenter from North Carolina had surgery to repair a leaking heart valve — in India! Mr. Staab flew to New Delhi, had the operation, and afterward toured the Taj Mahal, the price of which was bundled with that of the surgery. The cost, including air fare, totaled $10,000. If Mr. Staab’s surgery had been performed in the U.S., the cost would have been $60,000 and there would have been no visit to the Taj Mahal... According to the management consultancy McKinsey & Co., Medical tourism (oversea trips to have medical procedures performed) could be a $2.3 billion industry in India by 2012.

CHARLES W.L. HILL

Chapter II
REGULATIONS OF RECRUITMENT AND PLACEMENT ACTIVITIES

Overview/Key Questions:

1. What are the requirements and restrictions for the private sector’s participation in recruitment and placement of workers, local and overseas?
2. What acts or practices are prohibited in recruitment and placement activities of licensed recruiters?
3. On what grounds and by which office may an employment license or recruitment permit be cancelled?

ART. 25. PRIVATE SECTOR PARTICIPATION IN THE RECRUITMENT AND PLACEMENT OF WORKERS

Pursuant to national development objectives and in order to harness and maximize the use of private sector resources and initiative in the development and implementation of a comprehensive employment program, the private employment sector shall participate in the recruitment and placement of workers, locally and overseas, under such guidelines, rules and regulations as may be issued by the Secretary of Labor.

COMMENTS

1. POEA’S RETAINED JURISDICTION

As already noted, R.A. No. 8042 transferred from POEA to NLRC the jurisdiction over OFWs’ claims arising from employer-employee relationship. But POEA retains original and exclusive jurisdiction over cases involving violations of POEA rules and regulations, disciplinary cases and other cases that are administrative in character involving OFWs. Thus, POEA performs regulatory, enforcement, and limited or special adjudicatory functions.

\[1\]See Rules and Regulations of the Philippine Overseas Employment Administration, amended 2002.
2. VALIDITY OF POEA REGULATIONS

Under Sec. 4(a) of E.O. No. 797 which created the POEA, the authority to issue regulations is clearly provided:

“x x x The governing Board of the Administration (POEA), as hereunder provided, shall promulgate the necessary rules and regulations to govern the exercise of the adjudicatory functions of the Administration (POEA).”

With the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called “the power of subordinate legislation.”

The regulations issued by administrative agencies have the force and effect of law.

2.1 POEA Circular No. 11 (1983) Unenforceable for Lack of Publication

The ruling in Tañada vs. Tuvera, 136 SCRA 27 (1985), is reiterated; i.e., administrative rules and regulations must be published if its purpose is to enforce or implement existing law pursuant to a valid delegation. Considering that POEA Administrative Circular No. 2, Series of 1983 (embodying a schedule of fees that employment offices may charge) has not yet been published or filed with the National Administrative Register, the circular cannot be used as basis for the imposition of administrative sanctions.

ART. 26. TRAVEL AGENCIES PROHIBITED TO RECRUIT

Travel agencies and sales agencies of airline companies are prohibited from engaging in the business of recruitment and placement of workers for overseas employment whether for profit or not.

COMMENTS

In addition to those mentioned in this article, the POEA Rules (Rule 1, Sec. 2) also disqualify persons with derogatory records such as those convicted for illegal recruitment or other crimes involving moral turpitude. The same prohibition extends to any official or employee of DOLE, POEA, OWWA, DFA and other government agencies directly involved in the implementation of R.A. No. 8042 or any of their relatives within the fourth civil degree.

1Eastern Shipping Lines, Inc. vs. POEA, Minister of Labor and Employment, Hearing Officer Abdu Basar and Kathleen D. Saco, G.R. No. 76633, October 18, 1988.
2Ibid.
ART. 27. CITIZENSHIP REQUIREMENT
Only Filipino citizens or corporations, partnerships or entities at least seventy-five percent (75%) of the authorized and voting capital stock of which is owned and controlled by Filipino citizens shall be permitted to participate in the recruitment and placement of workers, locally or overseas.

ART. 28. CAPITALIZATION
All applicants for authority to hire or renewal of license to recruit are required to have such substantial capitalization as determined by the Secretary of Labor.

COMMENTS
A private employment agency for local employment should have a minimum net worth of P200,000.00 in the case of single proprietorship and partnership or a minimum paid-up capital of P500,000.00 in the case of a corporation.¹

A private recruitment or manning agency for overseas employment should have a minimum capitalization of P2,000,000.00 for single proprietorship or partnership, and a minimum paid-up capital of P2,000,000.00 for corporation.²

ART. 29. NON-TRANSFERABILITY OF LICENSE OR AUTHORITY
No license or authority shall be used directly or indirectly by any person other than the one in whose favor it was issued or at any place other than that stated in the license or authority, nor may such license or authority be transferred, conveyed or assigned to any other person or entity. Any transfer of business address, appointment or designation of any agent or representative including the establishment of additional offices anywhere shall be subject to the prior approval of the Department of Labor.

COMMENTS
PLACE OF RECRUITMENT
Licensees or holders of authority or their duly authorized representatives may, as a rule, undertake recruitment and placement activity only at their authorized official addresses. Most, if not all, of these licensees or holders of authority have their official addresses in Metro Manila. Under existing regulations, they may be allowed to conduct provincial recruitment and/or job fairs only upon written authority from the POEA.³

¹Sec. 1(b) Rule II, Rules and Regulations Governing Private Recruitment and Placement Agency for Local Employment.
³See POEA Rules and Regulations, Part I, Rule VI.
As a matter of procedure, prior to the conduct of provincial recruitment, a copy of the authority shall be presented to the DOLE/Regional Director concerned. The recruitment activities are conducted under the supervision of a DOLE employee or officer designated by the Regional Director. Obviously, recruitment of workers for overseas employment cannot be lawfully done on a house-to-house basis, in residences, or in secluded places.

ART. 30. REGISTRATION FEES
The Secretary of Labor shall promulgate schedule of fees for the registration of all applicants for license or authority.

ART. 31. BONDS
All applicants for license or authority shall post such cash and surety bonds as determined by the Secretary of Labor to guarantee compliance with prescribed recruitment procedures, rules and regulations, and terms and conditions of employment as may be appropriate.

COMMENTS AND CASES

1. AMOUNT OF BOND

1.1 Recruitment or Manning Agency for Overseas Employment
Upon approval of the application for license, the applicant for license to operate a private recruitment or manning agency shall:

(a) Submit an Escrow Agreement in the amount of one million pesos (P1,000,000.00), with confirmation of escrow deposit with an accredited reputable bank; and

(b) Post a surety bond in the amount of one-hundred thousand pesos (P100,000.00) from a bonding company acceptable to the POEA and accredited with the Insurance Commission.

The surety bond shall cover the validity of the period of the license, and shall include the condition that notice to the principal is notice to the surety and that any judgment against the principal in connection with matters falling under the jurisdiction of the POEA or NLRC shall be binding and conclusive on the surety.

The bonds and escrows shall answer for all valid and legal claims arising from violations of the conditions for the grant and use of the license and/or accreditation and contracts of employment. The bonds and escrow shall likewise guarantee compliance with the provisions of the Philippine laws and all liabilities that the POEA may impose.¹

ART. 31

2. ENFORCEMENT

The POEA possesses the power to enforce liability under cash or surety bonds.

_Finman General Assurance vs. Innocencio, G.R. Nos. 90273-75, November 15, 1989 —_

The fundamental argument of Finman is that its liability under its own bond must be determined and enforced, not by the POEA or the Secretary of Labor, but by the Insurance Commission or by the regular court.

_Ruling:_ There is nothing so special or unique about the determination of a surety’s liability under its bond as to restrict that determination to the office of the Insurance Commissioner and to the regular courts of justice, exclusively. The exact opposite is stressed by the second paragraph of Article 31 of the Labor Code.

To compel the POEA and the beneficiaries of Finman’s bond to go to the Insurance Commissioner or to a regular court of law to enforce that bond would be to collide with the public policy which requires prompt resolution of claims against private recruitment and placement agencies. The Supreme Court will take judicial notice of the appalling frequency with which some, perhaps many, of such agencies have cheated workers avid for overseas employment by, _e.g._, collecting placement fees without securing employment for them at all, extracting exorbitant fees or kickbacks from those for whom employment is actually obtained, abandoning hapless and unlettered workers to exploitative foreign principals, and so on.

Cash and surety bonds are required by the POEA and its predecessor agencies from recruitment and employment companies precisely as a means of ensuring prompt and effective recourse against such companies when held liable for applicants or workers’ claims.

3. APART FROM APPEAL BOND

The bond required under Article 31 of the Labor Code is different from the bond required under Article 223 [renumbered as 229] of the Labor Code. The bond under Article 223 is a requirement for the perfection of an appeal. It is intended to insure the payment of the monetary award if the judgment is affirmed on appeal.

It is true that the cash and surety bonds under Article 31 of the Labor Code are also intended to guarantee payment of all valid and legal claims against an employer, but these claims are not limited to monetary awards to employees whose contracts of employment have been violated. The POEA can go against these bonds also for violations by the recruiter of the conditions for its license, the provisions of the Labor Code, the rules of the POEA as well as the settlement of other liabilities the recruiter may incur.
Therefore, a recruitment agency who appeals a judgment of the POEA or Labor Arbiter to the NLRC is still obliged to post a bond in an amount equivalent to the monetary award as required by Article 229 of the Labor Code, notwithstanding the fact that it has already posted a bond under Article 31 of the Labor Code.\footnote{JMM Promotions vs. NLRC, G.R. No. 109835, November 22, 1993.}

4. **GARNISHMENT OF BONDS**

The bond under Article 31 of the Labor Code is intended to answer only for employment-related claims and for violations of labor laws. Therefore, it cannot be garnished to satisfy a claim of a travel agency against a recruitment agency such as payment for airline tickets used by the agency’s recruits. Though the liability may have been incurred in connection with the business of recruiting or placing overseas workers, it is definitely not one arising from violation of the conditions for the grant and use of the license or authority and contracts of employment. Nor is it one arising from a violation of labor laws.\footnote{Capricorn International Travel vs. Court of Appeals, G.R. No. 91096, April 3, 1990.}

5. **EFFECT OF A VALID GARNISHMENT**

As soon as an Order or Notice of Garnishment is served upon the Bank, and the same is correspondingly earmarked, the deposit in escrow shall no longer be considered sufficient. The POEA shall then require the recruitment or manning agency to replenish its escrow deposit.

Within fifteen (15) days from date of receipt of notice from the POEA that the bonds or deposit in escrow, or any part of it had been garnished, the recruitment or manning agency shall replenish the same. Failure to replenish such bonds or deposit in escrow within the said period shall cause the suspension of the license.\footnote{Rule II, Part II, POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers; Sec. 21, Rule II, Part II, POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers [2003].}

6. **RELEASE OF CASH BOND/DEPOSIT IN ESCROW**

6.1 **Recruitment Agency for Local Employment**

A private recruitment and placement agency for local employment which voluntarily surrenders its license shall be entitled to the refund of its deposited cash bond only after posting a surety bond of similar amount from a bonding company accredited by the Insurance Commission. The surety bond is valid for three (3) years from expiration of the license.\footnote{Sec. 53, Rule VIII, Rules and Regulations Governing Private Recruitment and Placement Agency for Local Employment.}
6.2 Recruitment or Manning Agency for Overseas Employment

A licensed recruitment or manning agency for overseas employment which voluntarily surrenders its license shall be entitled to the release of the deposit in escrow, only after posting a surety bond of similar amount valid for four (4) years from expiration of license and submission of clearance from the National Labor Relations Commission and the POEA.1

7. LAW AS PART OF THE BOND

It is a settled doctrine that the conditions of a bond specified and required in the provisions of the statute or regulation providing for the submission of the bond are incorporated or built into all bonds tendered under that statute or regulation even though not there set out in printer’s ink.2

ART. 32. FEES TO BE PAID BY WORKERS

Any person applying with a private fee-charging employment agency for employment assistance shall not be charged any fee until he has obtained employment through its efforts or has actually commenced employment. Such fee shall be always covered with the appropriate receipt clearly showing the amount paid. The Secretary of Labor shall promulgate a schedule of allowable fees.

COMMENTS

1. CHARGEABLE FEES

1.1 Placement and Documentation Fees for Overseas Employment

The POEA Rules and Regulations Governing Overseas Employment (Part II, Rule V, Secs. 2 and 3[2002]) provides:

Section 2. Fees and Costs Chargeable to Principals. Unless otherwise provided, the principal shall be responsible for the payment of the following:

a. visa fee;
b. airfare;
c. POEA processing fee; and
d. OWWA membership fee.

Section 3. Fees/Costs Chargeable to the Workers. Except where the prevailing system in the country where the worker is to be deployed, either by law, policy or practice, does not allow the charging or collection of placement and recruitment fee, a land-based agency may charge and collect from its hired workers a (1) placement fee in an amount equivalent to one month salary, exclusive of (2) documentation costs.

---

1Sec. 23, Rule II, Part II, POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers (2002); Sec. 22, Rule II, Part II, POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers [2003].

2Finman General Assurance vs. Inocencio, 179 SCRA 480.
Documentation costs to be paid by the worker shall include, but not be limited to, expenses for the following:

a. Passport  
b. NBI/Police/Barangay Clearance  
c. Authentication  
d. Birth Certificate  
e. Medicare  
f. Trade Test, if necessary  
g. Inoculation, when required by host country  
h. Medical Examination fees

In the event that the recruitment agency agrees to perform documentation services, the worker shall pay only the actual costs of the document which shall be covered by official receipts.

The above-mentioned placement and documentation costs are the only authorized payments that may be collected from a hired worker. No other charges in whatever form, manner or purpose, shall be imposed on and be paid by the worker without prior approval of the POEA.

Such fees shall be collected from a hired worker only after he has obtained employment through the facilities of the recruitment agency.\(^1\)

1.2 For Recruitment or Manning Agency for Overseas Employment

A private recruitment or manning agency for overseas employment shall charge their principals a **service or manning fee** to cover services rendered in the recruitment documentation and placement of workers or seafarers.\(^2\)

2. **REFUND OF FEES**

POEA has the power to order refund of illegally collected fees. Implicit in its power to regulate the recruitment and placement activities of all agencies is the award of appropriate relief to the victims of the offenses committed by the respondent agency or contractor. Such relief includes the refund or reimbursement of such fees as may have been fraudulently or otherwise illegally collected, or such money, goods or services imposed and accepted in excess of what is licitly prescribed. It would be illogical and absurd to limit the sanction on an offending recruitment agency or contractor to suspension or cancellation of its license, without the concomitant obligation to repair the injury caused to its victims.\(^3\)

---

\(^2\)Rule IV, Part II, POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers [2003].  
ART. 33. REPORTS ON EMPLOYMENT STATUS
Whenever the public interest requires, the Secretary of Labor may direct all persons or entities within the coverage of this Title to submit a report on the status of employment, including job vacancies, details of job requisitions, separation from jobs, wages, other terms and conditions, and other employment data.

ART. 34. PROHIBITED PRACTICES
It shall be unlawful for any individual, entity, licensee, or holder of authority:

(a) To charge or accept, directly or indirectly, any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under this Code;

(d) To induce or to attempt to induce a worker already employed to quit his employment in order to offer him to another unless the transfer is designed to liberate the worker from oppressive terms and conditions of employment;

(e) To influence or to attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor or by his duly authorized representatives;

(h) To fail to file reports on the status of employment, placement, vacancies, remittances of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor;

(i) To substitute or alter employment contracts approved and verified by the Department of Labor from the time of actual signing thereof by the parties up to and including the periods of expiration of the same without the approval of the Secretary of Labor;
(j) To become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency; and

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under this Code and its implementing rules and regulations.

**COMMENTS**

**PROHIBITED PRACTICES**

These prohibitions and the comments below are related to Article 38: Illegal Recruitment.

Article 34(a) of the Labor Code has two parts. The first part prohibits the charging or accepting of fees greater than that allowed by regulations. Apart from Article 32 of the Labor Code, Sec. 3, Rule V, Part II of the Rules and Regulations on Overseas Employment provides that “fees shall be collected from a hired worker only after he has obtained employment through the facilities of the recruitment agency.”

The second part of Article 34(a) is a deterrent to loan sharks who lend money at usurious interests.

Under Article 34(b), the prohibition includes the act of furnishing fake employment documents to a worker, and the act of publishing false notice or information in relation to recruitment or employment. The act of advertising for employment is within the definition of recruitment and placement and the falsity of the notice or information published is immaterial in prosecution for illegal recruitment for unauthorized advertisement.

Under Article 34(d), a mere attempt to induce the worker to quit his employment for the purpose of offering him to another is sufficient to constitute the offense. It is not necessary that the worker was actually induced or did quit employment.

Nonlicensees or nonholders of authority cannot lawfully engage in recruitment and placement of workers; they are likewise prohibited by Article 34(e) from attempting to influence another person not to employ a worker.

The purpose of Article 34, paragraph (i) of the Labor Code is to protect both parties. The rule that there should be concern, sympathy and solicitude for the rights and welfare of the working class, is meet and proper. That in controversies between a laborer and his master, doubts reasonably arising from the evidence or in the interpretation of agreement and writings should be resolved in the former’s favor, is not an unreasonable or unfair rule. But to disregard the employer’s own rights and interests solely on the basis of that concern and solicitude for labor is unjust and unacceptable.¹

ART. 35

The law empowers the POEA to approve and verify a contract under Article 34(i) of the Labor Code to insure that the employee shall not be placed in a disadvantageous position and that the contract contains the minimum standards of such employment contract set by the POEA. This is why a standard format for employment contracts has been adopted by the Department of Labor. However, there is no prohibition against stipulating in a contract more benefits to the employee than those required by law.\(^1\)

Thus, where a supplementary contract was entered into affording greater benefits to the employee than the previous one and although the same was not submitted for approval of the POEA, the NLRC properly considered said contract to be valid and enforceable. Moreover, as said contract was voluntarily entered into by the parties, the same is binding between them. Not being contrary to law, morals, good customs, public policy or public order, its validity must be sustained.\(^2\)

ART. 35. SUSPENSION AND/OR CANCELLATION OF LICENSE OR AUTHORITY

The Minister of Labor shall have the power to suspend or cancel any license or authority to recruit employees for overseas employment for violation of rules and regulations issued by the Ministry of Labor, the Overseas Employment Development Board, and the National Seamen Board, or for violation of the provisions of this and other applicable laws, General Orders and Letters of Instructions.

COMMENTS AND CASES

1. SUSPENSION OR CANCELLATION OF LICENSE

The POEA Rules enumerate the recruitment violations that may cause the imposition of administrative sanctions, including suspension or cancellation of license. The grounds for imposition of administrative sanctions include engaging in act/s of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false testimonies or falsified documents; engaging in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines; charging of any fee before employment is obtained for an applicant worker; charging of any fee in amount exceeding the allowable rate; and obstructing inspections by DOLE.\(^3\)

1.1 Concurrent Jurisdiction to Suspend or Cancel a License

The DOLE Secretary and the POEA Administrator have concurrent jurisdiction to suspend or cancel a license. Quoting the case of Eastern Assurance and Surety Corp. vs. Secretary of Labor, 181 SCRA 110 (1990), the Supreme Court


\(^2\) Ibid.

\(^3\) Sec. 2, Rule I, Part IV of the POEA Rules of 2002.
ART. 35

explains that the penalties of suspension and cancellation of license or authority are prescribed for violations of POEA rules, among other causes. The Secretary of Labor has the power under Article 35 to apply these sanctions. He also has the authority, under Article 36, not only to ‘restrict and regulate the recruitment and placement activities of all agencies,’ but also to ‘promulgate rules and regulations to carry out the objectives and implement the provisions’ governing said activities. Pursuant to this rule-making power, the Secretary of Labor authorized the POEA to conduct the necessary proceedings for the suspension or cancellation of the license or authority of any agency or entity for certain enumerated offenses. Thus, the Court concludes:

“We rule that the power to suspend or cancel any license or authority to recruit employees for overseas employment is concurrently vested with the POEA and the Secretary of Labor.” (People vs. Diaz, 259 SCRA 441 [1996]).

2. PERSONS LIABLE; DURATION OF LIABILITY

A recruitment agency is solidarily liable for the unpaid salaries of a worker it recruited for employment with a foreign principal. Sec. 10, Rule V, Book I [now Part II, Rule II, Sec. 1(f) of the 2002 POEA Rules — CAA] of the Implementing Regulations of the Labor Code, provides: “Before recruiting any worker, the private employment agency shall submit the following documents:

x x x (2) Power of the agency to sue and be sued jointly and solidarily with the principal or foreign-based employer for any of the violations of the recruitment agreement, and the contracts of employment.”

Even if the recruitment agency and the principal had already severed their agency agreement at the time the worker was injured, the recruitment agency may still be sued for violation of the employment contract, if no notice of the agency agreement’s termination was given to the employee. This is pursuant to Article 1921 of the Civil Code, which states that if the agency has been entrusted for the purpose of contracting with specified persons, its revocation shall not prejudice the latter if they were not given notice thereof.

The obligations covenanted in the recruitment agreement entered into by and between the local agent and its foreign principal are not coterminous with the term of such agreement. If either or both of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end. It extends up to and until the expiration

3Ibid.
of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. Otherwise, this will render nugatory the very purpose for which the law governing the employment of workers for foreign jobs abroad was enacted.¹

3. SOLIDARY LIABILITY ASSUMED BY RECRUITMENT AGENT


Facts: Petitioner, a private employment agency, contends that there is no provision in the Labor Code or the omnibus implementing rules which provides for the “third-party liability” of an employment agency for violations of an employment agreement performed abroad. Neither does the law designate it as the agent of the foreign employer for enforcing claims arising from such employment agreement.

Ruling: Petitioner’s contention is erroneous. It overlooks the fact that it had voluntarily assumed liability under various contractual undertakings it submitted to the Bureau of Employment Services [POEA now]. In applying for a license to operate a private employment agency for overseas recruitment and placement, petitioner was required to submit a verified undertaking. In that document, the agency assumed all responsibilities for the proper use of its license and the proper implementation of the employment contracts with the workers it recruited and deployed for overseas employment.

3.1 Required Undertaking by Agent

Under POEA Rules (Part II, Rule II, Section f), an applicant for a license to operate a private employment agency or manning agency should submit an undertaking under oath stating that the applicant:

(1) Shall select only medically and technically qualified recruits;

(2) Shall assume full and complete responsibility for all claims and liabilities which may arise in connection with the use of the license;

(3) Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract; including but not limited to payment of wages, health and disability compensation and repatriation;

(4) Shall guarantee compliance with the existing labor and social legislations of the Philippines and of the country of employment of recruited workers;

(5) Shall assume full and the complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement.

(6) Shall negotiate for the best terms and conditions of employment;

(7) Shall disclose the full terms and conditions of employment to the applicant workers;

(8) Shall deploy at least 100 workers to its new markets within one (1) year from the issuance of its license;

(9) Shall provide orientation on recruitment procedures, terms and conditions and other relevant information to its workers and provide facilities therefor; and

(10) Shall repatriate the deployed workers and his personal belongings when the need arises.

For the purpose of compliance with item (1), the agency may require the worker to undergo trade testing and medical examination only after the worker has been pre-qualified for employment.

In case of corporation or partnership, its officers, directors or partners shall file the verified undertaking that they will be jointly and severally liable with the company over claims arising from employer-employee relationship.

3.2 Contract by Principal

Even if it was the agency’s principal which entered into contract with the worker, nevertheless, the petitioner, as the manning agent in the Philippines, is jointly and solidarily responsible with its principal.¹

3.3 Proper Party

A sister in the Philippines of a maltreated Filipino domestic helper in Abu Dhabi is a proper party to file complaint. The agency is liable for illegal dismissal of the domestic helper.²

3.4 Exceptions

The rule holding the agency solidarily liable admits of exceptions depending on peculiar circumstances. In one case where the workers themselves insisted for the recruitment agency to send them back to their foreign employer despite their knowledge of its inability to pay their wages, the Court absolved the agency from liability.

²Sigma Personnel Services vs. NLRC, G.R. No. 108284, June 30, 1993.
It cannot simply be ignored that FCC Agency was reluctant to send [the complainant] and the other workers back to Saudi Arabia because of the financial difficulties encountered by Algosaibi-Bison, Ltd. They were informed of the risks involved, but [the complainant] and the other workers insisted that they be allowed to resume employment and they even signed Statements to the effect that each one of them did not hold FCC Agency liable for delay or non-payment of their salaries and amounts due them from Algosaibi-Bison, Ltd. Under the circumstances where [the complainant] and the other workers were insisting to return to work despite the warning, it cannot be said that their written waivers as to FCC Agency’s responsibilities are void. They were not victims of deceit or deception. They entered into those waivers with open eyes and clear minds. They were aware of the imminent danger and great risks involved in their renewed ventures. (Feagle Construction Corp. vs. Gayda, G.R. No. 82310, June 18, 1990)

3.5 Liability for Moral Damages

A recruitment agency is obligated to protect and tend to the welfare of its recruits. Even if the death of the recruit is not attributable to the recruitment agency’s principal and even if the death is not work-related, the nonchalant and uncaring attitude of the recruitment agency, even after it was shown that the worker did not commit suicide but was murdered, may justify making the agency liable for moral and exemplary damages of the worker’s family. “It is surprising, therefore, that [the foreign employer and the recruitment agencies] should insist on suicide, without even lifting a finger to help solve the mystery of [the worker’s] death. Being in the business of sending OFWs to work abroad, Becmen and White Falcon [the agencies] should know what happens to some of our OFWs. It is impossible for them to be completely unaware that cruelties and inhumanities are inflicted on OFWs who are unfortunate to be employed by vicious employers, or upon those who work in communities or environments where they are liable to become victims of crimes…. It appears from the record that to this date, no follow up of Jasmin’s case was ever made at all by them, and they seem to have expediently treated Jasmin’s death as a closed case.” Therefore, the foreign employer, the recruitment agencies and their corporate directors and officers are found jointly and solidarily liable for moral and exemplary damages to the heirs of the deployed worker.1

Subsequent to this Becmen decision of 2009, the Court ruled in 2012, upon a motion for reconsideration, that corporate officers or directors can be held liable only if it is proved that they are personally involved in the wrongful acts of their company.2

---

4. **SUABILITY OF A FOREIGN CORPORATION WHICH HIRES FILIPINO WORKERS**

A foreign corporation which, through unlicensed agents, recruits workers in the country may be sued in and found liable by Philippine courts.

*Facilities Management Corp. vs. De La Osa, 89 SCRA 131 (1979)* —

A foreign corporation domiciled outside of the Philippines was ordered by the CIR to pay a Filipino employee unpaid overtime and premium pay. On *certiorari* before the Supreme Court, the corporation contended that because it was domiciled outside and not doing business in the Philippines, it could not be sued in the country.

It was shown that the corporation, through one of its employees in the Philippines, recruited Filipino workers for employment abroad.

The question was: Does the act of a nonresident foreign corporation of recruiting Filipino workers to work for it abroad constitute “doing business in the Philippines”?

The Supreme Court ruled: “Indeed, if a foreign corporation, not engaged in business in the Philippines, is not barred from seeking redress from courts in the Philippines, a *fortiori*, that same corporation cannot claim exemption from being sued in Philippine courts for acts done against a person or persons in the Philippines.”

**Note:** Under present Article 18 of the Labor Code, “no employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Secretary of Labor.”
Chapter III
MISCELLANEOUS PROVISIONS

Overview/Key Questions:

1. With the amendments made by the “Migrant Workers and Overseas Filipinos Act” (R.A. No. 8042), what acts constitute illegal recruitment and who are the persons that can be held liable for it?
2. Under what circumstances is illegal recruitment an offense involving economic sabotage?
3. Is the secretary of labor legally authorized to order the arrest of an illegal recruiter? May he order the closure of an illegal recruitment office?

ART. 36. REGULATORY POWER

The Secretary of Labor shall have the power to restrict and regulate the recruitment and placement activities of all agencies within the coverage of this Title and is hereby authorized to issue orders and promulgate rules and regulations to carry out the objectives and implement the provisions of this Title.

COMMENTS

ATTEMPTED DEREGULATION AND PHASE OUT

R.A. No. 8042 had envisioned a phase-out of POEA’s regulatory function so that the migration of the workers would become strictly a matter between the worker and his employer. Its Section 38 provided that the DOLE within one year from the effectivity of the Act in 1995 should formulate a five-year comprehensive deregulation plan on recruitment activities. And, Section 39, titled “Gradual Phase-Out of Regulatory Functions,” provided that within five years from effectivity of R.A. No. 8042 (in 1995), the DOLE should phase-out the regulatory functions of POEA “pursuant to the objectives of deregulation.”

This projected deregulation stirred some controversy. Employment agencies sought to compel POEA to implement the phase-out, but POEA appeared reluctant or unwilling. DOLE-POEA believed that the “mandate” of phase-out was not absolute as it was subject to the condition that the country would first attain the status of a newly industrialized country (or NIChooed) by the year 2000. DOLE-POEA argued that the perennial problem of illegal recruitment,
the surge of welfare cases, and the indifference of host countries to the protection of the OFWs, among other factors, made deregulation inadvisable. An untimely phase-out, it was said, would go against the very spirit of protection of the OFWs that R.A. No. 8042 intended.

The debate is over because R.A. No. 9422, approved on April 10, 2007, repealed the phase-out provision of R.A. No. 8042.

ART. 37. VISITORIAL POWER

The Secretary of Labor or his duly authorized representatives may, at any time, inspect the premises, books of accounts and records of any person or entity covered by this Title, require it to submit reports regularly on prescribed forms, and act on violations of any provisions of this Title.

ART. 38. ILLEGAL RECRUITMENT

(a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. The Department of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof. Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

(c) The Secretary of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-licensee or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Minister shall order the search of the office or premises and seizure of documents, paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishments and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.

But see amendments by R.A. No. 8042, discussed below.
ART. 38

COMMENTS AND CASES

1. ILLEGAL RECRUITMENT DEFINED AS AMENDED

As defined originally in Article 38, illegal recruitment was limited to recruitment activities undertaken by non-licensees or nonholders of authority. This has been changed by R.A. No. 8042, known as the “Migrant Workers and Overseas Filipinos Act of 1995.” Under this law, even a licensee or holder of authority may be held guilty of illegal recruitment if it commits any of the fourteen (14) acts listed in Sec. 6. The list of acts considered as illegal recruitment has been expanded by R.A. No. 10022. Section 6 states:

SEC. 6. Definition. — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;
(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker’s fault.

(n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency. (Added by R.A. No. 10022)

Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

As expanded through the above definition, illegal recruitment embodies Article 34 of this Code. The comments under that Article equally apply here.

1.1 Two Kinds of Illegal Recruiter

The amended definition of illegal recruitment identifies two kinds of illegal recruiters: one, a non-licensee or nonholder of authority, and two, a licensed recruiter. The first kind, not having been issued a license or authority to recruit, commits illegal recruitment when he (or it) performs (a) any of the acts defined in the law as recruitment and placement such as canvassing, enlisting, contracting workers; or (b) any of the fourteen acts enumerated in Section 6 of R.A. No. 8042.
The second kind of illegal recruiter possesses a license or authority to recruit. It may be charged with illegal recruitment only when it commits any of the 14 wrongful acts enumerated in Sec. 6 (see above).¹

1.2 Essential Element

Illegal recruitment as a criminal offense presupposes deceit or misrepresentation. The court says that to prove illegal recruitment, “it must be shown that the accessed, without being duly authorized by law, gave complainants the distinct impression that he had the power or ability to send them abroad for work, such that the latter were convinced to part with their money in order to be employed. It is important that there must at least be a promise or offer of an employment from the person posing as a recruiter, whether locally or abroad.”²

1.3 Illegal Recruitment as Economic Sabotage

Article 38(b) of the Labor Code, as amended by P.D. No. 2018 as well as Sec. 6 of R.A. No. 8042, provides that illegal recruitment shall be considered an offense involving economic sabotage if any of the qualifying circumstances exists, namely:

a) When illegal recruitment is committed by a syndicate, i.e., if it is carried out by a group of three or more persons conspiring and/or confederating with one another; or

b) When illegal recruitment is committed in large scale, i.e., if it is committed against three or more persons individually or as a group.

Separate Categories

Illegal recruitment in large scale and illegal recruitment by a syndicate are separate or independent categories. They need not coincide within the same case. Where only one complainant filed individual complaints, there is no illegal recruitment in large scale; but the three conspiring recruiters can be held guilty of illegal recruitment by a syndicate.³

It has been held that accused-appellant’s acts of accepting placement fees from job applicants and representing to said applicants that he could get them jobs in Taiwan constitute recruitment and placement under the Labor Code. The offense committed against the six (6) complainants in this case is illegal recruitment in large scale punishable under Article 39(a) of the Labor Code with life imprisonment and a fine of One hundred thousand pesos (P100,000.00).⁴

²People vs. Laogo, G.R. No. 176264, January 10, 2011, with cited cases.
Where illegal recruitment is proved, but the elements of “large scale” or “syndicate” are absent, the accused can be convicted only of “simple” illegal recruitment.¹

1.4 Lack of Receipts

The absence of receipts cannot defeat a criminal prosecution for illegal recruitment. As long as the witnesses can positively show through their respective testimonies that the accused is the one involved in prohibited recruitment, she may be convicted of the offence despite the absence of receipts.²

Presentation of receipts acknowledging payments is not necessary for successful prosecutions of illegal recruitment charge. Credible testimonial evidence may suffice.³

2. ESTAFA

A worker who suffers pecuniary damage, regardless of the amount, as a result of a previous or simultaneous false pretense resorted to by a nonlicensee or nonholder of authority, may complain of estafa under Article 315, paragraph 2(a) of the Revised Penal Code, aside from illegal recruitment.

In People vs. Calonzo, G.R. Nos. 115150-55, September 27, 1996, the Court reiterates the rule that a person convicted for illegal recruitment under the Labor Code can be convicted for violation of the Revised Penal Code provisions on estafa provided the elements of the crime are present. The elements of the crime are: a) that the accused defrauded another by abuse of confidence or by means of deceit, and b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.

Estafa under Article 315, paragraph 2 of the Revised Penal Code is committed by any person who defrauds another by using a fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of the fraud. The offended party must have relied on the false pretense, fraudulent act or fraudulent means of the accused-appellant and as a result thereof, the offended party suffered damages. It has been proved in this case that accused-appellants represented themselves to private complainants to have the capacity to send domestic helpers to Italy, although they did not have any authority or license. It is by this representation that they induced private complainants to pay a placement fee of P150,000.00. Such act clearly constitutes estafa under Article 315(2) of the Revised Penal Code.⁴

¹People vs. Sagun, G.R. No. 119076, March 25, 2002.
ART. 38

3. OTHER PROHIBITED ACTS

Apart from the acts enumerated as illegal recruitment, the following “prohibited acts” are also unlawful under Sec. 6 of R.A. No. 8042:

(1) Grant a loan to an overseas Filipino worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;

(2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons;

(3) Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter’s employment contract has been prematurely terminated through no fault of his or her own;

(4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;

(5) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;

(6) For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers’ applications; and

(7) For a recruitment/manning agency or a foreign principal/employer to pass on the overseas Filipino worker or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker’s insurance coverage.

4. PERSONS LIABLE FOR ILLEGAL RECRUITMENT

The persons criminally liable for illegal recruitment and other offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents shall be liable.¹

¹Sec. 6, R.A. No. 8042, as amended.
4.1 Employee, When Liable

An agency’s employee who does not control, manage or direct the business may not be held liable for illegal recruitment. Where it is shown that the employee was merely acting under the direction of his superiors and was unaware that his acts constituted a crime, he may not be held criminally liable for an act done for and in behalf of his employer... Such employee has to be acquitted even where the employer, in violation of POEA requirement, did not register such employee, and the employee was unaware of such violation.¹

Conversely, an employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he actively and consciously participated in illegal recruitment.

In one case, evidence showed that accused-appellant was the one who informed complainants about the job and the requirements for deployment. She also received money from them as placement fees. The complainants testified that they personally met and transacted with her regarding the overseas job placement offers. Complainants parted with their money, evidenced by receipts signed by the accused. Thus, accused-appellant [the employee] actively participated in the recruitment of the complainants and was held guilty of illegal recruitment.²

4.2 Foreign Employer

In case of a final and executory judgment against a foreign employer/principal, it shall be automatically disqualified, without further proceedings, from participating in the Philippine Overseas Employment Program and from recruiting and hiring Filipino workers until and unless it fully satisfies the judgment award.³

5. POWER TO ISSUE SEARCH OR ARREST WARRANTS; ARTICLE 38(C) UNCONSTITUTIONAL

_Salazar vs. Achacoso and Marquez, G.R. No. 81510, March 14, 1990 —_

_Facts:_ On November 3, 1987, having ascertained that the petitioner had no license to operate a recruitment agency, the POEA Administrator issued Closure and Seizure Order No. 1205, ordering the closure of the alleged recruitment agency, now the petitioner, and the seizure of documents and paraphernalia being used or intended to be used in committing illegal recruitment. Pursuant to said order, a team of POEA people swooped down at the residence of petitioner and at a dance studio inside the residence and confiscated assorted costumes. Petitioner wrote POEA, contesting the legality of the seizure of her personal property because the seizure was contrary to the constitutional guarantees of due process and the right of the people “against unreasonable searches and seizure.”

³Sec. 10, R.A. No. 8042, as amended.
ART. 38

**Issue:** May the Philippine Overseas Employment Administrator (or the Secretary of Labor) validly issue warrants of search and seizure (or arrest) under Article 38 of the Labor Code?

**Ruling:** The petition is granted. Article 38, par. (c) of the Labor Code is declared unconstitutional and is null and void. The respondents are ordered to return all materials seized as a result of the implementation of Search and Seizure Order No. 1205.

*Under the Constitution, only a judge may issue warrants of search and arrest.* Article 38, paragraph (c), of the Labor Code, as now written, was entered as an amendment by Presidential Decrees No. 1920 and 2018 of the late President Ferdinand Marcos.

The above has now been etched as Article 38, paragraph (c) of the Labor Code.

**The decrees in question, it is well to note, stand as the dying vestiges of authoritarian rule in its twilight moments.**

We reiterate that the Secretary of Labor, not being a judge, may no longer issue search or arrest warrants. Hence, the authorities must go through the judicial process. To that extent, we declare Article 38, paragraph (c), of the Labor Code, unconstitutional and of no force and effect.

For the guidance of the bench and the bar, we reaffirm the following principles:

1. Under Article III, Sec. 2, of the 1987 Constitution, it is only judges, and no other, who may issue warrants of arrest and search;

2. The exception is in cases of deportation or illegal and undesirable aliens, whom the President or the Commissioner of Immigration may order arrested, following a final order of deportation, for the purpose of deportation.

6. **ILLEGAL RECRUITERS STILL SUBJECT TO ARREST**

After the ruling in *Salazar vs. Achacoso*, the POEA’s Prosecution Division explained that the ruling “does not necessarily mean that the Secretary of Labor or his duly authorized representatives, or any officer of the law, for that matter, cannot cause the arrest of illegal recruiters.”

A person who has committed any act that constitutes illegal recruitment may be arrested by virtue of a warrant issued by a Judge of a Regional Trial Court where the criminal information was filed after preliminary investigation. Or the arrest may be done by virtue of a warrant issued by a municipal trial judge conducting the preliminary investigation if the judge is satisfied, after an examination in writing and under oath of the complainant and his witnesses, that a probable cause exists and that there is need to place the respondent under immediate custody in order to serve the ends of justice.

---

Further, an illegal recruiter may be lawfully arrested without warrant under the provisions of Sec. 5, Rule 113 of the Rules on Criminal Procedure as amended, which reads:

SEC. 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; x x x.

In a nutshell, the Secretary of Labor and Employment or his duly authorized representatives may cause the lawful arrest of illegal recruiters either:

1. by virtue of a judicial warrant issued by an RTC, MTC or MCTC judge, as the case may be; or
2. without judicial warrant, under the provisions of Section 5, Rule 113 of the 1985 Rules on Criminal Procedure, as amended; [revised, effective December 1, 2000, per A.M. No. 00-5-03-SC]

Likewise, searches and seizures may be caused to be made either:

1. by virtue of a search warrant issued by a judge upon a probable cause in connection with one specific offense determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized.
2. without a judicial search warrant, for anything which may be used as proof of the commission of illegal recruitment, under any of the following conditions:
   a) when the search is incidental to a lawful arrest but limited to the person of the suspect and the place of arrest;
   b) when the thing to be seized is in plain view of the officer; or
   c) when the individual concerned knowingly consents to be searched.1

7. CLOSURE; OTHER ANTI-ILLEGAL RECRUITMENT ACTIVITIES OF POEA

The power of the Secretary or his duly authorized representatives to order the closure of illegal recruitment establishments still subsists, because the power is considered essentially administrative and regulatory. This finds further support under Article 36 of the Labor Code.2

---

1Abalayan, p. 22.
2Abalayan, p. 22.
The procedure to order the closure of an illegal recruitment establishment is provided for in the Rules Implementing R.A. No. 8042. The Rules also detail other anti-illegal recruitment activities that the POEA may undertake.

“VIII. Anti-Illegal Recruitment Programs

Section 14. **POEA Programs.** — The POEA shall adopt policies and procedures, prepare and implement programs toward the eradication of illegal recruitment activities such as, but not limited to the following:

(a) Providing legal assistance to victims of illegal recruitment and related cases which are administrative or criminal in nature;

(b) Prosecution of illegal recruiters;

(c) Special operations such as surveillance of persons and entities suspected to be engaged in illegal recruitment; and

(d) Information and education campaign.

Whenever necessary, the POEA shall coordinate with other appropriate entities in the implementation of said programs.

Section 15. **Legal Assistance.** — The POEA shall provide free legal service to victims of illegal recruitment and related cases which are administrative or criminal in nature in the form of legal advice, assistance in the preparation of complaints and supporting documents, institution of criminal actions and whenever necessary, provide counseling assistance during preliminary investigation and hearings.

Section 16. **Receiving of Complaints for Illegal Recruitment.** — Victims of illegal recruitment and related cases which are administrative or criminal in nature may file with the POEA a report or complaint in writing and under oath for assistance purpose.

In regions outside the National Capital Region, complaints and reports involving illegal recruitment may be filed with the appropriate regional office of the POEA or DOLE.

Section 17. **Action on the Complaint/Report.** — Where the complaint report alleges that illegal recruitment activities are on-going, surveillance shall be conducted and if such activities are confirmed, issuance of closure order may be recommended to the POEA Administrator through the Director of the Licensing and Regulation Office (Director-LRO). If sufficient basis for criminal action is found, the case shall be immediately forwarded to the appropriate office for such action.

Section 18. **Surveillance.** — The POEA and/or or designated official in the DOLE regional offices may on his own initiative conduct surveillance on the alleged illegal recruitment activities.
Within two (2) days from the termination of surveillance, a report supported by an affidavit, shall be submitted to the Director-LRO or the Regional Director concerned, as the case may be.

Section 19. **Issuance of Closure Order.** — The Secretary of Labor and Employment or the POEA Administrator or the DOLE Regional Director of the appropriate regional office outside the National Capital Region, or their duly authorized representatives may conduct an *ex parte* preliminary examination to determine whether the activities of a non-licensee constitute a danger to national security and public order or will lead to further exploitation of job seekers. For this purpose, the Secretary or Director concerned or their duly authorized representatives may examine personally the complainants and/or their witnesses in the form of searching questions and answers and shall take their testimony under oath. The testimony of the complainant and/or witnesses shall be reduced in writing and signed by them.

If upon the preliminary examination or surveillance, the Secretary of Labor and Employment, the POEA Administrator or DOLE Regional Director is satisfied that such danger or exploitation exists, a written order may be issued for the closure of the establishment being used for illegal recruitment activity.

In case of a business establishment whose license or permit to operate a business was issued by the local government, the Secretary of Labor and Employment, the POEA Administrator or the Regional Director concerned shall likewise recommend to the granting authority the immediate cancellation/revocation of the license or permit to operate its business.

Section 20. **Implementation of Closure Order.** — Closure order shall be served upon the offender or the person in charge of the establishment subject thereof. The closure shall be effected by sealing the establishment and posting a notice of such closure in bold letters at a conspicuous place in the premises of the establishment. Whenever necessary, the assistance and support of the appropriate law enforcement agencies may be requested for this purpose.

Section 21. **Report on Implementation.** — A report on the implementation of the closure order executed under oath, stating the details of the proceedings undertaken shall be submitted to the Director-LRO or the Regional Director concerned, as the case may be, within two (2) days from the date of implementation.

Section 22. **Institution of Criminal Action.** — The Secretary of Labor and Employment, the POEA Administrator or the Regional Director concerned, or their duly authorized representatives, or any aggrieved person, may initiate the corresponding criminal action with the appropriate office.
ART. 38

Where a complaint is filed with the POEA and the same is proper for preliminary investigation, it shall file the corresponding complaint with the appropriate officer, with the supporting documents.

Section 23. **Motion to Lift A Closure Order.** — A motion to lift a closure order which has already been implemented may be entertained only when filed with the Licensing and Regulations Office (LRO) within ten (10) calendar days from the date of implementation thereof. The motion shall clearly state the grounds upon which it is based, attaching thereto the documents in support thereof. A motion to lift which does not conform with the requirements herein set forth shall be denied outrightly.

Section 24. **Who May File.** — The motion to lift a closure order may be filed only by the following:

(a) The owner of the building or his/her duly authorized representative;

(b) The building administrator or his/her duly authorized representatives; or

(c) The person or entity against whom the closure order was issued and implemented or the duly authorized representative; or

(d) Any other person or entity legitimately operating within the premises closed/padlocked whose operations/activities are distinct from the recruitment activities of the person/entity subject of the closure order.

Section 25. **Grounds for Lifting/Re-Opening.** — Lifting of the closure order and/or re-opening of the office closed or padlocked may be granted on any of the following grounds:

(a) That the office is not the subject of the closure order;

(b) That the contract of lease with the owner of the building or the building administrator has already been cancelled or terminated. The request to re-open shall be duly supported by an affidavit of undertaking either of the owner of the building or the building administrator that the same will not be leased/rented to any other person/entity for recruitment purposes without the necessary license from the POEA;

(c) That the office is shared by a person/entity not involved in illegal recruitment activities, whether directly or indirectly; or

(d) Any other ground that the POEA may consider as valid and meritorious.

Lifting of a closure order is without prejudice to the filing of a criminal complaint with the appropriate office against the person alleged to have conducted illegal recruitment activities.
Section 26. **Appeal.** — The order of the POEA Administrator denying the motion to lift may be appealed to the Secretary of Labor and Employment within ten (10) days from service or receipt thereof.

Section 27. **Re-Padlocking of Office.** — Where a re-opened office was subsequently confirmed to be used for illegal recruitment activities, a new closure order shall be issued which shall not be subject to a motion to lift.”

**ART. 39. PENALTIES**

(a) The penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein;

(b) Any licensee or holder of authority found violating or causing another to violate any provision of this Title or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than two years nor more than five years or a fine of not less than P10,000 nor more than P50,000, or both such imprisonment and fine, at the discretion of the court;

(c) Any person who is neither a licensee nor a holder of authority under this Title found violating any provision thereof or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than four years nor more than eight years or a fine of not less than P20,000 nor more than P100,000 or both such imprisonment and fine, at the discretion of the court;

(d) If the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation, and if such officer is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings; and

(e) In every case, conviction shall cause and carry the automatic revocation of the license or authority and all the permits and privileges granted to such person or entity under this Title, and the forfeiture of the cash and surety bonds in favor of the Overseas Employment Development Board or the National Seamen Board, as the case may be, both of which are authorized to use the same exclusively to promote their objectives.
ART. 39

COMMENTS AND CASES

1. PENALTIES

Section 7 of R.A. No. 8042, as amended by R.A. No. 10022, provides the penalties for illegal recruitment. It states:

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than one million pesos (P1,000,000.00) not more than two million pesos (P2,000,000.00).

(b) The penalty of life imprisonment and a fine of not less than two million pesos (P2,000,000.00) nor more than Five million pesos (P5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

(c) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than five hundred thousand pesos (P500,000.00) nor more than one million pesos (P1,000,000.00).

If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings.

In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment/manning agency, lending institutions, training school or medical clinic.

2. VENUE

A criminal action arising from illegal recruitment shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense. The court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts. These provisions also apply to those criminal actions that have already been filed in court at the time of the effectivity of this Act.1

3. MANDATORY PERIODS

The preliminary investigations of cases under this Act shall be terminated within a period of thirty (30) calendar days from the date of their filing. Where the preliminary investigation is conducted by a prosecutor and a prima facie case is established, the corresponding information shall be filed in court within twenty-

---

1Sec. 9, R.A. No. 8042.
four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a prima facie case is found to exist, the corresponding information shall be filed by the proper prosecution officer within forty-eight (48) hours from the date of receipt of the records of the case.\(^1\)

4. **PRESCRIPTIVE PERIODS**

Illegal recruitment cases under this Act shall prescribe in five (5) years; Provided, however, That illegal recruitment cases involving economic sabotage as defined herein shall prescribe in twenty (20) years.\(^2\)

5. **ILLUSTRATIVE CASES OF ILLEGAL RECRUITMENT**

*People of the Philippines vs. Verano, Criminal Case No. 88-61017 (Illegal Recruitment in Large Scale), and Criminal Case No. 88-61018 (Estafa) —*

**Facts:** Sometime in October 1987, the accused Verano, while at her residence at Sta. Ana, Manila, informed her cousin Alfonso and the latter’s friends Joe and Arturo that she was recruiting salesmen for employment in Bahrain. Accused asked them to pay for various expenses and fees including cost of processing of travel papers, cost of plane tickets, medical examination and recruitment fees.

Complainants Alfonso, Jose and Arturo paid total installments in the amounts of P7,150.00, P15,000.00, and P10,000.00, respectively, covered by receipts issued and signed by the accused. Afterwards, the accused promised that they could depart for Bahrain for their promised employment.

For three times and on various dates, the complainants proceeded to the Manila International Airport and waited for the accused to deliver their plane tickets, passports, and visas just before their supposed flight to Bahrain, but the accused failed to deliver them. This prompted them to go to the WPD headquarters to lodge their complaint. Despite verbal demands from the three complainants, the accused failed to return the amounts paid to her. It appeared from the records of the POEA that the accused was not a licensed labor recruiter.

**Ruling:** In Criminal Case No. 88-61017, the Court found the accused guilty beyond reasonable doubt of the crime of illegal recruitment in large scale and sentenced her to suffer the penalty of life imprisonment and to pay a fine of P100,000. The accused was likewise ordered to pay to the offended parties, Arturo and Alfonso the sums of P10,000 and P7,150.00, respectively, plus interest thereon at the legal rate from February 22, 1988, the date of filing of the information.

In Criminal Case No. 88-61018, the Court found the accused guilty beyond reasonable doubt of the crime of estafa and sentenced her to suffer an indeterminate sentence of six (6) years of *prision correccional* as minimum, to nine (9) years of *prision mayor* as maximum penalty, and to pay Jose Daep, the sole complaining offended party in this case, the sum of P15,000 plus interest thereon at the legal rate from February 22, 1988.

---

\(^1\)Sec. 11, R.A. No. 8042.

\(^2\)Sec. 12, R.A. No. 8042.
ART. 39

(People of the Philippines vs. Español, Criminal Case No. Q-88 4444 (Illegal Recruitment) —

**Facts:** In or about February and August 1988, at Quezon City, accused J. Español canvassed, enlisted, contracted and promised employment to 14 persons, exacting a total of P21,500.00 as recruitment fees, without authority or license from the POEA. Accused introduced himself to the 14 private complainants as one who had rich and influential relatives in California, U.S.A. The positions promised were for a dressmaker, cook, dishwasher, driver, and housemaid, and accused exacted payments for processing of travel documents in amounts ranging from P1,000 – P3,000.

On September 3, 1988, the birthday of accused, he informed the 14 applicants that a certain Atty. Dizon, who was working for their documents, would definitely be coming and would advise them of their departure. The lawyer never appeared. The birthday turned out to be a grand affair, applicants donating pigs, dogs, goats, and some other items. After the party, complainants became apprehensive.

On several occasions, complainants talked to the accused, who kept promising that he could send them abroad. When the complainants sensed that they were deceived, they demanded return of their money, but accused failed and started hiding. They chanced on him and forcibly took him to the police station where they gave their sworn statements. Accused’s defense was that he did not know the applicants except one, that he had no brother or sister in California, U.S.A. and that the house where he celebrated his birthday was owned by one de la Pasion, who shouldered all the expenses.

**Ruling:** The accused is a dangerous member of society who feels happy and comfortable victimizing the poor, innocent and the gullible, of their hard-earned money. Evidence woven together proves the pattern for illegal recruitment, hence, mere denial must necessarily fall.

The Court found the accused guilty beyond reasonable doubt of the crime charged and sentenced him to suffer eight years imprisonment and to pay a fine of P50,000 and the costs. The accused was likewise ordered to reimburse the amount of P21,500.00 to the 14 private complainants listed in the criminal information.

(People of the Philippines vs. Roxas, Criminal Case No. 87-52583 (Violation of Article 32 of P.D. No. 442, as amended) —

**Facts:** Accused F.C. Roxas, doing business under the name and style of F.C. Roxas Construction, with office address at Rm. 212 Manufacturers Building, Sta. Cruz, Manila, was a licensed private recruitment entity (Service contractor) whose authority was issued on February 20, 1984 and expired on March 25, 1988. (A service contractor acts as the employer of its recruits with respect to projects it contracted to service abroad).
As a service contractor, it is not allowed to charge, directly or indirectly, any fee from the workers except the authorized documentation fee of P1,500.00.

During the period from January 1984 to July 1986, the accused F.C. Construction Co. demanded and received from its applicants, herein private complainants numbering about 22, various sums of money ranging from P1,500.00 to P8,500.00, in excess of the limits set forth by law. The complainants, furthermore, were not able to work abroad, were not issued any travel documents, and despite efforts, were not refunded the money paid to and received by the accused.

The accused Roxas did not deny the receipts covering the different sums of money paid by private complainants. He reasoned out that the amounts paid to and received by him were for “passporting and ticketing” of the private complainants.

**Ruling:** The court found the excuse of accused to be highly unjustified and definitely unconvincing. Besides, the accused has jumped bail, and despite the issuance of a warrant of arrest, he has not been apprehended. As a matter of fact, he was tried *in absentia*. The fundamental rule that the plight of the accused is consistent with his guilt was made applicable in his case.

Accused Roxas is guilty beyond reasonable doubt of violation of Article 32 of P.D. No. 442, as amended, and its implementing rules and regulations, as charged in the Information and was sentenced to suffer a penalty of imprisonment for a period of five years and to pay a fine of fifty thousand pesos (P50,000.00).

The accused was further ordered to refund to the herein private complainants the amounts paid by each of them plus legal interest of 12% *per annum* from the filing of this case until the above amounts are paid in full, and also to pay the cost of this suit.

(Case decided by Judge Lorenzo B. Veneracion, RTC-NCJR Branch 47, Manila, August 8, 1989.)

**People of the Philippines vs. Remullo, G.R. No. 124443-46, June 6, 2002 —**

**Facts:** Jenelyn Q., Rosario C. and Honorina M. testified that appellant Remullo told them she was recruiting factory workers for Malaysia. Appellant told them to fill up application forms and go to the office of Jamila and Co., the recruitment agency where appellant worked. Appellant also required each applicant to submit a passport, pictures, and clearance from the NBI and to undergo a medical examination. Appellant asked them to pay, as in fact she received an amount, as placement fee. On the day of their departure, an immigration officer told private complainants that they lacked a requirement imposed by POEA. They were not able to leave because their visas were for tourist only. Honorina M. inquired from Jamila and Co. regarding their application papers. In response, Evelyn, vice president and general manager to Jamilla, denied any knowledge of such papers and that appellant Remullo did not submit any document to Jamila. She certified that appellant was not authorized to receive payments on behalf of Jamila.

**Issue:** Whether appellant N. Remullo is guilty of illegal recruitment in large scale.
Held: Yes. For a charge of illegal recruitment to prosper, the following elements must concur: 1) the accused was engaged in recruitment activity defined under Article 13(b), or any prohibited practice under Article 34 of the Labor Code; 2) he or she lacks the requisite license or authority to lawfully engage in the recruitment and placement of workers; and 3) he or she committed such acts against three or more persons, individually or as a group.

The Court is convinced that private complainants were enticed by appellant to apply for jobs abroad. However, she acted without license or lawful authority to conduct recruitment of workers for overseas placement. The POEA’s licensing branch issued a certification that appellant, in her personal capacity, was not authorized to engage in recruitment activities. The general manager of the placement agency where appellant used to work denied that the scope of appellant’s work included recruiting workers and receiving placement fees. Such lack of authority to recruit is also apparent from a reading of the job description of a marketing consultant.

People of the Philippines vs. S. Angeles, G.R. No. 132376, April 11, 2002 —

Facts: Maria T. was working in Saudi Arabia when she received a call from her sister, Priscilla, who was in Paris, France. Priscilla advised Maria to return to the Philippines and await the arrival of her friend, accused S. Angeles, who would assist in processing her travel and employment documents to Paris. Heeding her sister’s advice, Maria returned to the Philippines. Marceliano T. likewise received and followed the same instructions from his sister Priscilla. They eventually met the accused to whom they gave the money required for the processing of their documents.

Precila O. and Vilma B. also received the same instructions from Precila’s sister who met the accused in Belgium. Precila’s sister told her that the accused could help process her documents for employment in Canada. The accused told Precila and Vilma that it was easier to complete the processing of their papers if they would start from Jakarta, Indonesia rather than from Manila. So Precila, Vilma and the accused S. Angeles flew to Jakarta. However, accused returned to the Philippines after two days, leaving the two behind. Precila tried to get in touch with the accused but she could not reach her. Maria and Marceliano also began looking for her after she disappeared with their money. The POEA presented a certification to the effect that accused S. Angeles was not duly licensed to recruit workers here and abroad.

The accused, however, contended that she never represented to the complainants that she could provide them with work abroad. She pointed out that none of the complainants testified on what kind of jobs were promised to them, how much they would earn, the length of their employment and even the names of their employers, which are basic subjects a prospective employee would first determine.

Issue: Whether the accused Samina Angeles is guilty of illegal recruitment.

Held: No. To prove illegal recruitment, it must be shown that the accused gave complainants the distinct impression that he had the power or ability to send complainants abroad for work such that the latter were convinced to part with their money in order to be employed. To be engaged in the practice of recruitment and placement, it is plain that there must at least be a promise or offer of an employment from the person posing as a recruiter whether locally or abroad. In the case at bar,
none of the complainants testified that the accused lured them to part with their money with promises of jobs abroad. On the contrary, they were all consistent in saying that their relatives abroad were the ones who contacted them and urged them to meet the accused who would assist them in processing their travel documents. The accused did not have to make promises of employment as these were already done by complainants’ relatives.

---

**LOSS OF COMPARATIVE ADVANTAGE**

With rapid population growth and a large backlog of unemployed workers, employment provision is a chronic problem in the Philippines. The labor force is growing by about 2.8% each year, equivalent now to about 800,000 new job entrants.

The number of OFWs has been growing at a phenomenal pace, almost quadrupling between 1980 (about 215,000 persons) and 1999 (around 837,000).

The overwhelming reason for the outflow of workers is the failure of the country’s labor markets to generate enough (sufficiently lucrative) employment for its nationals. Nominal wages have risen in spite of widespread unemployment, leading to a gradual loss of comparative advantage in labor-intensive production to countries like China, Vietnam, and Indonesia. On the other hand, real wages have generally stayed flat, because the growth in nominal wages was eaten up by inflation.

Title II

EMPLOYMENT OF NON-RESIDENT ALIENS

Overview/Key Questions: 
1. Who are the foreign nationals that cannot work in the Philippines without an employment permit?
2. Who are exempt from such requirement?

ART. 40. EMPLOYMENT PERMIT OF NON-RESIDENT ALIENS

Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor.

The employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.

For an enterprise registered in preferred areas of investments, said employment permit may be issued upon recommendation of the government agency charged with the supervision of said registered enterprise.

ART. 41. PROHIBITION AGAINST TRANSFER OF EMPLOYMENT

(a) After the issuance of an employment permit, the alien shall not transfer to another job or change his employer without prior approval of the Secretary of Labor.

(b) Any non-resident alien who shall take up employment in violation of the provision of this Title and its implementing rules and regulations shall be punished in accordance with the provisions of Articles 289 and 290 [now 303 and 304] of the Labor Code.

In addition, the alien worker shall be subject to deportation after service of his sentence.

ART. 42. SUBMISSION OF LIST

Any employer employing non-resident foreign nationals on the effective date of this Code shall submit a list of such nationals to the Secretary of Labor within thirty (30) days after such date indicating their names, citizenship,
foreign and local addresses, nature of employment and status of stay in the country. The Secretary of Labor shall then determine if they are entitled to an employment permit.

COMMENTS AND CASES

1. EMPLOYMENT OF ALIENS

Article 40 requires only non-resident aliens to secure employment permit. Resident aliens are not so required.\(^1\) For immigrants and resident aliens, what is required is an Alien Employment Registration Certificate (AERC).

Foreigners may not be employed in certain “nationalized” business. The Anti-Dummy Law (C.A. No. 108, as amended by P.D. No. 715) prohibits employment of aliens in entities that own or control a right, franchise, privilege, property or business whose exercise or enjoyment is reserved by law only to Filipinos or to corporations or associations whose capital should be at least 60% Filipino-owned. Authority to operate a public utility or to develop, exploit, and utilize natural resources can be granted only to Philippine citizens or to corporations or associations at least 60% of the capital of which is owned by such citizens. The same 60% requirement applies to financing companies.\(^2\) Under the Philippine Constitution, Article XVI, Section 11, mass media enterprises can be owned or managed only by Filipinos or by corporations or associations wholly owned or managed by them.

The Secretary of Justice has rendered an Opinion, however, that aliens may be employed in entities engaged in nationalized activities: (a) where the Secretary of Justice specifically authorizes the employment of foreign technical personnel, or (b) where the aliens are elected members of the board of directors or governing body of corporations or associations in proportion to their allowable participation in the capital of such entities.\(^3\)

Enterprises registered under the Omnibus Investments Code (E.O. No. 226) may, for a limited period, employ foreign nationals in technical, supervisory, or advisory positions.

1.1 Department Order No. 75-06

Several department orders have been issued about employment permit for foreign workers. The latest of these, replacing the earlier ones, is D.O. No. 75, dated 31 May 2006 whose full text is reproduced below.

---

\(^1\) Almodiel vs. NLRC, et al., G.R. No. 100641, June 14, 1993, 42 SCAD 354.
\(^2\) R.A. No. 5980.
\(^3\) Opinion No. 143 s. 1976 of the Secretary of Justice.
Revised Rules for the Issuance of Employment Permits to Foreign Nationals

Pursuant to the provisions of Articles 5 and 40 of P.D. No. 442, as amended, the provisions of Rule XIV Book I of its Implementing Rules and Regulations, Section 17(5), Chapter 4, Title VII of the Administrative Code of 1987, the following Rules are hereby promulgated:

Rule I. Coverage and Exemption

1. Coverage. All foreign nationals who intend to engage in gainful employment in the Philippines shall apply for Alien Employment Permit (AEP).

2. Exemption. The following categories of foreign nationals are exempt from securing an employment permit:
   2.1 All members of the diplomatic service and foreign government officials accredited by and with reciprocity arrangement with the Philippine government;
   2.2 Officers and staff of international organizations of which the Philippine government is a member, and their legitimate spouses desiring to work in the Philippines;
   2.3 Foreign nationals elected as members of the Governing Board who do not occupy any other position, but have only voting rights in the corporation;
   2.4 All foreign nationals granted exemption by law;
   2.5 Owners and representatives of foreign principals whose companies are accredited by the Philippine Overseas Employment Administration (POEA), who come to the Philippines for a limited period and solely for the purpose of interviewing Filipino applicants for employment abroad;
   2.6 Foreign nationals who come to the Philippines to teach, present and/or conduct research studies in universities and colleges as visiting, exchange or adjunct professors under formal agreements between the universities or colleges in the Philippines and foreign universities or colleges; or between the Philippine government and foreign government; provided that the exemption is on a reciprocal basis; and
   2.7 Resident foreign nationals.

Rule II. Procedure in the Processing of Applications for AEP

1. Applications shall be filed with the Regional Office having jurisdiction over the intended place of work. Only applications with the following complete documentary requirements shall be received and acted upon by the Regional Office:
   - Duly accomplished Application Form
– Photocopy of Passport, with visa or Certificate of Recognition for refugees
– Contract of Employment/Appointment or Board Secretary’s Certificate of Election
– Photocopy of Mayor’s Permit to operate business
– Photocopy of current AEP (if for renewal)

In the case of foreign nationals to be assigned in related companies, they may file their application with any of the Regional Offices having jurisdiction over the applicant’s intended place of work.

2. **Fee** — Upon filing of application, the applicant shall pay a fee of Eight Thousand Pesos (P8,000.00) for each application for AEP with a validity of one (1) year. In case the period of employment is more than one year, an additional Three Thousand Pesos (P3,000.00) shall be charged for every additional year of validity or a fraction thereof. In case of renewal, the applicant shall pay a fee of Three Thousand Pesos (P3,000.00) for each year of validity or a fraction thereof.

3. All applications shall be processed and AEP issued within 24 hours after compliance with all the documentary requirements and the payment of required fees and fines, if there is any.

4. The Regional Office shall publish all applications within two (2) working days upon receipt of application.

5. A foreign national whose application for AEP has been denied/cancelled/revoked shall not be allowed to reapply in any of the DOLE Regional Offices unless said foreign national has provided proof that the ground for denial/cancellation/revocation has been corrected.

6. **Renewal of Permit** — An application for renewal of AEP shall be filed on or before its expiration. Application of foreign nationals with expired AEPs shall be considered as a new application.

   In case of corporate officers, whose election or appointment takes place on or before expiration of AEP, the application shall be filed not later than ten (10) working days after election or appointment and before expiration of the AEP.

   In case the election or appointment will take place after the expiration of the AEP, the application for renewal shall be filed on or before the expiration of the AEP, and shall be renewed for one (1) year. In case the foreign national is not re-elected or re-appointed, the AEP shall be automatically revoked.

   Within ten (10) working days after the date of election or appointment, the foreign national shall submit to the issuing Regional Office the Board Secretary’s Certificate of Election or Appointment.
7. **Validity of Permit** — The AEP shall be valid for a period of one (1) year, unless the employment contract, consultancy services, or other modes of engagement provides otherwise, which in no case shall exceed five (5) years.

**Rule III. Suspension of AEP**

1. The AEP may be suspended by the issuing Regional Office, based on any of the following grounds, and after due process:
   1.1 The continued stay of the foreign national may result in damage to the interest of the industry or the country;
   1.2 The employment of the foreign national is suspended by the employer or by order of the Court.
2. Petitions for suspension of AEP issued shall be resolved within thirty (30) calendar days from receipt thereof.

**Rule IV. Cancellation/Revocation of AEP.** The Regional Director may cancel or revoke the AEP based on any of the following grounds, and after due process:

1. Non-compliance with any of the requirements or conditions for which the AEP was issued;
2. Misrepresentation of facts in the application;
3. Submission of falsified or tampered documents;
4. Meritorious objection or information against the employment of the foreign national as determined by the Regional Director;
5. Foreign national has a derogatory record; and
6. Employer terminated the employment of the foreign national.

Petitions for cancellation or revocation of AEP issued shall be resolved within thirty (30) calendar days from receipt thereof.

**Rule V. Remedies in Case of Suspension, Cancellation or Revocation of AEP**

1. Any aggrieved party may file a Motion for Reconsideration and/or Appeal.
2. A Motion for Reconsideration may be filed, within seven (7) calendar days after receipt of the Suspension/Cancellation/Revocation Order, with the Regional Director who shall resolve the same within ten (10) calendar days from receipt thereof.

   A Motion for Reconsideration filed after the period of seven (7) calendar days but not later than ten (10) calendar days after receipt of the denial shall be treated as an appeal.
3. Orders of the Regional Director may be appealed, within ten (10) calendar days from its receipt, to the Secretary of Labor and Employment whose decision shall be final and unappealable.
Rule VI. Fines for Working Without AEP. The Regional Director shall have the power to order and impose a fine of Ten Thousand Pesos (P10,000.00) for every year or a fraction thereof on foreign nationals found working without an AEP or with an expired AEP.

Rule VII. Miscellaneous Provisions

1. **Separability Clause** — If any provision or part of this Department Order or the application thereof to any person or circumstance is held invalid by the Courts, the remaining valid provisions of this Department Order shall not be affected.

2. **Repealing Clause** — All guidelines, rules and regulations, procedures and agreements inconsistent herewith are hereby repealed or modified accordingly.

3. **Effectivity** — These Rules shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation. The Records Officer of this Department is hereby directed to file three (3) certified copies thereof with the University of the Philippines Law Center pursuant to Section 3, Chapter 2, Book VII of the Administrative Code of 1987.

______

**General Milling Corporation vs. Torres, G.R. No. 9366, April 22, 1991 —**

**Facts:** The Department of Labor issued an alien employment permit in favor of Earl Timothy Cone, a United States citizen, as sports consultant and assistant coach for General Milling Corporation.

Later, the Board of Special Inquiry of the Commission on Immigration and Deportation approved Cone’s application for a change of admission status from temporary visitor to pre-arranged employee.

A month later, GMC requested renewal of Cone’s alien employment permit and that it be allowed to employ Cone as full-fledged coach. The DOLE Regional Director granted the request.

The Basketball Coaches Association of the Philippines appealed the issuance of said permit to the Secretary of Labor who canceled Cone’s employment permit because GMC failed to show that there was no person in the Philippines who was competent and willing to do the services required nor that the hiring of Cone would redound to the national interest.

**Ruling:** The Secretary of Labor did not act with grave abuse of discretion in revoking Cone’s Alien Employment Permit. GMC’s claim that hiring of a foreign coach is an employer’s prerogative has no legal basis. Under Article 40 of the Labor Code, an employer seeking employment of an alien must first obtain an employment permit from the Department of Labor. GMC’s right to choose whom to employ is limited by the statutory requirement of an employment permit.
GMC will not find solace in the equal protection clause of the Constitution. No comparison can be made between Cone and Norman Black as the latter is “a long-time resident” of the country and thus, not subject to Article 40 of the Labor Code which applies only to “nonresident aliens.”

Neither will obligation of contract be impaired by the implementation of the Secretary’s decision. The Labor Code and its implementing Rules and Regulations requiring alien employment permits were in existence long before GMC and Cone entered into their contract of employment. Provisions of applicable laws especially those relating to matters affected with public policy, are deemed written into contracts. Private parties cannot constitutionally contract away the applicable provisions of law.

GMC’s contention that the Labor Secretary should have deferred to the Immigration Commission’s finding as to the need to employ Cone is again bereft of legal basis. The Labor Code empowers the Labor Secretary to determine as to the availability of the services of a “person in the Philippines who is competent, able and willing at the time of the application to perform the services for which an alien is desired.” The Labor Department is the agency vested with jurisdiction to determine the question of availability of workers.

2. LEGALITY OF LIMITING EMPLOYMENT OF ALIENS

_Deec C. Chuan and Sons vs. Court of Industrial Relations, 85 Phil. 431, January 31, 1950_ —

Facts: Pending settlement by the Court of Industrial Relations [now NLRC] of a labor dispute between petitioner company and its labor union, petitioner requested for authority to hire “about 12 more laborers from time to time and on a temporary basis.” This request was granted by the CIR with the proviso, however, that “the majority of the laborers to be employed should be native.”

Petitioner assails the constitutionality of the said proviso.

1) Is the petitioner entitled to challenge the constitutionality of the order on the ground of denial of equal protection of the laws insofar as it restricts the number of aliens that may be employed in any business?

2) Does the order restrain the petitioner’s right to hire labor?

Ruling: 1) The petitioner is not entitled to challenge the constitutionality of an order which does not adversely affect it, in behalf of aliens who are prejudiced thereby. It is the prospective alien employee who may do so and only when and so far as it is being, or is about to be, applied to his disadvantage.

2) The employer’s right to hire labor is not absolute. The Legislature has the power to make regulations subject only to the condition that they pass the “reasonableness” and “public interest” tests. And under Commonwealth Act No. 103, the CIR may specify that a certain proportion of the additional laborers to be employed should be Filipinos, if such condition, in the court’s opinion, is necessary or expedient for the purpose of settling disputes, preventing further disputes, or doing justice to the parties.
BOOK TWO
HUMAN RESOURCES
DEVELOPMENT
DETERMINANTS OF NATIONAL ADVANTAGE

Why does a nation achieve international success in a particular industry? The answer lies in four broad attributes of a nation that shape the environment in which local firms compete that promote or impede the creation of competitive advantage:

1. **Factor conditions.** The nation’s position in factors of production, such as skilled labor or infrastructure, necessary to compete in a given industry.

2. **Demand conditions.** The nature of home demand for the industry’s product or service.

3. **Related and supporting industries.** The presence or absence in the nation of supplier industries and related industries that are internationally competitive.

4. **Firm strategy, structure, and rivalry.** The conditions in the nation governing how companies are created, organized, and managed, and the nature of domestic rivalry.

The determinants, individually and as a system, create the context in which a nation’s firms are born and compete: the availability of resources and skills necessary for competitive advantage in an industry; the information that shapes what opportunities are perceived and the directions in which resources and skills are deployed; the goals of the owners, managers, and employees that are involved in or carry out competition; and most importantly, the pressures on firms to invest and innovate.

Firms gain competitive advantage where their home base allows and supports the most rapid accumulation of specialized assets and skills, sometimes due solely to greater commitment. Firms gain competitive advantage in industries when their home base affords better ongoing information and insight into product and process needs. Firms gain competitive advantage when the goals of owners, managers, and employees support intense commitment and sustained investment. Ultimately, nations succeed in particular industries because their home environment is the most dynamic and the most challenging, and stimulates and prods firms to upgrade and widen their advantages over time.

MICHAEL E. PORTER
THE COMPETITIVE EDGE

The millennium will see the world’s GNP roughly divided into four quarters: the Pacific Rim, Europe, the United States, and the rest of the world....

In the world economy, education is the Pacific Rim’s competitive edge. In the new economic order the countries that invest most in education will be the most competitive.

In the Pacific Rim — where economic growth is much more rapid than in mature Western economies — the need for well-educated people is extraordinary....

In an information society, college pays off in the marketplace. Although Asian-Americans are only 1.5 percent of the US population, their incomes match or exceed those of non-Hispanic whites. Considering that almost all the Asians are immigrants, this is quite a statistic. Chinese, Japanese, Indian, and Filipino families earned $26,535, which exceeds the average white family income, according to a study by the US Civil Rights Commission....

JOHN NAISBITT AND PATRICIA ABURDENE
Megatrends 2000

In any economy, production and profits depend inescapably on the three main sources of power — violence, wealth, and knowledge. Violence is progressively converted into law. In turn, capital and money alike are now being transmitted into knowledge. Work changes in parallel, becoming more and more dependent on the manipulation of symbols. With capital, money and work all moving in the same direction, the entire basis of the economy is revolutionized. It becomes a super-symbolic economy, which operates according to rules radically different from those that prevailed during the smokestack era.

Because it reduces the need for raw materials, labor, time, space, and capital, knowledge becomes the central resource of the advanced economy.

ALVIN TOFFLER
Powershift (1991)
FOCUS ON SKILLS

The basic resources of any country are the energy, skills and character of its people. The building of institutions to develop these human resources is essential to economic advance.

Just as underdeveloped countries have underdeveloped governments, they also have underdeveloped private business communities. There is a lack of real business enterprise, business know-how, and business integrity, and of a sense of social responsibility. For private enterprise to make the contribution it should in these countries, personnel must be developed by training and experience, organizations must be established, and philosophies must change.

The low level of management skills is one of the chief obstacles to economic progress in underdeveloped countries; hence, measures to increase the supply of those skills should be ranked high among the strategic factors for promoting a sustained economic advance.

The rank and file of labor in underdeveloped countries, having had little education, is likely to be easy prey to unscrupulous manipulators. Sometimes unsuccessful doctors, lawyers, and others who have had the advantage of some education go in for labor leadership and use the influence thus acquired to seek political preferment or personal profit. The relation between productivity and high wages is rarely understood. Both employers and trade unions in newly industrializing nations lack the traditions and the skills that make for successful collective bargaining.

EUGENE STALEY
The Future of Underdeveloped Countries
(New York, 1961), pp. 230-245

More students should choose technical and professional schools for their advanced education; all schooling at the secondary and tertiary levels should be modernized to include more technical and scientific subjects, with greater emphasis on manual work experience... Inasmuch as the South Asian schools produce an oversupply of “generalists” — as evidenced by the growing number of “educated unemployed” — there is no reason why technical and vocational training should not be encouraged within the present or even a somewhat smaller secondary and tertiary education system.

GUNNAR MYRDAL
Asian Drama — An Inquiry into the Poverty of Nations
HUMAN RESOURCE DEVELOPMENT — A CRUCIAL TOOL

When I was in New York recently to inaugurate the exhibit of the National Seamen Board because we were campaigning for more jobs in the shipping industry based in New York, Exxon management told me: “Mr. Secretary, true, you now have 40,000 seafarers in world shipping, accounting for about 18 percent of total world tonnage, but the time has now come when you may no longer dump your labor surpluses on to the sea. You will have to give them training, they will have to be as well trained as the Japanese and the Koreans. You may no longer invoke your competitive price to your workers because right now if a medium size Exxon tanker consisting of a crew of 30 is run by Americans, the cost will be about 1.7 million dollars per year. If the same crew is Japanese it will be 1.5 million dollars. If the crew is Korean it will be half a million dollars. But if the crew is Filipino it will be only $300,000. We do not mind paying the Filipino what we pay the Japanese or even the Americans, provided that they will rise to the same level of training...”

Increasingly, we will have to develop our manpower in terms of skill levels that will make them competitive both here and abroad instead of relying on the customary cost-savings because of the cheap labor... We will have to realize our competitiveness not in terms of lower price for our labor but in terms of quality.

This kind of quality cannot be developed overnight. It will call for a certain state of readiness, for a kind of mental set among policy-makers that will not brook mediocrity easily, that will insist on setting high standards for the training of our manpower, and look at manpower or human resources development as a crucial tool for executing a national strategy, perhaps the very key to the realization of our long-term plan to the next 25 years. By means of the development of both our natural and manpower resources, we can still lift up a whole nation and not just a few individuals to a new plateau of dignity and well-being, of independence and self-respect.

BLAS F. OPLE
The Human Spectrum of Development
(Manila, 1981), pp. 23-24
THE MANAGER AS DEVELOPER OF PEOPLE

The manager works with a specific resource: people. And the human being is a unique resource requiring peculiar qualities in whoever attempts to work with it.

For human beings, and human beings alone, cannot be “worked.” A relationship between two people is never a relationship between a person and a “thing” to be used as a passive “resource.” Legally the slave was a “chattel,” i.e., a thing. But slavery affected the master just as much as it did the slave. It is in the nature of a human relationship that it changes both parties — whether they are man and wife, father and child, or manager and the people managed.

A human being is not “worked”; a human being is “developed.” And the direction this development takes decides whether the human being — both as a person and as a resource — will become more productive or cease, ultimately, to be productive at all. This applies, as cannot be emphasized too strongly, not alone to the man or woman who is being managed, but also to the manager. Whether a manager develops subordinates in the right direction, helps them to grow and become bigger and richer persons, will directly determine whether that manager will develop, will grow or wither, become richer or become impoverished, improve or deteriorate.

One can learn certain skills in managing people, for instance, the skill to lead a conference or to conduct an interview. One can set down practices that are conducive to development — in the structure of the relationship between manager and subordinate, in a promotion system, in the rewards and incentives of an organization. But when all is said and done, developing people still requires a basic quality in the manager which cannot be created by supplying skills or by emphasizing the importance of the task. It requires integrity of character.... Being a manager is more like being a parent, or a teacher. And in these relationships honorable dealings are not enough; personal integrity is of the essence.

PETER F. DRUCKER
People and Performance (1995)
ART. 43. STATEMENT OF OBJECTIVE

It is the objective of this Title to develop human resources, establish training institutions, and formulate such plans and programs as will ensure efficient allocation, development and utilization of the nation’s manpower and thereby promote employment and accelerate economic and social growth.

ART. 44. DEFINITIONS

As used in this Title:

(a) “Manpower” shall mean that portion of the nation’s population which has actual or potential capability to contribute directly to the production of goods and services.

(b) “Entrepreneurship” shall mean training for self-employment or assisting individual or small industries within the purview of this Title.

ART. 45. NATIONAL MANPOWER AND YOUTH COUNCIL,¹ COMPOSITION

¹NMYC has been replaced and absorbed by TESDA (Technical Education and Skills Development Authority) created under R.A. No. 7796 which was approved on August 25, 1994. For this law and its implementing rules, see the Appendix.
To carry out the objectives of this Title, the National Manpower and Youth Council, which is attached to the Department of Labor for policy and program coordination and hereinafter referred to as the Council, shall be composed of the Secretary of Labor as ex-officio chairman, the Secretary of Education and Culture as ex-officio vice-chairman, and as ex-officio members, the Secretary of Economic Planning, the Secretary of Agriculture and Food, the Secretary of Natural Resources, the Chairman of the Civil Service Commission, the Secretary of Social Welfare, the Secretary of Local Government, the Secretary of Science and Technology, the Secretary of Trade and Industry, and the Director-General of the Council. The Director General of the Council shall have no vote.

In addition, the President shall appoint the following members from the private sector: two (2) representatives of national organization of employers, two (2) representatives of national workers organizations and one representative of national family and youth organizations, each for a term of three (3) years.

ART. 46. NATIONAL MANPOWER PLAN

The Council shall formulate a long-term national manpower plan for the optimum allocation, development and utilization of manpower for employment, entrepreneurship and economic and social growth. This manpower plan shall, after adoption by the Council, be updated annually and submitted to the President for his approval. Thereafter, it shall be the controlling plan for the development of manpower resources for the entire country in accordance with the national development plan. The Council shall call upon any agency of the Government or the private sector to assist in this effort.

ART. 47. NATIONAL MANPOWER SKILLS CENTER

The Council shall establish a National Manpower Skills Center and regional and local training centers for the purpose of promoting the development of skills. The centers shall be administered and operated under such rules and regulations as may be established by the Council.

ART. 48. ESTABLISHMENT AND FORMULATION OF SKILLS STANDARDS

There shall be national skills standard for industry trades to be established by the Council in consultation with employers and workers organizations and appropriate government authorities. The Council shall thereafter administer the national skills standards.
ART. 49. ADMINISTRATION OF TRAINING PROGRAMS
The Council shall provide, through the Secretariat, instructor training, entrepreneurship development, training in vocations, trades and other fields of employment, and assist any employer or organization in training schemes to attain its objectives under rules and regulations which the Council shall establish for this purpose.

The Council shall exercise, through the Secretariat, authority and jurisdiction over, and administer, ongoing technical assistance programs and on grants-in-aid for manpower and youth development including those which may be entered into between the Government of the Philippines and international and foreign organizations and nations, as well as persons and organizations in the Philippines.

In order to integrate the national manpower development efforts, all manpower training schemes as provided for in this Code shall be coordinated with the Council, particularly those having to do with the setting of skills standards. For this purpose, existing manpower training programs in the Government and in the private sector shall be reported to the Council which may regulate such programs to make them conform with national development programs.

This Article shall not include apprentices, learners and handicapped workers as governed by appropriate provisions of this Code.

ART. 50. INDUSTRY BOARDS
The Council shall establish industry boards to assist in the establishment of manpower development schemes, trades and skills standards and such other functions as will provide direct participation of employers and workers in the fulfillment of the Council’s objectives, in accordance with guidelines to be established by the Council and in consultation with the National Economic and Development Authority.

The maintenance and operations of the industry boards shall be financed through a funding scheme under such rates of fees and manners of collection and disbursement as may be determined by the Council.

ART. 51. EMPLOYMENT SERVICE TRAINING FUNCTIONS
The Council shall utilize the employment service of the Department of Labor for the placement of its graduates. The Bureau of Employment Services shall render assistance to the Council in the measurement of unemployment and underemployment, conduct of local manpower resource surveys and occupational studies including an inventory of the labor force, establishment and maintenance without charge of a national register of technicians who have successfully completed a training program under this Act and skilled manpower including its periodic publication, and maintenance of an adequate and up-to-date system of employment information.
ART. 52. INCENTIVE SCHEME

An additional deduction from taxable income of one-half (1/2) of the value of labor training expenses incurred for developmental programs shall be granted to the person or enterprise concerned provided that such development programs, other than apprenticeship, are approved by the Council and the deduction does not exceed ten percent (10%) of direct labor wage.

There shall be a review of the said scheme two years after its implementation.

ART. 53. COUNCIL SECRETARIAT

The Council shall have a Secretariat headed by a Director General who shall be assisted by a Deputy Director General both of whom shall be career administrators appointed by the President of the Philippines on recommendation of the Secretary of Labor. The Secretariat shall be under the administrative supervision of the Secretary of Labor and shall have an Office of Manpower Planning and Development, an Office of Vocational Preparation, a National Manpower Skills Center, regional manpower development offices, and such other offices as may be necessary.

The Director General shall have the rank and emoluments of an undersecretary and shall serve for a term of ten (10) years. The Executive Directors of the Office of Manpower Planning and Development, the Office of Vocational Preparation, National Manpower Skills Center shall have the rank and emoluments of a bureau director and shall be subject to Civil Service Law, rules and regulations. The Director General, Deputy General and Executive Directors shall be natural-born citizens, between 30 and 50 years of age at the time of appointment, with a master’s degree or its equivalent, and experience in national planning and development of human resources. The Executive Director of the National Manpower Skills Center shall, in addition to the foregoing qualifications, have undergone training in center management. Directors shall be appointed by the President on the recommendation of the Secretary of Labor.

The Director General shall appoint such personnel necessary to carry out the objectives, policies and functions of the Council subject to Civil Service rules. The regular professional and technical personnel shall be exempt from WAPCO rules and regulations.

The Secretariat shall have the following functions and responsibilities:

(a) To prepare and recommend the manpower plan for approval by the Council;

(b) To recommend allocation of resources for the implementation of the manpower plan as approved by the Council;
(c) To carry out the manpower plan as the implementing arm of the Council;

(d) To effect the efficient performance of the functions of the Council and the achievement of the objectives of this Title;

(e) To determine specific allocation of resources for projects to be undertaken pursuant to approved manpower plans;

(f) To submit to the Council periodic reports on progress and accomplishment of work programs;

(g) To prepare for approval by the Council an annual report to the President on plans, programs and projects on manpower and out-of-school youth developments;

(h) To enter into agreements to implement approved plans and programs and perform any and all such acts as will fulfill the objectives of this Code as well as ensure the efficient performance of the functions of the Council; and

(i) To perform such other functions as may be authorized by the Council.

ART. 54. REGIONAL MANPOWER DEVELOPMENT OFFICES

The council shall create regional manpower development offices which shall determine the manpower needs of industry, agriculture and other sectors of the economy within their respective jurisdiction; provide the Council central planners with the data for updating the National Manpower plan; recommend programs for the regional level agencies engaged in manpower and youth development within the policies formulated by the Council; and administer and supervise Secretariat training program within the region and perform such other functions as may be authorized by the Council.

ART. 55. CONSULTANTS AND TECHNICAL ASSISTANCE, PUBLICATION AND RESEARCH

In pursuing its objectives, the Council is authorized to set aside a portion of its appropriation for the hiring of the services of qualified consultants, and/or private organizations for research work and publication. It shall avail itself of the services of the Government as may be required.

ART. 56. RULES AND REGULATIONS

The Council shall define its broad functions and issue appropriate rules and regulations necessary to implement the provisions of this Code.
Title II

TRAINING AND EMPLOYMENT OF SPECIAL WORKERS

Chapter I

APPRENTICES

ART. 57. STATEMENT OF OBJECTIVES
This Title aims:

(1) To help meet the demand of the economy for trained manpower;

(2) To establish a national apprenticeship program through the participation of employers, workers and government and non-government agencies; and

(3) To establish apprenticeship standards for the protection of apprentices.

ART. 58. DEFINITION OF TERMS
As used in this Title:

(a) “Apprenticeship” means practical training on the job supplemented by related theoretical instruction.

(b) An “apprentice” is a worker who is covered by a written apprenticeship agreement with an individual employer or any of the entities recognized under this Chapter.

(c) An “apprenticeable occupation” means any trade, form of employment or occupation which requires more than three (3) months of practical training on the job supplemented by related theoretical instruction. (See Sec. 4[m] R.A. No. 7796, TESDA law.)

(d) “Apprenticeship agreement” is an employment contract wherein the employer binds himself to train the apprentice and the apprentice in turn accepts the terms of training.

ART. 59. QUALIFICATIONS OF APPRENTICE
To qualify as an apprentice, a person shall:

(a) Be at least fourteen (14) years of age;
(b) Possess vocational aptitude and capacity for appropriate tests; and
(c) Possess the ability to comprehend and follow oral and written instructions.

Trade and industry associations may recommend to the Secretary of Labor appropriate educational requirements for different occupations.

ART. 60. EMPLOYMENT OF APPRENTICES

Only employers in the highly technical industries may employ apprentices and only in apprenticeable occupations approved by the Minister of Labor and Employment.

COMMENTS

1. GENERAL POLICY AND GUIDELINES IN THE IMPLEMENTATION OF APPRENTICESHIP PROGRAM

Apprenticeship, generally understood, is the arrangement and the period when an upcoming worker undergoes hands-on training, more or less formal, to learn the ropes of a skilled job. It is usually the entry point to the world of work. A national apprenticeship program is needed to line-up a succession of trained young workers. Through apprenticeship, a nation builds, as it were, an army of workers possessing industrial skills.

Under Department Order No. 8, Series of 1989, issued on March 9, 1989, the policy of the Department of Labor and Employment is to:

a. Obtain the voluntary adoption of apprenticeship programs by employers and workers to help meet the increasing demand for skilled manpower necessary for economic development, and

b. Increase worker productivity through a relevant and effective apprenticeship program.

Under the Department Order, the Bureau of Local Employment is required to undertake the review of trades, occupations and jobs in all sectors of the economy to determine apprenticeability, after which it should publish a list of approved apprenticeable occupations. The Regional Offices are required to screen and evaluate apprenticeship programs so that only companies, entities and establishments with adequate facilities for training are recognized and issued the corresponding certificate of program recognition. The certificate is required prior to the hiring of apprentices. The creation of a Plant Apprenticeship Committee, which as much as possible should be tripartite, is encouraged. Such committee shall organize, administer and monitor the technical progress of the program, ratify every apprenticeship agreement processed by the organizing

1As amended by Sec. 1, Executive Order 111, December 24, 1986.
company, and recommend to the Regional Office concerned the issuance of a certificate of completion to the apprentice after passing the appropriate trade test.

2. **TESDA IMPLEMENTS THE APPRENTICESHIP PROGRAM**

   Section 18 of the TESDA Act of 1994 expressly empowers the TESDA to implement and administer the apprenticeship program in accordance with existing laws, rules and regulations.

3. **REQUISITES FOR EMPLOYMENT OF APPRENTICES**

   The following are the requisites for employment of apprentices:
   
   (a) The employer should be engaged in a business that is considered a highly technical industry. A highly technical industry is a trade, business, enterprise, industry or other activity which utilizes the application of advanced technology.¹

   (b) The job which the apprentice will work on should be an apprenticeable occupation.

   An apprenticeable occupation is one which is officially endorsed by a tripartite body and approved for apprenticeship by the Technical Education and Skills Development Authority (TESDA). It is no longer the Secretary of Labor and Employment, but the TESDA, who approves apprenticeable occupations.²

4. **APPRENTICEABLE AGE**

   The apprenticeable age under this article is fourteen (14) years but fifteen (15) under the Implementing Rules (Book II, Rule VI, Section 11). The elementary rule is that an implementing regulation cannot prevail over a statutory provision. In any case, the question of variance is rendered moot by R.A. No. 7610, as amended by R.A. No. 7658 (approved on November 9, 1993), which explicitly prohibits employment of children below fifteen (15) years of age. The same law recognizes certain exceptions, but being an apprentice in an apprenticeable occupation is not one of the exceptions.

   **ART. 61. CONTENTS OF APPRENTICESHIP AGREEMENTS**

   Apprenticeship agreements, including the wage rates of apprentices, shall conform to the rules issued by the Minister of Labor and Employment. The period of apprenticeship shall not exceed six months. Apprenticeship agreements providing for wage rates below the legal minimum wage, which in no case shall start below 75 percent of the applicable minimum wage, may be entered into only in accordance with apprenticeship programs duly approved by the Minister of Labor and Employment. The Ministry shall develop standard model programs of apprenticeship.

¹Sec. 1[j], Rule VI, Book II, Rules Implementing the Labor Code.
²Sec. 4[m] R.A. No. 7796.
APPRENTICES

ART. 61

COMMENTS AND CASES

APPRENTICESHIP NEEDS DOLE’S PRIOR APPROVAL, OR APPRENTICE BECOMES REGULAR EMPLOYEE

Nitto Enterprises vs. National Labor Relations Commission, and R. Capili, G.R. No. 114337, September 29, 1995 —

Facts: Petitioner Nitto Enterprises hired Capili as an apprentice machinist under an apprenticeship agreement for six (6) months from May 28, 1990 to November 28, 1990 for a daily wage, which was 75% of the applicable minimum wage.

On August 3, 1990, Capili was asked to resign in a letter which read:

Wala siyang tanggap ng utos mula sa supervisor at wala siyang experiencia kung papaano gamitin ang "TOOL" sa pagbuhat ng salamin, sarili niyang desisyon ang paggamit ng tool at may disgrasya at nadamay pa ang isang sekretarya ng kompanya.

Sa araw ding ito limang (5) minuto ang nakakalipas mula alas-singko ng hapon siya ay pumasok sa shop na hindi naman sakop ng kanyang trabaho. Pinakialaman at kinalikot ang makina at nadisgrasya niyang sariling kamay.

Ang kompanya ang magbabayad ng lahat ng gastos pagtanggal ng tahi ng kanyang kamay, pagkatapos ng siyam na araw mula ika-2 ng Agosto.

Sa lahat ng nakasulat sa itaas, hinihingi ng kompanya ang kanyang resignasyon, kasama ng kanyang confirmasyon at pag-ayon na ang lahat ng nakasulat sa itaas ay totoo.

Capili signed the letter and executed a Quitclaim and Release in favor of petitioner in consideration of P1,912.79. Three days after, he filed a complaint for illegal dismissal and payment of other monetary benefits.

The Labor Arbiter found the termination valid and dismissed the money claim. But on appeal, the NLRC reversed the decision and directed Nitto to reinstate Capili with backwages because he was a regular employee who was illegally dismissed.

The employer assails the NLRC’s finding that Capili cannot be considered an apprentice since no apprenticeship program had yet been filed and approved by DOLE when the alleged apprenticeship agreement was executed and Capili was employed on May 28, 1990. However, the apprenticeship agreement was filed with DOLE only on June 7, 1990. The approval by DOLE of the apprenticeship agreement came much later.

Ruling: Petitioner did not comply with the requirements of the law (see Article 61, Labor Code) which provides that apprenticeship agreements shall be entered into by the employer and apprentice only in accordance with the apprenticeship program duly approved by the Minister of Labor and Employment.

The apprenticeship agreement between Nitto and Capili has no force and effect in the absence of a valid apprenticeship program duly approved by the DOLE. Hence, Capili’s assertion that he was hired not as an apprentice but as a delivery boy (“kargador” or “pahinante”) deserves credence. He should be considered a regular employee.
ART. 62. **SIGNING OF APPRENTICESHIP AGREEMENT**

Every apprenticeship agreement shall be signed by the employer or his agent, or by an authorized representative of any of the recognized organizations, associations or groups, and by the apprentice.

An apprenticeship agreement with a minor shall be signed in his behalf by his parent or guardian or, if the latter is not available, by an authorized representative of the Department of Labor, and the same shall be binding during its lifetime.

Every apprenticeship agreement entered into under this Title shall be ratified by the appropriate apprenticeship committee, if any, and a copy thereof shall be furnished both the employer and the apprentice.

ART. 63. **VENUE OF APPRENTICESHIP PROGRAMS**

Any firm, employer, group or association, industry, organization or civic group wishing to organize an apprenticeship program may choose from any of the following apprenticeship schemes as the training venue of apprentices:

(a) Apprenticeship conducted entirely by and within the sponsoring firm, establishment or entity;
(b) Apprenticeship entirely within a Department of Labor training center or other public training institutions; or
(c) Initial training in trade fundamentals in a training center or other institutions with subsequent actual work participation within the sponsoring firm or entity during the final stage of training.

ART. 64. **SPONSORING OF APPRENTICESHIP PROGRAM**

Any of the apprenticeship schemes recognized herein may be undertaken or sponsored by a single employer or firm or by a group or association thereof, or by a civic organization. Actual training of apprentices may be undertaken:

(a) In the premises of the sponsoring employer in the case of individual apprenticeship programs;
(b) In the premises of one or several designated firms in the case of programs sponsored by a group or association of employers or by a civic organization; or
(c) In a Department of Labor training center or other public training institution.
ART. 65. INVESTIGATION OF VIOLATION OF APPRENTICESHIP AGREEMENT

Upon complaint of any interested person or upon its own initiative, the appropriate agency of the Department of Labor or its authorized representative shall investigate any violation of an apprenticeship agreement pursuant to such rules and regulations as may be prescribed by the Secretary of Labor.

ART. 66. APPEAL TO THE SECRETARY OF LABOR

The decision of the authorized agency of the Department of Labor may be appealed by any aggrieved person to the Secretary of Labor within five (5) days from receipt of the decision. The decision of the Secretary of Labor shall be final and executory.

ART. 67. EXHAUSTION OF ADMINISTRATIVE REMEDIES

No person shall institute any action for the enforcement of any apprenticeship agreement or damages for breach of any such agreement, unless he has exhausted all available administrative remedies.

ART. 68. APTITUDE TESTING OF APPLICANTS

Consonant with the minimum qualifications of apprentice-applicants required under this Chapter, employers or entities with duly recognized apprenticeship programs shall have primary responsibility for providing appropriate aptitude tests in the selection of apprentices. If they do not have adequate facilities for the purpose, the Department of Labor shall perform the service free of charge.

ART. 69. RESPONSIBILITY FOR THEORETICAL INSTRUCTION

Supplementary theoretical instruction to apprentices in cases where the program is undertaken in the plant may be done by the employer. If the latter is not prepared to assume the responsibility, the same may be delegated to an appropriate government agency.

ART. 70. VOLUNTARY ORGANIZATION OF APPRENTICESHIP PROGRAMS; EXEMPTIONS

(a) The organization of apprenticeship program shall be primarily a voluntary undertaking of employers;

(b) When national security or particular requirements of economic development so demand, the President of the Philippines may require compulsory training of apprentices in certain trades, occupations, jobs or employment levels where shortage of trained manpower is deemed critical as determined by the Secretary of Labor. Appropriate rules in this connection shall be promulgated by the Secretary of Labor as the need arises;
(c) Where services of foreign technicians are utilized by private companies in apprenti-able trades, said companies are required to set up appropriate apprenticeship programs.

ART. 71. DEDUCTIBILITY OF TRAINING COSTS

An additional deduction from taxable income of one-half (1/2) of the value of labor training expenses incurred for developing the productivity and efficiency of apprentices shall be granted to the person or enterprise organizing an apprenticeship program: Provided, That such program is duly recognized by the Department of Labor: Provided, further, That such deduction shall not exceed ten (10%) percent of direct labor wage: And provided, finally, That the person or enterprise who wishes to avail himself or itself of this incentive should pay his apprentices the minimum wage.

ART. 72. APPRENTICES WITHOUT COMPENSATION

The Secretary of Labor may authorize the hiring of apprentices without compensation whose training on the job is required by the school or training program curriculum or as a requisite for graduation or board examination.

COMMENTs AND CASES

WORKING SCHOLAR; LIABILITY OF SCHOOL

In relation to Article 72, the Implementing Rules provide: There is no employer-employee relationship between students on one hand, and schools, colleges or universities, on the other, where there is written agreement between them under which the former agree to work for the latter in exchange for the privilege to study free of charge, provided the students are given real opportunities, including such facilities as may be reasonable and necessary to finish their chosen courses under such agreement.¹

If the student (referred to in the preceding implementing rule) injures a third party, does the school become liable? In the Filamer case, the Supreme Court at first said no and then reconsidered.

Filamer Christian Institute vs. Hon. Intermediate Appellate Court, et al., G.R. No. 75112, August 17, 1992 —

Facts: Kapunan, Sr., an 82-year-old retired teacher, was struck by a jeepney owned by Filamer Christian Institute and driven by its alleged employee, Funtecha. Because Kapunan suffered multiple injuries and was hospitalized, he filed a criminal case against Funtecha alone but reserved his right to file an independent civil action. Funtecha was found guilty.

Pursuant to his reservation, Kapunan commenced a civil case for damages not only against Funtecha but also the Institute and its president. The trial court and the Court of Appeals found the defendants liable for damages. The school petitioned for review by the Supreme Court.

Note: The Supreme Court, in its decision of October 16, 1990, ruled that the petitioner [school] was not liable for the injuries caused by Funtecha because the latter was not an authorized driver for whose acts the Institute should be made answerable. Funtecha was merely a working scholar. Under Section 14, Rule X, Book III of the Rules and Regulations Implementing the Labor Code, Funtecha was not an employee of the school. The heirs of the late Kapunan sought reconsideration of this ruling. They maintained that the applicable law was Article 2180 of the Civil Code and not the Labor Code’s implementing rule. Under Article 2180, an injured party shall have recourse against the servant as well as the school for whom, at the time of the incident, the servant was performing an act in furtherance of the interest and for the benefit of the school.

Ruling: After a re-examination of the laws relevant to the facts, the Court reconsidered its decision. Applying the Civil Code instead of the Labor Code, the Court finally ruled:

It is undisputed that Funtecha was a working student, being a part-time janitor and scholar of petitioner Filamer. He was, in relation to the school, an employee even if he was assigned to clean the school premises for only two (2) hours in the morning of each school day.

In learning how to drive while taking the vehicle home in the direction of Allan’s [the driver’s] house, Funtecha definitely was not having a joy ride. Funtecha was not driving for the purpose of his enjoyment or for a “frolic of his own” but ultimately, for the service for which the jeep was intended by the petitioner school. xxx Therefore, the Court is constrained to conclude that the act of Funtecha in taking over the steering wheel was one done for and in behalf of his employer for which act the petitioner-school cannot deny any responsibility by arguing that it was done beyond the scope of his janitorial duties.

Section 14, Rule X, Book III of the Rules implementing the Labor Code, on which the petitioner anchors its defense, was promulgated by the Secretary of Labor and Employment only for the purpose of administering and enforcing the provisions of the Labor Code on conditions of employment. Particularly, Rule X of Book III provides guidelines on the manner by which the powers of the Labor Secretary shall be exercised... on what records should be kept, maintained and preserved; on payroll; and on the exclusion of working scholars from, and inclusion of resident physicians in, the employment coverage as far as compliance with the substantive labor provisions on working conditions rest periods and wages, is concerned.

In other words, Rule X is merely a guide to the enforcement of the substantive law on labor. The Court, thus, makes the distinction and so holds that Section 14, Rule X, Book III of the Rules is not the decisive law in a civil suit for damages instituted by an injured person during a vehicular accident against a working student of a school and against the school itself.
The present case does not deal with a labor dispute on conditions of employment between an alleged employee and an alleged employer. It involves a claim brought by one for damages for injury caused by the patently negligent acts of a person, against both doer-employee and his employer. Hence, the reliance on the implementing rule on labor to disregard the primary liability of an employer under Article 2180 of the Civil Code is misplaced. An implementing rule on labor cannot be used by an employer as a shield to avoid liability under the substantive provisions of the Civil Code.
Chapter II

LEARNERS

ART. 73. LEARNERS DEFINED
Learners are persons hired as trainees in semi-skilled and other industrial occupations which are non-apprenticeable and which may be learned through practical training on the job in a relatively short period of time which shall not exceed three (3) months.

ART. 74. WHEN LEARNERS MAY BE HIRED
Learners may be employed when no experienced workers are available, the employment of learners is necessary to prevent curtailment of employment opportunities, and the employment does not create unfair competition in terms of labor costs or impair or lower working standards.

ART. 75. LEARNERSHIP AGREEMENT
Any employer desiring to employ learners shall enter into a learnership agreement with them, which agreement shall include:

(a) The names and addresses of the learners;
(b) The duration of the learnership period, which shall not exceed three (3) months;
(c) The wages or salary rates of the learners which shall begin at not less than seventy-five percent (75%) of the applicable minimum wage; and
(d) A commitment to employ the learners if they so desire, as regular employees upon completion of the learnership. All learners who have been allowed or suffered to work during the first two (2) months shall be deemed regular employees if training is terminated by the employer before the end of the stipulated period through no fault of the learner.

The learnership agreement shall be subject to inspection by the Secretary of Labor, or his duly authorized representatives.

ART. 76. LEARNERS IN PIECEWORK
Learners employed in piece or incentive-rate jobs during the training period shall be paid in full for the work done.

ART. 77. PENALTY CLAUSE
Any violation of this Chapter or its implementing rules and regulations shall be subject to the general penalty clause provided for in this Code.
LEARNERSHIP VS. APPRENTICESHIP

Learnership and apprenticeship are similar because they both mean training periods for jobs requiring skills that can be acquired through actual work experience. And because both a learner and an apprentice are not as fully productive as regular workers, the learner and the apprentice may be paid wages twenty-five percent lower than the applicable legal minimum wage.

They differ in the focus and the terms of training. A learner trains in a semi-skilled job or in industrial occupations that require training for less than three months. An apprentice, on the other hand, trains in a highly skilled job or in a job found only in a highly technical industry. Because it is a highly skilled job, the training period exceeds three months. For a learner, the training period is shorter because the job is more easily learned than that in apprenticeship. The job, in other words, is “non-apprenticeable” because its practical skills can be learned in three (not six) months. A learner is not an apprentice but an apprentice is, conceptually, also a learner.

Accordingly, because the job is more easily learnable in learnership than in apprenticeship, the employer is committed to hire the learner-trainee as an employee after the training period. No such commitment exists in apprenticeship.

Finally, employment of apprentices, as stated in Article 60, is legally allowed only in highly technical industries and only in apprenticeable occupations approved by DOLE. Learnership is allowed even for non-technical jobs.
Chapter III

HANDICAPPED WORKERS

ART. 78. DEFINITION
Handicapped workers are those whose earning capacity is impaired by age or physical or mental deficiency or injury.

ART. 79. WHEN EMPLOYABLE
Handicapped workers may be employed when their employment is necessary to prevent curtailment of employment opportunities and when it does not create unfair competition in labor costs or impair or lower working standards.

ART. 80. EMPLOYMENT AGREEMENT
Any employer who employs handicapped workers shall enter into an employment agreement with them, which agreement shall include:

(a) The names and addresses of the handicapped workers to be employed;
(b) The rate to be paid the handicapped workers which shall be not less than seventy-five (75%) percent of the applicable legal minimum wage;
(c) The duration of employment period; and
(d) The work to be performed by handicapped workers.

The employment agreement shall be subject to inspection by the Secretary of Labor or his duly authorized representatives.

ART. 81. ELIGIBILITY FOR APPRENTICESHIP
Subject to the appropriate provisions of this Code, handicapped workers may be hired as apprentices or learners if their handicap is not such as to effectively impede the performance of job operations in the particular occupations for which they are hired.

COMMENTS

1. THE MAGNA CARTA FOR DISABLED PERSONS
The “Magna Carta for Disabled Persons” (Republic Act No. 7277, approved on March 24, 1992) ensures equal opportunities for disabled persons and prohibits discrimination against them.
**Qualified Disabled Employee**

It provides for “Equal Opportunity for Employment” by stating that “No disabled person shall be denied access to opportunities for suitable employment. A qualified disabled employee shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as a qualified able-bodied person.”

A “Qualified Individual with a Disability” is defined in the law as “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. However, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job. This description shall be considered evidence of the essential functions of the job.”

If suitable employment for disabled persons cannot be found through open employment, the State shall endeavor to provide it by means of sheltered employment. In the placement of disabled persons in sheltered employment, it shall accord due regard to the individual qualities, vocational goals and inclinations to ensure a good working atmosphere and efficient production.

**Sheltered Employment** refers to the provision of productive work for disabled persons through workshops providing special facilities, income-producing projects or homework schemes with a view to giving them the opportunity to earn a living thus enabling them to acquire a working capacity required in open industry.

**Discrimination on Employment.** — No entity, whether public or private, shall discriminate against a qualified disabled person by reason of disability in regard to job application procedures, the hiring, promotion, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

The following constitutes acts of discrimination:

a) Limiting, segregating or classifying a disabled job applicant in such a manner that adversely affects his work opportunities;

b) Using qualification standards, employment test or other selection criteria that screen out or tend to screen out a disabled person unless such standards, test or other selection criteria are shown to be job-related for the position in question and are consistent with business necessity;

c) Utilizing standards, criteria, or methods of administration that:

1) have the effect of discrimination on the basis of disability; or

2) perpetuate the discrimination of others who are subject to common administrative control.

---

1Sec. 4[1], R.A. No. 7277.
2Sec. 6, ibid.
3Sec. 4[i], ibid.
d) Providing less compensation, such as salary, wage or other forms of remuneration and fringe benefits, to a qualified disabled employee, by reason of his disability, than the amount to which a non-disabled person performing the same work is entitled;

e) Favoring a non-disabled employee over a qualified disabled employee with respect to promotion, training opportunities, study and scholarship grants, solely on account of the latter’s disability;

f) Re-assigning or transferring a disabled employee to a job or position he cannot perform by reason of his disability;

g) Dismissing or terminating the services of a disabled employee by reason of his disability unless the employer can prove that he impairs the satisfactory performance of the work involved to the prejudice of the business entity: Provided, however, That the employer first sought to provide reasonable accommodations for disabled persons;

h) Failing to select or administer in the most effective manner employment tests which accurately reflect the skills, aptitude or other factor of the disabled applicant or employee that such test purports to measure, rather than the impaired sensory, manual or speaking skills of such applicant or employee, if any; and

i) Excluding disabled persons from membership in labor unions or similar organizations.¹


2. QUALIFIED DISABLED PERSONS AS REGULAR EMPLOYEES

Even handicapped persons, employed by a bank to accommodate the request of the social welfare secretary, may become regular employees. (See Bernardo vs. NLRC in comments under Article 294.)

¹Sec. 32, R.A. No. 7277.
BOOK THREE

CONDITIONS OF EMPLOYMENT
BASIC DUTIES OF WORKERS AND EMPLOYERS

Among these duties, the following concern the poor and the workers: To perform entirely and conscientiously whatever work has been voluntarily and equitably agreed upon; not in any way to injure the property or to harm the person of employers; in protecting their own interests, to refrain from violence and never to engage in rioting; not to associate with vicious men who craftily hold out exaggerated hopes and make huge promises, a course usually ending in vain regrets and in the destruction of wealth.

The following duties, on the other hand, concern rich men and employers: Workers are not to be treated as slaves; justice demands that the dignity of human personality be respected in them, ennobled as it has been through what we call the Christian character. If we hearken to natural reason and to Christian philosophy, gainful occupations are not a mark of shame to man, but rather of respect, as they provide him with an honorable means of supporting life. It is shameful and inhuman, however, to use men as things for gain and to put no more value on them than what they are worth in muscle and energy.

Likewise, it is enjoined that the religious interests and the spiritual well-being of the workers receive proper consideration. Wherefore, it is the duty of employers to see that the worker is free for adequate periods to attend to his religious obligations; not to expose anyone to corrupting influences or the enticements of sin, and in no way to alienate him from care for his family and the practice of thrift. Likewise, more work is not to be imposed than strength can endure, nor that kind of work which is unsuited to a worker’s age or sex.

Among the most important duties of employers, the principal one is to give every worker what is justly due him. Assuredly, to establish a rule of pay in accord with justice, many factors must be taken into account. But, in general, the rich and employers should remember that no laws, either human or divine, permit them for their own profit to oppress the needy and the wretched or to seek gain from another’s want. Finally, the rich must religiously avoid harming in any way the savings of the workers either by coercion, or by fraud, or by the arts of usury; and the more for this reason, that the workers are not sufficiently protected against injustices and violence, and their property, being so meager, ought to be regarded as all the more sacred.

Could not the observance alone of the foregoing laws remove the bitterness and the causes of conflict?

POPE LEO XII
in Rerum Novarum (1891)
One of the real problems of economic development nowadays, which did not exist in earlier times, is the temptation of underdeveloped countries to imitate the advanced social legislation of highly developed countries, or even to go them one better, without first imitating their productivity. It requires a high quality of leadership, both in the labor movement and in government, to select those items of modern social legislation which can be used to smooth the path of development and prevent abuses without stifling economic growth, and to reject those which cannot be supported until more growth has occurred.

EUGENE STALEY

*The Future of Underdeveloped Countries*


Another aspect of the internal policies of the underdeveloped areas which is inimical to rapid development is insistence on early introduction of a full-fledged welfare state. In the now advanced countries, the welfare state appeared only after generations of industrialization. In the present underdeveloped areas, the usual policy seems to reverse this process. Most of these countries want the blessings of the welfare state today, complete with old age pension, unemployment insurance, family allowances, health insurance, forty-hour week, and all the trimmings. Similarly, trade unions became powerful in the now advanced countries only after considerable industrial development had taken place. Many of the now underdeveloped areas, on the other hand, are encouraging the development of trade unionism in advance of industrialization. In some countries the trade unions, backed by governmental arbitration board, are demanding higher wages, shorter hours, and “fringe benefits” which do not reflect any commensurate rise in man-hour productivity... Too few of the trade-union leaders of underdeveloped countries have learned the hard lesson that a higher standard of living for labor as a group requires productivity of labor as a group.

BENJAMIN HIGGINS

*Economic Development*

(New York, 1968), pp. 199-200
SHIFTING WEALTH TO BRAINPOWER INDUSTRIES

In the late nineteenth and twentieth centuries, those with natural resources, such as Argentina and Chile, were rich while those without natural resources, such as Japan were destined to be poor. Everyone who became rich in the nineteenth and twentieth centuries had natural resources. Once a country became rich, it tended to stay rich. Having a higher income, it saved more; saving more, it invested more; investing more, it worked with more plant and equipment; working with more capital its productivity was higher; and having higher productivity, it could pay higher wages. For those who grew rich, there was a virtuous cycle leading them to more riches. As they became rich, they shifted to capital-intensive product that generated even higher levels of labor productivity and even higher wages.

In contrast, consider the list made in 1990 by the Ministry of International Trade and Industry in Japan speculating as to what would be the most rapidly growing industries in the 1990s and the early part of the twenty-first century: Microelectronics, beotechnology, the new material science industries, telecommunications, civilian aircraft manufacturing, machine tools and robots, and computers (hardware and software). All of them are man-made brainpower industries that could be located anywhere on the face of the earth. Where they will be located depends upon who organizes the brainpower to capture them.

Natural resource endorsement have fallen out of the competitive equation. Modern products simply use fewer natural resources... Few will become rich in the twenty-first century based simply on their possession of raw materials...

Capital availability has also fallen out of the competitive equation.... Effectively there simply is no such thing as a capital-rich or capital-poor country when it comes to investments. Capital intensive products are not automatically made in rich countries. Workers in rich countries won’t automatically work with more capital, have higher levels of productivity, or enjoy higher wages.

Today knowledge and skills now stand alone as the only source of comparative advantage. They have become the key ingredient in the late twentieth century’s location of economic activity...

Product invention, if a country is also not the world’s low-cost producer, gives one very little economic advantage. Technology has never been more important, but what matters more is being the leader in new process technologies and what matters less is being the leader in new product technologies.
Being the low-cost producer is partly a matter of wages but to a much greater extent it is a matter of becoming the masters of process technologies, having the skills and knowing how to put new things together, and the ability to manage the production processes. To be masters of process technologies a successful business must be managed so that there is a seamless web among invention, design manufacturing, sales, logistics and services that competitors cannot match. The secret of being the best is found, not in being either labor- or capital-intensive or even in being management-intensive, but in having the skills base throughout the organization that allows it to be the low-cost integrator of all of these activities.

The industries of the future have to be invented. They don’t just exist. In the era ahead countries have to make the investments in knowledge and skills that will create a set of man-made brainpower industries that will allow their citizens to have high-wages and a high standard of living. By way of contrast, natural resource industries were essentially a birth-right. One was born in a country with a lot of natural resources or one wasn’t. Man-made brain power industries are not a birth-right. No country acquires these industries without effort and without making the investments necessary to create them.

LESTER C. THUROW
The Future of Capitalism
FREE MARKET — BUT NOT TOO FREE

The people of the world, if we can believe the polling data, have clearly embraced free markets. A 2005 survey of citizens in 20 nations found a “striking global consensus that the free market economic system is best....”

China showed the highest level of support for capitalism with 74 percent approval followed by the Philippines (73 %), the United States (71 %) and India (70 %). The French were least enthusiastic with only 36 percent support for the free market economy. While all surveyed nations save France affirmed their faith in the free market, those same respondents somewhat paradoxically, and by even bigger margins, favored more government regulation of large companies. “Solid” majorities in all 20 countries favored more regulation of big business in order to protect worker rights (mean 74 %), consumer rights (73 %), and the environment (75 %). Most agreed that: “The free enterprise system and free market economy work best in society’s interest when accompanied by strong government regulations.”

Thus, the survey indicates the world wants free markets, but perhaps not “too free.”

TONY MCADAMS, NANCY NERLUND, and KIREN DOSANJH ZUCKER
Law, Business, and Society
(McGraw-Hill, 2009), p. 4

“TOUCH LABOR” — “KNOWLEDGE WORKER”

In the past, observers feared that machines might one day eliminate the need for people at work. In reality, just the opposite has been occurring. People are more important in today’s organizations than ever before... Advanced technology tends to reduce the number of jobs that require little skill and to increase the number of jobs that require considerable skill. In general, this transformation has been referred to as a shift from “touch labor” to “knowledge workers” in which employee responsibilities expand to include a richer array of activities such as planning, decision-making, and problem-solving.

SCOTT SNELL and GEORGE BOHLANDER
Principles of Human Resource, Management (South-Western, 2010 ed.) pp. 6-7
BOOK THREE
CONDITIONS OF EMPLOYMENT

Title I
WORKING CONDITIONS
AND REST PERIODS

Chapter I
HOURS OF WORK

Overview/Key Questions:
1. Obviously, the law on conditions of employment cannot apply if employer-employee relationship does not exist between the parties. In law, who is considered an “employee”? an “employer”?
2. What are the implications or consequences of the existence of employment relationship? Who are the employees that are excluded from the coverage of the law on employment conditions?
3. What are the rights and responsibilities of the employer and the employee as regards determination and observance of work hours?
4. In law what are considered hours worked? Which ones are “unworked,” hence, not compensable? Is lunch break compensable? What travel hours should be paid?
5. Is rendition of overtime work an obligation?

ART. 82. COVERAGE
The provisions of this Title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.
As used herein, “managerial employees” refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

“Field personnel” shall refer to nonagricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

COMMENTS AND CASES

1. ESSENTIALITY OF EMPLOYMENT RELATIONSHIP

The present Book III of the Code deals with conditions or standards of employment. Quite obviously, those standards apply only if there exists an employer-employee relationship between the parties. Unfortunately, as the Supreme Court has noted, “the question of whether an employer-employee relationship exists in a certain situation continues to bedevil the courts. Some businessmen try to avoid the bringing about of an employer-employee relationship in their enterprises because that judicial relation spawns obligations connected with workmen’s compensation, social security, medicare, termination pay, and unionism.”

Where the legal basis of the complaint is not employment but perhaps partnership, co-ownership, or independent contractorship, then a requisite for the application of this labor standards law does not exist. In such a situation, the claim, generally, cannot be pursued before the Department of Labor or its offices or agencies.

1.1 Question of Law, Question of Fact

In judicial parlance, a “question of law” arises when there is doubt as to what the law is on a certain state of facts; there is a “question of fact” when the doubt arises as to the truth or falsity of the alleged facts.

This differentiation holds true in labor as in other fields of law. But these terms acquire extended meanings when the existence or absence of employer-employee relationship has to be resolved.

The character of the relationship between the parties is not whatever they call it in their contract but what the law calls it after examination of the facts. If the facts show an employer-employee relationship, this conclusion shall stand even if the contract states otherwise. The recognition of the existence of employer-employee relationship is not dependent upon the agreement of the

---

Tirazona vs. Court of Appeals, et al., G.R. No. 169712, March 14, 2008
parties. The characterization by law prevails over that in the contract. In this sense, the existence of an employer-employee relationship is not a matter of stipulation; it is a question of law.\(^1\)

But the existence of an employer-employee relationship depends upon the facts of each case. In one case, an employer-employee relationship may be said to be present, but in another case, with different facts, it may be absent. In this sense, the existence of an employer-employee relationship is a question of fact.\(^2\)

Thus, a manpower agency may be considered a full-fledged independent contractor in one case even if in another case it was found to be merely an agent or conduit of the true employer.\(^3\)

### 1.2 Core or Non-core Jobs

Moreover, the employer-employee relationship may cover core or non-core activities of the employer’s business. It does not follow that the worker is a job contractor, not an employee, just because the work he is doing is not directly related to the employer’s trade or business or because the work may be considered as merely “housekeeping.” Similarly, the worker is not necessarily an employee just because the work he is doing is directly related to the trade or business of the alleged employer. Depending on the applicability of the tests of employment, an employer-employee relationship may exist regardless of the nature of the activities involved.\(^4\) In other words, the kind of work is not the definitive test of whether the worker is an employee or not.

Take the case of a company physician. The presence of a physician who will give medical attention to employees as required by Article 163 (former 157) is, of course, necessary or desirable. But that fact does not decide whether the physician is an employee or not. “We [the Supreme Court] take it that any agreement may provide that one party shall render services for and in behalf of another, no matter how necessary for the latter’s business, even without being hired as an employee. This setup is precisely true in the case of an independent contractorship as well as in an agency agreement. Indeed, Article 280 [now 294] is not the yardstick in determining the existence of an employment relationship.


\(^3\)Coca-Cola Bottlers, Phils. vs. Hingpit, G.R. No. 127238, August 25, 1998. See also: MAFINCO vs. Ople, 70 SCRA 139; RDL Martinez vs. NLRC, 127 SCRA 454; Industrial Timber Corp. vs. NLRC, 169 SCRA 341; DBP vs. NLRC, 175 SCRA 537; Great Pacific Life vs. NLRC, 187 SCRA 694; Cathedral School vs. NLRC, 214 SCRA 551.

\(^4\)Philippine Fuji Xerox Corp. vs. NLRC, G.R. No. 111501, March 5, 1996.
The provision merely distinguishes between two kinds of employees, *i.e.*, regular and casual. It does not apply where the very existence of employment is in dispute. Thus, a company physician “on retained” basis, under Article 163, is not necessarily an employee,¹ although his job is necessary or desirable and required by law.

1.3 *Futile Circumlocutory Definitions*

The Labor Code, ironically, neither explains nor illustrates who is an employer or who is an employee. But it offers “definitions” in Article 97, repeated in Article 219, which state: “Employer” “includes any person acting in the interest of an employer in relation to an employee...” And an “employee” “includes any individual employed by an employer.” These, of course, are not definitions. They are just futile, though amusing, circumlocutions.

The Social Security law (R.A. No. 1161, as amended) offers more substantive, meaningful definitions:

“Employer” — any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his order as regards the employment...xxx.

“Employee” — any person who performs services for an employer in which either or both mental and physical efforts are used and who receives compensation for such services, where there is an employer-employee relationship.

It is not the Labor Code but court rulings that explain the elements or indicators of an “employer-employee” relationship.

2. **ELEMENTS OR “TESTS” OF EMPLOYMENT RELATIONSHIP**

There has been no uniform test to determine the existence of an employer-employee relation. Generally, courts have relied on the so-called right of control test, “where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such end.” Subsequently, however, the Court considered in addition to the standard of right-of-control, the existing economic conditions prevailing between the parties, like the inclusion of the employee in the payrolls, in determining the existence of an employer-employee relationship.²

2.1 *Four-fold Test*

In determining the existence of employer-employee relationship, the elements that are generally considered comprises the so-called “four fold test” namely: (a) the selection and engagement of the employee; (b) the payment

¹Philippine Global Communications, Inc. vs. De Vera, G.R. No. 157214, June 7, 2005; emphasis in the decision itself.
of wages; (c) the power of dismissal; and (d) the employer’s power to control the employee with respect to the means and methods by which the work is to be accomplished. It is the so-called “control test” that is the most important element.1

Absent the power to control the employee with respect to the means and methods of accomplishing his work, there is no employer-employee relationship between the parties.2

The fact that one had been designated “branch manager” does not make such person an employee. Employment is determined by the right-of-control test and certain economic parameters. Titles are weak indicators.3

Where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his efforts and not the amount thereof, we should not find that the relationship of employer and employee exists. In fine, there is nothing in the records to show or would “indicate that complainant was under the control of the petitioner” in respect of the means and methods in the performance of complainant’s work. Consequently, [the complainant] is not entitled to the benefits prayed for.4

Similarly, in *Manila Golf & Country Club vs. IAC*, 237 SCRA 207, the Supreme Court held that the caddies are not employees of the golf club.

“As long as it is, the list made in the appealed decision detailing the various matters of conduct, dress, language, etc. covered by the petitioner’s regulations, does not, in the mind of the Court, so circumscribe the actions or judgment of the caddies concerned as to leave them little or no freedom of choice whatsoever in the manner of carrying out their services. In the very nature of things, caddies must submit to some supervision of their conduct while enjoying the privilege of pursuing their occupation within the premises and grounds of whatever club they do their work in. For all that is made to appear, they work for the club to which they attach themselves on sufferance but, on the other hand, also without having to observe any working hours, free to leave anytime they please, to stay away for as long as they like. It is not pretended that if found remiss in the observance of said rules, any discipline may be meted them beyond barring them from the premises which, it may be supposed, the Club may do in any case even

---


absent any breach of the rules, and without violating any right to work on their part. All these considerations clash frontally with the concept of employment.”

[But] it should be borne in mind that the control test calls merely for the existence of the right to control the manner of doing the work, not the actual exercise of the right. For instance, considering the finding by the Hearing Examiner that the establishment of Dy Keh Beng is ‘engaged in the manufacture of baskets known as kaing,’ it is natural to expect that those working under Dy would have to observe, among others, Dy’s requirements of size and quality of the kaing. Some control would necessarily be exercised by Dy as the making of the kaing would be subject to Dy’s specifications. Parenthetically, since the work on the baskets is done at Dy’s establishment, it can be inferred that proprietor Dy could easily exercise control on the men he employed.¹

An employer is one who employs the services of others; one for whom employees work and who pays their wages or salaries.

An employee is one who is engaged in the service of another; who performs services for another; who works for salary or wages. His work is subject to control of the employer not only as to the result but the manner and means of doing it.

For instance, a lawyer, like any other professional, may very well be an employee of a private corporation or even of the government. It is not unusual for a big corporation to hire a staff of lawyers as its in-house counsel, and pay them regular salaries, rank them in its table of organization, and otherwise treat them like its other officers and employees. At the same time, it may also contract with a law firm to act as outside counsel on a retainer basis. The two classes of lawyers often work closely together, but one group is made up of employees while the other is not. A similar arrangement may exist as to doctors, nurses, dentists, public relations practitioners and other professionals.²

Exclusivity of service for the company, control of assignments and removal of agents, collection of premiums, furnishing of facilities and materials as well as capital described as unit development fund are hallmarks of a management system where there can be no escaping the conclusion that one is an employee of the insurance company.³

²Air Material Wing Savings and Loan Association, Inc. vs. NLRC, et al., G.R. No. 111870, June 30, 1994; Hydro Resources Contractors Corporation vs. Pagalilauan, 172 SCRA 399.
“Independent contractors” can employ others to work and accomplish contemplated result without consent of contractee, while “employee” cannot substitute another in his place without consent of his employer.\(^{1}\)

### 2.2 Two-tiered Approach; the Economic Dependence Test

*Sevilla vs. Court of Appeals* (April 15, 1988) points out that there has been no uniform test to determine the existence of an employer-employee relationship. First adopted in 1956 in *Viana vs. Al-Lagadon*, the “four-fold test” may be regarded as the traditional or conventional test of the employment question. But it is not the sole test. *Sevilla vs. Court of Appeals* itself observes the need to consider the existing conditions between the parties, in addition to the right-of-control element, to determine employer-employee relationship.

In 2006, the Supreme Court categorically applied the economic dependence test in the case of a worker who performed various functions for a corporation for about six years. When the corporation stopped paying her salary, the worker complained of constructive dismissal. The corporation countered that she was never an employee because she was not “controlled” in the performance of her work. The Supreme Court ruled that in certain cases, the control test is not sufficient and that the better approach is to adopt a two-tiered test.

*Angelina Francisco vs. NLRC, Kasei Corp., etc., G.R. No. 170087, August 31, 2006* —

When formed in 1995, Kasei Corporation hired Francisco as Accountant, Corporate Secretary, and Liaison Officer. In 1996, she was replaced as Accountant and designated instead as Acting Manager. She performed managerial administrative functions and represented the company in dealing with government agencies such as the BIR, the SSS, and the Makati City government. Her monthly salary was P27,500.00, with housing allowance and 10% profit share. But in January 2001, she was replaced as a manager, was instead designated as Technical Consultant, and her pay was reduced by P2,500.00 a month. Finally, in October 2001, Kasei officials told her she was no longer connected with the company.

The Labor Arbiter declared that she was an employee and entitled to reinstatement. The NLRC affirmed the LA’s decision but did not order a reinstatement. The Court of Appeals took an opposite view as it ruled that the complainant-petitioner was not an employee.

**Ruling:** There are instances when, aside from the employer’s power to control the employee with respect to the means and methods by which the work is to be accomplished, economic realities of the employment relations help provide a comprehensive analysis of the true classification of the individual, whether as employee, independent contractor, corporate officer or some other capacity.

The better approach would therefore be to adopt a two-tiered test involving: (1) the putative employer’s power to control the employee with respect to the means and methods by which the work is to be accomplished; and (2) the underlying economic realities of the activity or relationship.

This two-tiered test would provide us with a framework of analysis, which would take into consideration the totality of circumstances surrounding the true nature of the relationship between the parties. This is especially appropriate in this case where there is no written agreement or terms of reference to base the relationship on; and due to the complexity of the relationship based on the various positions and responsibilities given to the worker over the period of the latter’s employment.

Thus, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity, such as: (1) the extent to which the services performed are an integral part of the employer’s business; (2) the extent of the worker’s investment in equipment and facilities; (3) the nature and degree of control exercised by the employer; (4) the worker’s opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.

The proper standard of economic dependence is whether the worker is dependent on the alleged employer for his continued employment in that line of business. In the United States, the touchstone of economic reality in analyzing possible employment relationships for purposes of the Federal Labor Standards Act is dependency. By analogy, the benchmark of economic reality in analyzing possible employment relationships for purposes of the Labor Code ought to be the economic dependence of the worker on his employer.

Under the broader economic reality test, the petitioner can likewise be said to be an employee of respondent corporation because she had served the company for six years before her dismissal, receiving check vouchers indicating her salaries/wages, benefits, 13th month pay, bonuses and allowances, as well as deductions and Social Security contributions from August 1, 1999 to December 18, 2000. When petitioner was designated General Manager, respondent corporation made a report to the SSS. Petitioner’s membership in the SSS as manifested by a copy of the SSS specimen signature card which was signed by the President of Kasei Corporation and the inclusion of her name in the on-line inquiry system of the SSS evince the existence of an employer-employee relationship between petitioner and respondent corporation.

It is therefore apparent that petitioner is economically dependent on respondent corporation for her continued employment in the latter’s line of business.

Based on the foregoing, there can be no other conclusion than that petitioner is an employee of respondent Kasei Corporation. She was selected and engaged by the company for compensation, and is economically dependent upon respondent for
her continued employment in that line of business. Her main job function involved accounting and tax services rendered to respondent corporation on a regular basis over an indefinite period of engagement. Respondent corporation hired and engaged petitioner for compensation, with the power to dismiss her for cause. More importantly, respondent corporation had the power to control petitioner with the means and methods by which the work is to be accomplished.

The corporation constructively dismissed petitioner when it reduced her salary by P2,500 a month from January to September 2001. This amounts to an illegal termination of employment, where the petitioner is entitled to full backwages. Since the position of petitioner as accountant is one of trust and confidence, and under the principle of strained relations, petitioner is further entitled to separation pay, in lieu of reinstatement.

The economic realities test is not really new. More than fifty years ago, the High Court handed down this ruling —

“When a worker possesses one attribute of an employee and others of an independent contractor, which make him fall within an intermediate area, he may be classified under the category of an employee when the economic facts of the relation make it more nearly one of employment than one of independent business enterprise with respect to the ends sought to be accomplished.” (Sunripe Coconut Products Co., Inc. vs. CIR, etc., G.R. No. L-2009, April 30, 1949)

But the “economic facts” test was rejected by the Supreme Court in Investment Planning vs. SSS, November 18, 1967 and the rejection was strongly reaffirmed in SSS vs. CA, October 31, 1969. Now, through Sevilla and Francisco, the economic relations test appears to have been revived.

2.3 Evidence of Employment: Identification Card, Vouchers, SSS Registration, Memorandum

In administrative and quasi-judicial proceedings, substantial evidence is sufficient as a basis for judgment on the existence of employer-employee relationship. No particular form of evidence is required to prove the existence of such relationship. Any competent and relevant evidence to prove the relationship may be admitted.¹

In a business establishment, an identification card is usually provided not only as a security measure but mainly to identify the holder thereof as a bona fide employee of the firm that issues it. Together with the cash vouchers covering petitioner’s [employee’s] salaries for the months stated therein, we [the Supreme Court] agree with the labor arbiter that these matters constitute

¹Domasig vs. NLRC, G.R. No. 118101, September 16, 1996; also: Opulencia Ice Plant vs. NLRC, G.R. No. 98368, December 15, 1993.
substantial evidence adequate to support a conclusion that petitioner was indeed an employee of private respondent [employer].

That respondent had registered the petitioners with the Social Security System is proof that the latter were the former’s employees. The coverage of Social Security Law is predicated on the existence of an employer-employee relationship. On the same question of employer-employee relationship between a commercial bank and its vice-president who was head of its legal department, the Supreme Court, in support of its conclusion that the lawyer was an employee, observed:

In addition to his duties as Vice President of the bank, the complainant’s duties and responsibilities were so defined as to prove that he was a bank officer working under the supervision of the President and the Board of Directors of the respondent bank. In his more than eight years employment with the respondent bank, the complainant was given the usual paystubs to evidence his monthly gross compensation. The respondent bank, as employer, withheld taxes due to the Bureau of Internal Revenue from the complainant’s salary as employee. Moreover, the bank enrolled the complainant as its employee under the Social Security System and Medicare programs. The complainant contributed to the bank Employees’ Provident Fund. (Equitable Banking Corp. vs. NLRC and R. L. Sadac, G.R. No. 102467, June 13, 1997)

Appointment letters or employment contracts, payrolls, organization charts, personnel lists, as well as testimony of co-employees, may also serve as evidence of employee status.

In one case, the company’s legal and industrial relations officer wrote the union president that the workers in question were being investigated “under the terms and in accordance with the provisions of our Policy and Procedure on Employment Termination as well as Policy on Disciplinary Actions....” The letter, ruled the Supreme Court, was itself evidence that those workers were indeed employees of the company despite the company’s vehement denial.

A claimant’s allegation of employer-employee relationship which the employer does not deny is deemed admitted. Rule 9, Section 11 of the Rules of Court, which supplements the NLRC Rules, provides that an allegation not specifically denied is deemed admitted.

---

1Domagis vs. NLRC, G.R. No. 118101, September 16, 1996; also: Opulencia Ice Plant vs. NLRC, G.R. No. 98368, December 15, 1993.
3Philippine Fuji Xerox Corp. vs. NLRC, G.R. No. 111501, March 5, 1996.
2.3a Absence of Name in the Payroll

In *Opulencia Ice Plant vs. NLRC*, G.R. No. 98368, December 15, 1993, the employer argued that the absence of the complainant’s name in the payroll disproved his being an employee. The Court replied:

We do not agree. For, if only documentary evidence would be required to show that relationship, no scheming employer would ever be brought before the bar of justice, as no employer would wish to come out with any trace of the illegality he has authored considering that it should take much weightier proof to invalidate a written instrument. Thus, as in this case where the employer-employee relationship between petitioners and Esita was sufficiently proved by testimonial evidence, the absence of time sheet, time record or payroll has become inconsequential.

The petitioner’s reliance on *Sevilla v. Court of Appeals* is misplaced. In that case, we did not consider the inclusion of employee’s name in the payroll as an independently crucial evidence to prove an employer-employee relation. Moreover, for a payroll to be utilized to disprove the employment of a person, it must contain a true and complete list of the employee. But, in this case, the testimonies of petitioners’ witnesses admit that not all the names of the employees were reflected in the payroll.

2.4 Mode of Compensation, Not a Test of Employment Status

The presence or absence of employer-employee relationship is not determined by the basis of the employee’s compensation. The compensation, whether called wage, salary, commission or other name, may be computed on the basis of time spent on the job or it may be based on the quality and/or quantity of the work done. It may further be dependent on skills possessed, seniority earned, or performance and initiative shown by the employee.

An employee may be paid according to how much time he stays on the job or how much product units he finished. Much in the same way, a non-employee, perhaps a businessman or a practising professional, may be paid according to how much time he spends with his client or how difficult the task is, or how voluminous is the work done.

Indeed, employment relationship is one thing, pay determination is another. The existence of employment relationship depends on whether the “four-fold test” (explained previously) is present or not. Piece-rate, “boundary,” and “pakyaaw” are merely methods of pay computation and do not prove whether the payee is an employee or not.

In one case, the employer tried to justify the nonpayment of statutory benefits to his workers by arguing that they were not employees because they were paid on per piece basis. The Court replied: “while petitioners’ mode
of compensation was on a “per piece basis,” the status and nature of their employment was that of regular employee.”


The nature of their employment, i.e., “pakiao” basis, does not make petitioners independent contractors. Pakiao workers are considered employees as long as the employer exercises control over the means by which such workers are to perform their work. Considering that petitioners did their work inside private respondent’s farm, the latter necessarily exercised control over the work performed by petitioners.

Petitioners rendered services essential for the cultivation of respondent’s farm. While the services were not continuous in the sense that they were not rendered every day throughout the year, as is the nature of farm work, petitioners had never stopped working for respondent from year to year from the time he hired them to the time he dismissed them.

The seasonal nature of petitioner’s work does not detract from the conclusion that employer-employee relationship exists. Seasonal workers whose work is not merely for the duration of the season, but who are rehired every working season are considered regular employees. The circumstance that petitioners do not appear in respondent’s payroll does not destroy the employer-employee relationship between them. Omission of petitioners in the payroll was not within their control; they had no hand in the preparation of the payroll. This circumstance, even if true, cannot be taken against petitioners.

2.5 Existence of Employment Relationship Determined by Law, Not by Contract

As stated earlier, the existence of an employer-employee relationship is determined by law; it cannot be negated simply by repudiating it in the management or employment contract. It cannot be held that the worker is an “independent contractor” when the terms of the agreement clearly show otherwise.

Even if the parties call their contract a “Contract of Lease of Services” under Articles 1642 and 1644 of the Civil Code, the factual existence of an employer-employee relationship will still prevail.

_Paguio vs. NLRC, et al., G.R. No. 147816, May 9, 2003 —_

_Facts:_ For the fifth time, in June 1992, complainant entered into an agreement with Metromedia Times Corp. as account executive whose main responsibility was to solicit advertisements for “The Manila Times.” His pay consisted of commissions and allowances. The agreement stipulated that “You are not an employee of the

---

Metromedia Times Corp. nor does the company have any obligations towards anyone you may employ, nor any responsibility for your operating expenses or for any liability you may incur. The only rights and obligations between us are those set forth in this agreement. . . Either party may terminate this agreement at any time by giving written notice to the other thirty (30) days prior to effectivity of termination.”

 Barely two months after the contract renewal, the company terminated the complainant’s services, effective one-and-a-half months after receipt of the letter. Apart from vague allegations of misconduct on which he was not given the opportunity to defend himself, i.e., pirating clients from his co-executives and failing to produce results, no definite cause for the termination was given. Complainant sued for illegal dismissal. The company denied any employer-employee relationship, urging that the contract between them was one of lease of service under the Civil Code.

 Ruling: Respondent company cannot seek refuge under the terms of the agreement it has entered with petitioner. The law, in defining their contractual relationship, does so, not necessarily or exclusively upon the terms of their written or oral contract, but also on the basis of the nature of the work petitioner has been called upon to perform. The law affords protection to an employee and it will not countenance any attempt to subvert its spirit and intent. A stipulation in an agreement can be ignored as and when it is utilized to deprive the employee of his security of tenure. The sheer inequality that characterizes employer-employee relations, where the scales generally tip against the employee, often scarcely provides him real and better options.

 Complainant-petitioner is ordered reinstated, but award of damages is deleted.

3. WHEN EMPLOYMENT RELATIONSHIP PRESENT

The following are illustrative situations where employment relationship is found to exist.

3.1 Employment Relationship: Salaried Insurance Agent


Facts: Honorato as a debit agent received a definite minimum amount per week as his wage known as “sales reserve.” He performed canvassing and collection job about which he was required to make a regular report, but he was assigned an office when he was not in the field. An anemic performance would mean a dismissal; a faithful and productive service would earn him a promotion.

In September 1981, Honorato was promoted to Zone Supervisor, but was reverted to his former position in November. Finally, on June 28, 1982, his agency contract was terminated. When he complained of illegal dismissal, the company averred that he was not an employee at all.
The Labor Arbiter dismissed the complaint on the ground that employer-employee relationship did not exist. The NLRC reversed the decision, ruling that Honorato was a regular employee.

**Ruling:** The Supreme Court affirmed the decision of the NLRC. The element of control by the company on Honorato was present. He was controlled by the company not only as to the kind of work, the amount of results, the kind of performance, but also by the power of dismissal. Honorato, by the nature of his position and work, had been a regular employee and was therefore entitled to the protection of the law and could not just be terminated without valid and justifiable reason.

An insurance company may have two classes of agents who sell its insurance policies: (1) salaried employees who keep definite hours and work under the control and supervision of the company; and (2) registered representatives who work on commission basis.

The agents who belong to the second category are not required to report for work at anytime. They do not have to devote their time exclusively to or work solely for the company since the time and the effort they spend in their work depend entirely upon their own will and initiative. They are not required to account for their time nor submit a report of their activities. They shoulder their own selling expenses as well as transportation. They are paid their commission based on a certain percentage of their sales. One salient point in the determination of employer-employee relationship which cannot be easily ignored is the fact that the compensation that these agents on commission received is not paid by the insurance company but by the investor (or the person insured). After determining the commission earned by an agent on his sales, the agent directly deducts it from the amount he received from the investor or the person insured and turns over to the insurance company the amount invested after such deduction is made. The test therefore is whether the ‘employer’ controls or has reserved the right to control the ‘employee’ not only as to the result of the work to be done but as to the means and methods by which the same is to be accomplished.

An ordinary commission insurance agent works at his own volition or at his own leisure without fear of dismissal from the company and short of committing acts detrimental to the business interest of the company or against the latter; whether he produces or not is of no moment as his salary is based on his production, his anemic performance or even dead result does not become a ground for dismissal.
substitute others to do their work without the consent of the university; and that they can be laid off if their work is unsatisfactory. All these indicate that the university has control over their work and that they are, therefore, employees and not independent contractors.

The principal consideration in determining whether a workman is an employee or an independent contractor is the right to control the manner of doing the work, and it is not the actual exercise of the right by interfering with the work, but the right to control, which constitutes the test.\footnote{Amalgamated Roofing Co. vs. Travelers’ Ins. Co., 233 N.E. 259, 261, 300 III. 487, quoted in “Words and Phrases,” Permanent ed., Vol. 14, p. 576.}

3.3 Employment Relationship: Jeepney Driver, Taxi Driver, Barber

In a case of jeepney drivers, the Court said: “The fact that the drivers do not receive fixed wages but get only that in excess of the so-called “boundary” they pay to the owner/operator is not sufficient to withdraw the relationship between them from that of employer and employee.”\footnote{Jardin vs. NLRC, G.R. No. 119268, February 23, 2000.}


\textbf{Facts:} “D” was the owner and operator of passenger jeepneys whose drivers were under contract that they would pay P7.50 for 10 hours’ use under the so-called ‘boundary system.’ The drivers did not receive salaries or wages from the owner. Their day’s earnings were the excess over the P7.50 they paid for the use of the jeepneys. In the event that they did not earn more than P7.50, the owner did not have to pay them anything.

\textbf{Ruling:} Employer-employee relationship exists between the owner of the jeepneys and the drivers even if the latter work under the boundary system.

The only features that would make the relationship lessor and lessee between the respondent, owner of the jeeps, and the drivers, members of the petitioning union, are the fact that he does not pay them any fixed wage but their compensation is the excess of the total amount of fares earned or collected by them over and above the amount of P7.50 which they agreed to pay to the respondent, and the fact that the gasoline burned by the jeeps is for the account of the drivers. These two features are not, however, sufficient to withdraw the relationship between them from that of employer-employee, because the estimated earnings for fares must be over and above the amount they agreed to pay to the respondent for a ten-hour shift or ten hours a day operation of the jeeps. Not having any interest in the business because they did not invest anything in the acquisition of the jeeps and did not participate in the management thereof, their service as drivers of the jeeps being their only contribution to the business, relationship of lessor and lessee cannot be sustained.
Reiterating that jeepney drivers under the “boundary” system are employees of the owner/operator, the Court further explains:

In the lease of chattels, the lessor loses complete control over the chattel leased although the lessee cannot be reckless in the use thereof, otherwise he would be responsible for the damages to the lessor. In the case of jeepney owners/operators and jeepney drivers, the former exercise supervision and control over the latter. The management of the business is in the owner’s hands. The owner as holder of the certificate of public convenience must see to it that the driver follows the route prescribed by the franchising authority and the rules promulgated as regards its operation.¹

The court has applied by analogy the above-stated doctrine to the relationships between bus owner/operator and bus conductor,² between autocalesa owner/operator and driver,³ and recently between taxi owners/operators and taxi drivers.⁴

The same “control test” leads the court to conclude that barbers are employees of a barber shop.

As to the “control test,” the following facts indubitably reveal that respondent company wielded control over the work performance of petitioners, in that: (1) they worked in the barbershop owned and operated by the respondents; (2) they were required to report daily and observe definite hours of work; (3) they were not free to accept other employment elsewhere but devoted their full time working in the New Look Barber Shop for all the fifteen years they have worked until April 15, 1995; (4) that some have worked with the barbershop as early as the 1960’s; (5) that petitioner P. Nas was instructed by the respondents to watch the other six petitioners in their daily task. Certainly, respondent company was clothed with the power to dismiss any or all of them for just and valid cause. Petitioners were unarguably performing work necessary and desirable in the business of the respondent company.⁵

### 3.3a Boundary-hulog

Even the boundary-hulog contract between the jeepney owner and the jeepney driver does not negate the employer-employee relationship between them.

**Villamaria vs. CA and Bustamante, G.R. No. 165881, April 19, 2006 —**

**Facts:** The jeepney owner (petitioner Villamaria) and the driver (respondent Bustamante) executed a contract entitled “Kasunduan ng Bilihan ng Sasakyan sa Pamamagitan ng Boundary-Hulog.”

²Doce vs. Workmen’s Compensation Commission, 104 Phil. 946 [1958].
⁴Martinez vs. NLRC, 272 SCRA 793 (1997).
⁵Corporal vs. NLRC, G.R. No. 129315, October 2, 2000.
Under the Kasunduan, the driver was required to remit P550.00 daily to the owner, an amount which represented the “boundary” as well as partial payment (hulog) of the purchase price of the jeepney. The driver was entitled to keep the excess of his daily earnings as his daily wage.

Under the boundary-hulog scheme, petitioner retained ownership of the jeepney although its material possession was vested in respondent as its driver. In case respondent failed to make his P550.00 daily installment payment for a week, the agreement would be of no force and effect and respondent would have to return the jeepney; the employer-employee relationship would likewise be terminated, unless petitioner would allow respondent to continue driving the jeepney on a boundary basis of P550.00 daily despite the termination of their vendor-vendee relationship.

In 1999, Bustamante (and other drivers who also had the same arrangement with Villamaria Motors) failed to pay their respective boundary-hulog. This prompted Villamaria to serve a “Paalala,” reminding them that under the Kasunduan, failure to pay the daily boundary-hulog for one week, would mean their respective jeepneys would be returned to him without any complaints.

On July 24, 2000, Villamaria took back the jeepney driven by Bustamante and barred the latter from driving the vehicle.

Bustamante filed an illegal dismissal complaint. Villamaria countered, there was no dismissal because the Kasunduan had transformed the relationship from employer-and-employee to seller-and-buyer.

**Ruling:** The juridical relationship of employer-employee was not negated by the Kasunduan, considering that petitioner retained control of respondent’s conduct as driver of the vehicle. As correctly ruled by the CA —

The exercise of control by private respondent over petitioner’s conduct in operating the jeepney he was driving is inconsistent with private respondent’s claim that he is, or was, not engaged in the transportation business; that, even if petitioner was allowed to let some other person drive the unit, it was not shown that he did so, that the existence of an employment relation is not dependent on how the worker is paid but on the presence or absence of control over the means and method of the work; that the amount earned in excess of the “boundary-hulog” is equivalent to wages; and that the fact that the power of dismissal was not mentioned in the Kasunduan did not mean that private respondent never exercised such power, or could not exercise such power.

Moreover, requiring petitioner to drive the unit for commercial use, or to wear an identification card, or to don a decent attire, or to park the vehicle in Villamaria Motors garage, or to inform Villamaria Motors about the fact that the unit would be going out to the province for two days or more, or to drive the unit carefully, etc. necessarily related to control over the means by which the petitioner was to go about his work; that the ruling applicable here is not Singer Sewing Machine but National Labor Union since the latter case involved jeepney owners/operators and jeepney drivers, and that the fact that the “boundary” here represented installment payment of the purchase price on the jeepney
did not withdraw the relationship from that of employer-employee, in view of the overt presence of supervision and control by the employer.

______________

Failure to remit the “boundary” is a valid reason to suspend the driver. See Caong vs. Regualos, G.R. No. 179428, January 26, 2011.

3.3b Truck Driver: Employee, not Partner

Sy, et al. vs. Hon. Court of Appeals and J. Sahot, G.R. No. 142293, February 27, 2003 —

Facts: Complainant started working with respondent SBT Trucking in 1958 at age 23, first as truck helper and later as truck driver, until 1994 when at age 59 he was separated for his inability to work due to sickness. When he inquired with the SSS, he learned that the trucking company never paid his SSS premiums. The company contended that he was never an employee but an industrial partner and that he would not have been separated if he returned to his work after his sick leave; it was he, rather, that could not resume his work.

Ruling: The NLRC, upheld by CA and later by the SC, said: “How can we entertain in our mind that a twenty-three year old man, working as a truck helper, be considered an industrial partner? Hence, we rule that complainant was only an employee, not a partner of respondents from the time complainant started working for respondent.”

The SC said furthermore: “There was no written agreement, no proof that he received a share in petitioner’s profits, nor was there anything to show he had any participation with respect to the running of the business... Not one of the circumstances [of a contract of partnership under Article 1767 of the Civil Code] is present in this case.”

______________

3.4 Employment Relationship: Piece-Rate Workers

Makati Haberdashery, Inc. vs. National Labor Relations Commission, G.R. Nos. 83380-81, November 15, 1989 —

Facts: Individual complainants have been working for Makati Haberdashery, Inc. as tailors, seamsters, sewers, basters and “plantadoras.” They were paid on a piece-rate basis except the two who were paid on a monthly basis. In addition to their piece-rate, they were given a daily allowance of three (P3.00) pesos provided they report for work before 9:30 a.m. everyday. They were required to work from or before 9:30 a.m. up to 6:00 or 7:00 p.m. from Monday to Saturday and during peak periods even on Sundays and holidays.

The Sandigan ng Manggagawang Pilipino filed a complaint for underpayment of the basic wage, underpayment of living allowance, nonpayment of overtime work, nonpayment of holiday pay, and other money claims.

The Labor Arbiter rendered judgment in favor of complainants which the NLRC affirmed.
Petitioner [employer] urged that the NLRC erred in concluding that an employer-employee relationship existed between petitioner and the workers.

**Ruling:** The facts at bar indubitably reveal that the most important requisite of control is present. When a customer enters into a contract with the haberdashery or its proprietor, the latter directs an employee who may be a tailor, pattern maker, sewer or "plantsadora" to take the customer’s measurement and to sew the pants, coat or shirt as specified by the customer. Supervision is actively manifested in all these acts — the manner and quality of cutting, sewing and ironing.

Petitioner has reserved the right to control its employees not only as to the result but also the means and methods by which the same are to be accomplished. That the workers are regular employees is further proven by the fact that they have to report for work regularly from 9:30 a.m. to 6:00 or 7:00 p.m. and are paid an additional allowance of P3.00 daily if they report for work before or on 9:30 a.m. and which is forfeited when they arrive at or after 9:30 a.m. The workers did not exercise independence in their own methods, but on the contrary were subject to the control of petitioners from the beginning of their tasks to their completion. Unlike independent contractors who generally rely on their own resources, the equipment, tools, accessories and paraphernalia used by the workers are supplied and owned by the Haberdashery. The workers are totally dependent on the employer in all these aspects.

Furthermore, the presence of control is immediately evident in a memorandum issued by the Assistant Manager which reads in part:

"Effective immediately, new procedures shall be followed:

A. To follow instruction and orders from the undersigned...

B. Before accepting the job orders, tailors must check the materials, job orders, due dates, and other things to maximize efficiency...

C. Effective immediately all job orders must be finished one day before the due date. This can be done by proper scheduling of job order and if you will cooperate with your supervisors. x x x

D. If there is any problem regarding supervisors or co-tailor inside our shop, consult with me at once to settle the problem. Fighting inside the shop is strictly prohibited. Any tailor violating this memorandum will be subject to disciplinary action."

From this memorandum alone, it is evident that petitioner has reserved the right to control its employees not only as to the result but also the means and methods by which the same are to be accomplished.

---

**Note:** The Makati Haberdashery ruling that the piece-rate workers, although employees, are not entitled to service incentive leave and holiday pay will be reexamined under Article 101.
3.5 Street-hired Cargadores

_Caurdanetaan Piece Workers Union, represented by Juanito P. Costales, Jr. in his capacity as union president vs. Undersecretary Bienvenido E. Laguesma and Corfarm Grains, Inc., G.R. No. 113542, February 24, 1998_

**Facts:** The complainants worked as ‘cargador’ at the warehouse and ricemills of private respondent Corfarm at Umingan, Pangasinan since 1982. As cargadores, they loaded, unloaded and piled sacks of palay from the warehouse to the cargo trucks and those brought by cargo trucks for delivery to different places. They were paid by Corfarm on a piece-rate basis. When Corfarm denied them some benefits, they formed their union. Corfarm replaced them with non-members of the union.

Respondent Corfarm denies that it had the power of control over the complainants, rationalizing that they were ‘street-hired’ workers engaged from time to time to do loading and unloading work; there was no superintendent-in-charge to give orders; and there were no gate passes issued, nor tools, equipment and paraphernalia issued by Corfarm for loading/unloading. It attributes error to the solicitor general’s reliance on Article 280 [now 294] of the Labor Code. Citing _Brent School, Inc. vs. Zamora_ (181 SCRA 702, February 5, 1990), it asserts that a literal application of such article will result in “absurdity,” where petitioner’s members will be regular employees not only of respondents but also of several other rice mills, where they allegedly also render service. Finally, Corfarm submits that the OSG’s position is negated by the fact that “petitioner’s members contracted for loading and unloading services with respondent company when such work was available and when they felt like it x x x.”

**Ruling:** The Court (through Mr. Justice Panganiban) considers the cargadores as regular employee. It is undeniable that petitioner’s members worked as cargadores for private respondent. They loaded, unloaded and piled sacks of palay from the warehouses to the cargo trucks and from the cargo trucks to the buyers. This work is directly related, necessary and vital to the operations of Corfarm. Moreover, Corfarm did not even allege, much less prove, that petitioner’s members have “substantial capital or investment in the form of tools, equipment, machineries, [and] work premises, among others.” Furthermore, said respondent did not contradict petitioner’s allegation that it paid wages directly to these workers without the intervention of any third-party independent contractor. It also wielded the power of dismissal over petitioners; in fact, its exercise of this power [resulted in this case]. Clearly, the workers are not independent contractors.

3.6 Workers in Movie Projects

The question of existence of employment relationship arose again in a case involving Viva Films, the movie company. The decision is highly instructive for its analysis of the circumstances that make the complainants employees.
A. Maraguinot and P. Enero vs. NLRC, et al. and Viva Films, G.R. No. 120969, January 22, 1998 —

Facts: Petitioners Maraguinot and Enero were employed by Viva Films as part of the filming crew, Maraguinot since July 1989 and Enero since June 1990.

Their tasks consisted of loading, unloading and arranging movie equipment in the shooting area, assisting in the “fixing” of the lighting system, and performing other tasks that the cameraman and/or director may assign.

Sometime in May 1992, they asked that their salary be adjusted to the minimum wage rate. Instead of getting a pay increase they were asked to sign a blank employment contract, and when they refused, their services were terminated on 20 July 1992. They sued for illegal dismissal.

On the other hand, the respondent “Viva Films” denied being the employer. It explained that it was primarily engaged in the distribution and exhibition, but not the making of movies. It also asserted that it contracted with persons called “producers” (also referred to as “associate producers”) to “produce” or make movies. Hence, the petitioners were project employees of the associate producers who act as independent contractors.

The Labor Arbiter found that complainants were employees of the respondents Viva Films and Mr. Del Rosario (executive producer) and that the complainants were illegally dismissed.

But on appeal, the NLRC found that complainants [petitioners] were hired only for specific movie projects and their employment was co-terminus with each movie project.

Ruling: Assuming that the associate producers are job contractors, they must then be engaged in the business of making motion pictures. They must have tools, equipment, machinery, work premises, and other materials necessary to make motion pictures. However, the associate producers here have none of these. Private respondents’ evidence reveals that the movie-making equipment are supplied to the producers and owned by VIVA. These include generators, cables and wooden platforms, cameras and “shooting equipment”; in fact, VIVA likewise owns the trucks used to transport the equipment. It is thus clear that the associate producer merely leases the equipment from VIVA.

The relationship between VIVA and its producers or associate producers seems to be that of agency, as the latter make movies on behalf of VIVA, whose business is to “make” movies. As such, the employment relationship between petitioners and producers is actually one between petitioners and VIVA, with the latter being the direct employer.

The employer-employee relationship between petitioners and VIVA can further be established by the “control test.” In their position paper submitted to the Labor Arbiter, private respondents narrated the following circumstances:

To ensure that quality films are produced by the PRODUCER who is an independent contractor, the company likewise employs a Supervising PRODUCER, a Project accountant and a Shooting unit supervisor.
The Supervising PRODUCER acts as the eyes and ears of the company and of the Executive Producer to monitor the progress of the PRODUCER’s work accomplishment. He is there usually in the field doing the rounds of inspection to see if there is any problem that the PRODUCER is encountering and to assist in threshing out the same so that the film project will be finished on schedule. The director merely instructs petitioners on how to better comply with VIVA’s requirements to ensure that a quality film is completed within schedule and without exceeding the budget. At bottom, the director is akin to a supervisor who merely oversees the activities of rank-and-file employees with control ultimately resting on the employer.

Moreover, appointment slips issued to all crew members state:

During the term of this appointment you shall comply with the duties and responsibilities of your position as well as observe the rules and regulations promulgated by your superiors and by Top Management.

The words “superiors” and “Top Management” can only refer to the “superiors” and “Top Management” of VIVA. By commanding crew members to observe the rules and regulations promulgated by VIVA, the appointment slips only emphasize VIVA’s control over petitioners.

Notably, nowhere in the appointment slip does it appear that it was the producer or associate producer who hired the crew members; moreover, it is VIVA’s corporate name which appears on the heading of the appointment slip. What likewise tells against VIVA is that it paid petitioners’ salaries as evidenced by vouchers, containing VIVA’s letterhead, for that purpose.

All the circumstances indicate an employment relationship between petitioners and VIVA alone, thus the inevitable conclusion is that petitioners are employees only of VIVA.

The next issue is whether the employees were illegally dismissed. Viva Films contend that petitioners were project employees whose employment was automatically terminated with the completion of their respective projects. Petitioners, on the other hand, assert that they were regular employees who were illegally dismissed. Are the complainants project employees or are they regular? This matter is taken up in Book VI under Article 294.

4. LABOR UNION AND UNREGISTERED ASSOCIATION AS EMPLOYER

The mere fact that an entity is a labor union does not mean that it cannot be considered an employer of the persons who work for it. Much less should it be exempted from the very labor laws which it espouses as a labor organization.1

Even an unregistered association may be deemed an employer.

Orlando Farm Growers vs. NLRC, G.R. No. 129076, November 25, 1998 —

**Facts:** The Landowners, engaged in the production of export quality bananas, formed an unregistered association so as to deal more effectively with the company that buys their banana produce, with respect to technical services, canal maintenance, irrigation and pest control, among other services.

The Association, called Orlando Farm Growers, was not registered and therefore, did not have any legal personality. However, it was authorized to transact business and carry out certain activities in the interest of the individual landowner members.

The Association’s workers worked as packers, harvesters, etc. although they were, in fact, hired by the individual landowner members who were the ones paying the SSS contributions of the workers. The Association issued identification cards to the workers and memoranda or circulars regarding absences of workers and disciplinary measures. When three of its women workers filed money claims, it was the Association that entered into a compromise settlement of their claims.

Later, about 20 workers were dismissed by the Association. The workers filed individual suits for illegal dismissal with reinstatement and money claims.

Instead of addressing the issue of whether the workers were validly dismissed, the Association simply denied the existence of an employer-employee relationship with the workers. It claimed that the workers were hired by the individual landowner members and therefore were employees of the landowners who were, in fact, paying their SSS contributions. The Association also claimed that it was merely an “Unregistered Association” with no legal personality of its own, and formed solely by the landowner members.

**Ruling:** The Labor Code defines an employer as any person who acts in the interest of an employer directly or indirectly. The law does not require an employer to be registered in order to be considered as an employer. Otherwise, it would bring about a situation where employees are denied not only redress of their grievances but also the protection and benefits accorded them by law if their employer happens to be simply an Unregistered Association.

An employer-employee relationship can be determined using the four-fold test. In the case at bench, it was the Association which issued memoranda and circulars regarding employees’ conduct and their identification cards. The Association was vested with powers to settle and pay the claims of workers.

While the original purpose in the formation of the Association was to provide the landowners with a unified voice in effectively dealing with the buying company, it exceeded its avowed intentions when by its subsequent actions, it performed the role of an employer to its workers. Thus, it is the Association that is deemed the employer of the workers, not the individual landowner members.
5. WHEN EMPLOYMENT RELATIONSHIP ABSENT; JOB CONTRACTING OR INDEPENDENT CONTRACTORSHIP

Employment relationship and job contracting are inseparable issues—explaining one requires explaining the other. But they describe opposite or incompatible relationships, producing dissimilar effects. As a rule, they exclude each other: An employee is not a contractor; a contractor is not an employee and does not enjoy employee’s rights.

A contractor is self-employed or an employer to others. And if a contractor (an individual or a firm) hires other workers, the latter are his employees and not those of the contractee. But the law validates this trilateral set-up only if the contractor is himself a bona fide employer-businessman or business firm. If he is not so, the supposed contractee or client may end up being the employer of those other workers. The crucial question then is: Who is a bona fide job contractor? what is valid job contracting?

Take the familiar business of a security agency. It enters into contracts to render a job or service and, therefore, is also known as a job contractor. The guards that the security agency supplies or assigns to an enterprise do not thereby become employees of the client company. They are employees of the security agency because, ordinarily, a security agency is an independent contractor, hence, an employer. To the contractor and its employees, the Labor Code applies. While employer-employee relationship exists between a job contractor and the workers that he hires, no such relationship exists between those workers and the job contractee, the contractor’s client.

5.1 Labor-only Contracting, Prohibited

Entirely different is the case of a labor-only contractor. His contract is not to accomplish a job or service but merely to supply the people to do the job. In effect, he does not really hire people but merely recruits and supplies people. He is an agent of the true employer, the enterprise to which the labor-only contractor sends the people.

To sum up, employer-employee relationship exists between the job contractor and the people he hires; on the other hand, in labor-only contracting the employer-employee relationship is between the workers and the enterprise to which they are supplied.

Contracting and the distinction between “labor-only contracting” and “job contracting” are treated further under Articles 106 to 109.

6. GENERAL RIGHT OF EMPLOYER OVER CONDITIONS OF EMPLOYMENT

Where an employment relationship exists, what are its surrounding conditions? Who lays them down?

The conditions of employment are laid down by law, such as this Book III of the Labor Code, or by contract, concluded individually with an employee or
collectively with a group. It is also possible for certain conditions of employment to arise from established practice in the enterprise as contemplated in Article 100 of this Code. Broadly, therefore, the two kinds of employment conditions or benefits are **statutory** (provided for by law) and **voluntary** (initiated by the employer unilaterally or by contractual stipulation).

The employer’s right and responsibility to manage is broad, and this the law and the court recognize. Except as limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and discipline, dismissal and recall of workers.\(^1\)

Every business enterprise endeavors to increase its profits. In the process, it may adopt a device or means designed towards that goal. Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.\(^2\)

The economic laws of competition and of supply and demand operate inexorably in the capitalistic world of business. No Congress-made law can repeal or suspend those laws of economics. Managing them may only be attempted. For that reason, efforts of business to strengthen its competitiveness, especially in the present state of global commerce, may be viewed as legitimate, unless violative of a particular valid law, a valid contract or the basic principles of justice and fairness.

For instance, an employer, to make its salary rates competitive, may lawfully devise and implement a new salary scale applicable only to future employees. The employer may determine the effectivity date of the new scale; he may even retroact its effectivity. Existing employees falling within the covered period may have their salary adjusted upward if their rates are below the new hiring rate. But those who do not fall within the effectivity date have no right to demand upward adjustment of their rates nor can they demand restoration of their previous pay advantage. Such contraction of pay gaps may be considered a “salary distortion,” but because this is not a salary distortion brought about by compliance with a government wage order, the employer has no legal obligation to rectify the resulting “distortion” consisting of reduced pay gaps between the old and new hires. The legal duty to rectify a distortion applies to government-mandated wage increase under Article 124, but not to increases voluntarily initiated by

---

\(^1\)San Miguel Brewery Sales vs. Ople, G.R. No. 53615, February 8, 1989.

\(^2\)Ibid.
the employer, unless such duty exists under a CBA stipulation or a binding and established company practice.¹

Not only in people management but also in operational system is a business allowed to make innovations to boost its competitive capability.

**San Miguel Brewery Sales vs. Ople, G.R. No. 53615, February 8, 1989 —**

**Facts:** In 1979, San Miguel introduced a marketing scheme known as the “Complimentary Distribution System” (CDS) whereby its beer products were offered for sale directly to wholesalers through San Miguel’s sales offices. The labor union filed a complaint for unfair labor practice on the ground that the CDS was contrary to the existing marketing scheme whereby the Route Salesmen were assigned specific territories within which to sell their stocks of beer, and wholesalers had to buy beer products from them, not from the company. The union alleged that the new marketing scheme violated the collective bargaining agreement because the introduction of the CDS would reduce the take-home pay of the salesmen and their truck helpers, thus the company was unfairly competing with them.

**Ruling:** San Miguel’s offer to compensate the members of its sales force who would be adversely affected by the implementation of the CDS, by paying them a so-called “back adjustment commission” to make up for the commissions they might lose as a result of the CDS, proved the company’s good faith and lack of intention to bust their union.

So long as a company’s prerogatives are exercised in good faith for the advancement of the employer’s interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, the Supreme Court will uphold them.

6.1 **Limitations to Stipulations**

Nonetheless, while it is true that the parties to a contract may establish any agreements, terms, and conditions that they may deem convenient, they should not be contrary to law, morals, good customs, public order or public policy. The relations between capital and labor are not merely contractual, impressed as they are with so much public interest that the same should yield to the common good.²

7. **EXCLUDED EMPLOYEES**

In the situation where employment relationship exists, the next matter of concern is coverage, that is, who are the employees that are or are not covered by the law on conditions of employment. Article 82 says that the whole Title I—

¹Bankard Employees Union-Workers Alliance Trade Union vs. NLRC and Bankard, Inc., G.R. No. 140689, February 17, 2004.
HOURS OF WORK

from Articles 82 to 96 (Working Conditions and Rest Periods) — applies to all employees in all establishments, except the following:

(1) government employees, (2) managerial employees, including other officers or members of the managerial staff, (3) field personnel, (4) the employer’s family members who depend on him for support, (5) domestic helpers, (6) persons in the personal service of another, (7) workers who are paid by results as determined under DOLE regulations.

7.1 Government Employees

As noted in the Preliminary Title, government employees are governed by the Civil Service rules and regulations, not by the Labor Code, particularly this Title on employment conditions. But this exclusion does not refer to employees of government agencies and government corporations that are incorporated under the Corporation Code. To them the Labor Code applies.

particularly as regards public health workers, R.A. No. 7305, applies. 1

7.2 Managerial Employees or Staff

Managerial employees and other officers or members of the managerial staff are also excluded from the coverage of Articles 82 to 96. The Implementing Rules of Book III defines the workers that belong to these categories.

Since “managerial employees” include managerial staff, the definition therefore covers more people than does the definition in Article 212(m) [now 219]. “Managerial employee” in Article 82 includes supervisors, but “managerial employee” under Article 212(m) does not. In effect, a supervisor is a manager for purposes of Book III, but is not so for purposes of Book V.

It follows that under Book V, supervisors, unlike managers, are allowed to form, join or assist the labor union of fellow supervisors. But under Book III, supervisors, like managers, are not entitled to the benefits under Articles 83 through 96, such as overtime pay or rest day or holiday pay. If a supervisor is given these benefits, it is not because of law but the employer’s voluntary act or contractual obligation.

7.3 Supervisors, like managers, not entitled to overtime pay

National Sugar Refineries Corp. vs. NLRC and NBSR Supervisory Union (PACIWU) TUCP, G.R. No. 101761, March 24, 1993 —

The main issue in this petition is whether supervisory employees, as defined in Article 219(m), Book V of the Labor Code, should be considered as officers or members of the managerial staff under Article 82.

It is the submission of petitioner [employer] that while the members of respondent union, as supervisors, may not be occupying managerial positions, they are clearly officers or members of the managerial staff because they meet all the

1See in the Labor Law Source Book by the present author.
conditions prescribed by law, hence, not entitled to overtime, rest day and holiday pay. It contends that the distinction between managerial and supervisory employees under Article 212(m) [now 219] should be made to apply only to the provisions on Labor Relations, while the right of said employees to the questioned benefits should be considered in the light of Article 82 of the Code and Section 2, Rule I, Book III of the implementing rules. In other words, the supervisors are allowed to form and join unions under Book V, but not entitled to the employment benefits under Articles 82 to 96 of Book III.

The court ruled that a perusal of the Job Value Contribution Statements of the union members would readily show that these supervisory employees were under the direct supervision of their respective department superintendents and that, generally, they assisted the latter in planning, organizing, staffing, directing, controlling, communicating and in making decisions in attaining the company’s set goals and objectives. These supervisory employees were likewise responsible for the effective and efficient operation of their respective departments.

From the foregoing, it is apparent that the members of respondent union discharge duties and responsibilities which ineluctably qualify them as officers or members of the managerial staff, as defined in Section 2, Rule I, Book III of the aforesaid Rules to Implement the Labor Code, viz.: (1) their primary duty consists of the performance of work directly related to management policies of their employer; (2) they customarily and regularly exercise discretion and independent judgment; (3) they regularly and directly assist the managerial employee whose primary duty consists of the management of a department of the establishment in which they are employed; (4) they execute, under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; (5) they execute, under general supervision, special assignments and tasks; and (6) they do not devote more than 20% of their hours worked in a work-week to activities which are not directly and clearly related to the performance of their work hereinbefore described.

Thus, the court concluded:

Under the facts obtaining in this case, we are constrained to agree with petitioner that the union members should be considered as officers or members of the managerial staff and are, therefore exempt from the coverage of Article 82. Perforce, they are not entitled to overtime, rest day and holiday pay.

Considering his duties and responsibilities, a shift engineer/foreman/boiler head may be considered a member of the managerial staff.

*Peñaranda vs. Baganga Plywood Corp., et. al., G.R. No. 159577, May 3, 2006* —

As shift engineer, petitioner’s duties and responsibilities were as follows:

“1. To supply the required and continuous steam to all consuming units at minimum cost

“2. To supervise, check and monitor manpower workmanship as well as operation of boiler and accessories
3. To evaluate performance of machinery and manpower
4. To follow-up supply of waste and other materials for fuel
5. To train new employees for effective and safety while working
6. Recommend parts and supplies purchases
7. To recommend personnel actions such as; promotion, or disciplinary actions
8. To check water from the boiler, feedwater and softener, regenerate softener if beyond hardness limit
9. Implement Chemical Dosing
10. Perform other task as required by the superior from time to time

The foregoing enumeration, particularly items 1, 2, 3, 4, 5 and 7 illustrates that petitioner was a member of the managerial staff. His duties and responsibilities conform to the definition of a member of a managerial staff under the Implementing Rules.

Petitioner supervised the engineering section of the steam plant boiler. His work involved overseeing the operation of the machines and the performance of the workers in the engineering section. This work necessarily requires the use of discretion and independent judgment to ensure the proper functioning of the steam plant boiler. As supervisor, petitioner is deemed a member of the management staff.

Noteworthy, even petitioner admitted that he was a supervisor. In his Position Paper, he stated that he was the foreman responsible for the operation of the boiler. The term foreman implies that he was the representative of management over the workers and the operation of the department. Petitioner’s evidence also showed that he was the supervisor of the steam plant. His classification as supervisor is further evident from the manner his salary was paid. He belonged to the 10% of respondent’s 354 employees who were paid on a monthly basis, the others were paid only on a daily basis.

On the basis of the foregoing, the Court finds no justification to award overtime pay and premium pay for rest days to petitioner.

The perceptive student will suspect, of course, that the above rulings are correct only in strictly legal terms. In management reality, employment relationship will not last and the company will probably crumble, if the managers and supervisors are given less benefits than their subordinates receive.

7.4 Outside or Field Sales Personnel

Another group of employees excluded from coverage of Articles 82 to 96 refers to field personnel. The non-applicability of the overtime law (Eight-hour Labor Law) to field personnel is explained in a 1963 case.

Whereafter the morning roll call the outside or field sales personnel leave the plant of the company to go on their respective sales routes and they do not have a daily time record but the sales routes are so planned that they can be completed within 8 hours at most, and they receive monthly salaries and sales commissions in variable amounts, so that they are made to work beyond the required eight hours similar to piece-work, pakiao, or commission basis regardless of the time employed, and the employees’ participation depends on their industry, it is held that the Eight-hour Labor Law has no application to said outside or field sales personnel and that they are not entitled to overtime compensation.

In our opinion, the Eight-hour Labor Law only has application where an employee or laborer is paid on a monthly or daily basis, or is paid a monthly or daily compensation, in which case, if he is made to work beyond the requisite period of eight hours, he should be paid the additional compensation prescribed by law. This law has no application when the employee or laborer is paid on a piece-work, pakiao, or commission basis, regardless of the time employed. The philosophy behind this exemption is that his earnings in the form of commission is based on the gross receipts of the day. His participation depends upon his industry so that the more hours he employs in the work, the greater are his gross returns and the higher his commission. This philosophy is better explained in Jewel Tea Co. vs. Williams, C.C.A. Okla., 118 F. 2d 202, as follows:

The reasons for excluding an outside salesman are fairly apparent. Such salesman, to a greater extent, works individually. There are no restrictions respecting the time he shall work and he can earn as much or as little, within the range of his ability, as his ambition dictates. In lieu of overtime, he ordinarily receives commissions as extra compensation. He works away from his employer’s place of business, is not subject to the personal supervision of his employer, and his employer has no way of knowing the number of hours he works per day.

As a general rule, “field personnel” are those whose performance of their job/service is not supervised by the employer or his representative, the workplace being away from the principal office and whose hours and days of work cannot be determined with reasonable certainty; hence, they are paid specific amount for rendering specific service or performing specific work. If required to be at specific places at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the employer.¹

¹BWC advisory opinion to Philippine Technical-Clerical Commercial Employees Association, April 6, 1989.
If usage of work hours is supervised, the employee is not a “field personnel.” Same rule applies to an employee paid on task or commission basis.

The phrase “whose actual hours of work in the field cannot be determined with reasonable certainty” in Article 82 must be read in conjunction with Rule IV, Book III of the Implementing Rules which provides:

Rule IV. Holidays with Pay

Section 1. Coverage — This rule shall apply to all employees except:

x x x

(e) Field personnel and other employees whose time and performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid in a fixed amount for performing work irrespective of the time consumed in the performance.

The aforementioned rule did not add another element to the Labor Code definition of field personnel. The clause “whose time and performance is unsupervised by the employer” did not amplify but merely interpreted and expounded the clause “whose actual hours of work in the field cannot be determined with reasonable certainty.” The former clause is still within the scope and purview of Article 82 which defines field personnel. Hence, in deciding whether or not an employee’s actual working hours in the field can be determined with reasonable certainty, query must be made as to whether or not such employee’s time and performance is constantly supervised by the employer.

In the case at bar, during the entire course of their fishing voyage, fishermen employed by petitioner have no choice but to remain on board its vessel. Although they perform non-agricultural work away from petitioner’s business offices, the fact remains that throughout the duration of their work they are under the effective control and supervision of petitioner through the vessel’s patron or master as the NLRC correctly held.1

Hence, the fishermen are not “field personnel.”

Bus drivers and conductors are supervised; their actual work hours are monitored.


The definition of a “field personnel” is not merely concerned with the location where the employee regularly performs his duties but also with the fact that the employee’s performance is unsupervised by the employer. As discussed above, field personnel are those who regularly perform their duties away from the principal place of business of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. Thus, in order to conclude whether an employee is a field personnel...

---

1Mercidar Fishing Corporation vs. NLRC and F. Agao, G.R. No. 112574, October 8, 1998.
employee, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee’s time and performance are constantly supervised by the employer.

As observed by the Labor Arbiter and concurred in by the Court of Appeals:

It is of judicial notice that along the routes that are plied by these bus companies, there are its inspectors assigned at strategic places who board the bus and inspect the passengers, the punched tickets, and the conductor’s reports. There is also the mandatory once-a-week car barn or shop day, where the bus is regularly checked as to its mechanical, electrical, and hydraulic aspects, whether or not there are problems thereon as reported by the driver and/or conductor. They too, must be at specific place as [sic] specified time, as they generally observe prompt departure and arrival from their point of origin to their point of destination. In each and every depot, there is always the Dispatcher whose function is precisely to see to it that the bus and its crew leave the premises at specific times and arrive at the estimated proper time. These are present in the case at bar. The driver, the complainant herein, was therefore under constant supervision while in the performance of this work. He cannot be considered a field personnel.

The same is true with respect to the phrase “those who are engaged on task or contract basis, purely commission basis.” Said phrase should be related with “field personnel,” applying the rule on ejusdem generis that general and unlimited terms are restrained and limited by the particular terms that they follow. Hence, employees engaged on task or contract basis or paid on purely commission basis are not automatically exempted from the grant of service incentive leave, unless they fall under the classification of field personnel.

Therefore, petitioner’s contention that respondent [a driver-conductor plying Manila-Tuguegarao-Baguio] is not entitled to the grant of service incentive leave just because he was paid on purely commission basis [7% of gross income per trip] is misplaced. What must be ascertained in order to resolve the issue of propriety of the grant of service incentive leave to respondent is whether or not he is a field personnel.

In Union of Filipro Employees vs. Vivar, et al., G.R. No. 79255, January 20, 1992, the sales personnel are considered as field personnel. The Court explains:

It is undisputed that these sales personnel start their field work at 8:00 a.m. after having reported to the office and come back to the office at 4:00 p.m. if they are Makati-based.

The petitioner [union] maintains that the period between 8:00 a.m. [and] 4:00 or 4:30 p.m. comprises the sales personnel’s working hours which can be determined with reasonable certainty.

The Court does not agree. The law requires that the actual hours of work in the field be reasonably ascertained. The company has no way of determining whether or not these sales personnel, even if they report to
the office before 8:00 a.m. prior to field work and come back at 4:30 p.m.,
really spend the hours in between in actual field work.

Despite the above ruling, the entitlement to overtime pay of piece-work
employees has to be reexamined under Article 101 where the different kinds of
piece-work employees are explained.

7.5 Employer’s Family Members

Although not field personnel, workers who are family members of the
employer, and dependent on him for their support, are outside the coverage of
this Title on working conditions and rest periods.

7.6 Domestic Helper and Persons Rendering Personal Service

Excluded also from the coverage of the law on working conditions are
domestic servants and persons in the personal service of another if they perform
such services in the employer’s home which are usually necessary or desirable for
the maintenance or the enjoyment thereof, or minister to the personal comfort,
convenience or safety of the employer, as well as the members of the employer’s
household.¹

However, house personnel hired by a ranking company official, a foreigner,
but paid for by the company itself, to maintain a staff house provided for the
official, are not the latter’s domestic helpers but regular employees of the
company.²

Since the rules require that domestic servants must perform their services
in the employer’s home, a family cook, who is later assigned to work as a watcher
and cleaner of the employer’s business establishment, becomes an industrial
worker entitled to receive the wages and benefits flowing from such status.³

Waiters of a hotel do not fall under the term “domestic servants and
persons in the personal service of another,” nor under the terms “farm laborers,”
“laborers who prefer to be paid on piece work basis,” and “members of the family
of the employer working for him”; therefore, they do not fall within any of the
exceptions provided for in Section 2 of C.A. No. 44, and their work is within the
scope of the Eight-hour Labor Law.⁴

The new Batas Kasambahay is taken up in the chapter on Househelpers.

¹Sec. 2[d], Rule I, Implementing Rules of Book III.
²Abundio Cadiz, et al. vs. Philippine Sinter Corporation, NLRC Case No. 7-1729,
³Estrella Villa vs. Jose M. Zaragosa and Associates, OP Decision No. 0183, August
5, 1977.
7.7 Workers Paid by Result

Workers paid by result are not covered by the law on working conditions.\(^1\) Examples are workers paid per piece and those paid per task. Their common denominator is that they are paid by results and not on the basis of the time spent in working, such as those being paid straight wages by the hour, day, week or month.

In the case of task work, the emphasis is on the task itself, in the sense that payment is not reckoned in terms of numbers of units produced because one task may take hours or even days to finish, but in terms of completion of the work. Examples of this kind of work are plowing a piece of land at a specific price, painting a barn, or digging a ditch, at so much a cost.\(^2\)

Pursuant to the statutory exclusion, piece-rate workers in the coconut industry whose rate was fixed by the Wage Commission are not entitled to overtime pay for work in excess of eight hours a day.\(^3\)

Similarly, a taxi driver who is not observing any working hours is not covered by the Eight-hour Labor Law \(\text{[or Article 87 of the Labor Code].}\) In an opinion dated July 1, 1939 (Opinion No. 115), modified by Opinion No. 22, series of 1940, dated January 11, 1940, the Secretary of Justice held that chauffeurs of the Manila Yellow Taxicab Co. who “observed in a loose way certain working hours daily” and, “the time they report for work as well as the time they leave work was left to their discretion,” may be considered as piece workers and therefore, not covered by the provisions of the Eight-hour Labor Law. Section 2 of the Act excludes from the application thereof laborers who preferred to be on piece work basis. This connotes that a laborer or employee with no fixed salary, wages or remuneration but receiving a compensation from his employer an uncertain and variable amount depending upon the work done or the result of said work (piece work), irrespective of the amount of time employed, is not covered by the Eight-hour Labor Law and is not entitled to extra compensation should he work in excess of 8 hours a day. And this seems to be the condition of employment of the plaintiff. A driver in the taxi business of the plaintiffs, in one day could operate his taxicab eight hours, or less than eight hours or in excess of eight hours, or even 24 hours on Saturdays, Sundays, and holidays, with no limit or restriction other than his desire, inclination and state of health and physical endurance.\(^4\)

Payment by results is taken up further in Article 101.

\(^1\) But see explanation under Article 101 as regards entitlement to service incentive leave and night differential.


\(^3\) Inciong: Red V Coconut Products, Ltd., November 22, 1976.

\(^4\) Lara vs. Del Rosario, G.R. No. L-6339, April 20, 1954.
ART. 83. NORMAL HOURS OF WORK

The normal hours of work of any employee shall not exceed eight (8) hours a day.

Health personnel in cities and municipalities with a population of at least one million (1,000,000) or in hospitals and clinics with a bed capacity of at least one hundred (100) shall hold regular office hours for eight (8) hours a day, for five (5) days a week, exclusive of time for meals, except where the exigencies of the service require that such personnel work for six (6) days or forty-eight (48) hours, in which case they shall be entitled to an additional compensation of at least thirty percent (30%) of their regular wage for work on the sixth day. For purposes of this Article, “health personnel” shall include: resident physicians, nurses, nutritionists, dieticians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, attendants and all other hospital or clinic personnel.

COMMENTS

1. NORMAL HOURS OF WORK

1.1 Purpose of the 8-Hour Labor Law

The Eight-hour Labor Law was enacted not only to safeguard the health and welfare of the laborer or employee, but in a way to minimize unemployment by forcing employers, in cases where more than 8-hour operation is necessary, to utilize different shifts of laborers or employees working only for 8 hours each.1

1.2 Part-Time Work

Considering the purpose of the law, as mentioned above, it is not prohibited to have “normal hours of work” of less than eight hours a day. What the law regulates is work hours exceeding eight. It prescribes a maximum but not a minimum. Article 83 does not say that the normal hours of work is or should be eight hours but that it shall not exceed eight. Therefore, part-time work, or a day’s work of less than eight hours, is not prohibited.

Part-time work is common in work places, such as restaurants, in schools, and even in factories. It spawns a number of questions having to do with such matters as meal break, rest day, or length of probation. For instance, does a part-timer get the same five days service incentive leave, just like a full-timer? Is the probation of a part-timer six months as mentioned in Article 295, or should it be 12 months? Does a part-timer get a full holiday pay? These questions, or most of them, are answered in an “Explanatory Bulletin on Part-time Employment” dated 2 January 1996 issued by DOLE. In any case, the fair and general rule is

1Manila Terminal Co., Inc. vs. The Court of Industrial Relations, et al., G.R. No. L-4148, July 16, 1952.
that the wage and the benefits of a part-timer are in proportion to the number of hours worked.

Proportionate wage for part-time work is recognized in the eighth paragraph of Article 124, as amended by R.A. No. 6727.

### 1.3 Work Hours of Health Personnel

The second paragraph of Article 83 applies particularly to health personnel. Health personnel covered by the forty-hour workweek shall include, but not be limited to, resident physicians, nurses, nutritionists, dieticians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, attendants, and all other hospital or clinic personnel.¹

Medical secretaries are also considered clinic personnel.²

The customary practice of requiring resident physicians to work for 24 hours a day violates the limitations prescribed by Article 83 and would not be permissible even if the resident physicians were paid additional compensation. It cannot override the purpose of the limitation which is to safeguard the health and interest of hospital workers. However, the forty-hour workweek would not be applicable if there is a training agreement between the resident physician and the hospital and the training program is duly accredited or approved by the appropriate government agency. In such case, there is no employer-employee relation on account of the approved training program pursuant to Section 15, Rule X of the Rules and Regulations Implementing the Labor Code.³

The Manila Medical Society is not embraced in the definition and is accordingly not limited to a forty-hour workweek because it does not perform any diagnosis, treatment and care of patients. Nonetheless, its exclusion from the definition will not confer upon it the right to change its present practice relative to the hours of work being observed by its employees. Therefore, the practice of the Center in allowing its employees to work half-day during Saturdays and in giving them additional compensation should they work beyond four (4) hours should be retained.⁴

### 1.3a Republic Act No. 5901 Already Repealed

Republic Act No. 5901, otherwise known as “An Act Prescribing Forty Hours a Week of Labor for Government and Private Hospitals or Clinic Personnel,” enacted on June 21, 1969, has long been repealed with the passage of the Labor Code on May 1, 1974. Policy Instruction No. 54, dated April 12, 1988, issued by the DOLE Secretary proceeds from a wrong interpretation of R.A. No. 5901 and Article 83 of the Labor Code.

¹Article 83, Labor Code, Section 4, Rule 1-A, Book III.
⁴Nuesa: Manila Medical Society, August 17, 1979.
A cursory reading of Article 83 of the Labor Code betrays petitioners’ position that “hospital employees” are entitled to “a full weekly salary with paid two (2) days' off if they have completed the 40-hour/5-day workweek.” In other words, they want seven days’ pay for five days’ work. What Article 83 merely provides are: (1) the regular office hour of eight hours a day, five days per week for health personnel, and (2) where the exigencies of service require that health personnel work for six days or forty-eight hours then such health personnel shall be entitled to an additional compensation of at least thirty percent of their regular wage for work on the sixth day. There is nothing in the law that supports then Secretary of Labor’s assertion that “personnel in subject hospitals and clinics are entitled to a full weekly wage for seven (7) days if they have completed the 40-hour/5-day workweek in any given workweek.” Needless to say, the Secretary of Labor exceeded his authority by including [in P.I. No. 54] two days off with pay in contravention of the clear mandate of the statute. Such act the Court shall not countenance. Administrative interpretation of the law, we reiterate, is at best merely advisory, and the Court will not hesitate to strike down an administrative interpretation that deviates from the provision of the statute... Policy Instructions No. 54 being inconsistent with and repugnant to the provision of Article 83 of the Labor Code, as well as to R.A. No. 5901, should be, as it is hereby, declared void.¹

¹San Juan De Dios Hospital Employees Assn-AFW, et al. vs. NLRC and San Juan De Dios Hospital, G.R. No. 126383, November 28, 1997.
It is evident from the foregoing provision (of the CBA) that the working hours may be changed, at the discretion of the company, should such change be necessary for its operations, and that the employees shall observe such rules as have been laid down by the company. The company had to adopt a continuous 24-hour work daily schedule by reason of the nature of its business and the demands of its clients. It was established that the employees adhered to the said work schedule since 1988. The employees are deemed to have waived the eight-hour schedule since they followed, without any question or complaint, the two-shift schedule while their CBA was still in force and even prior thereto. The two-shift schedule effectively changed the working hours stipulated in the CBA. As the employees assented by practice to this arrangement, [8 hours regular plus 4 hours overtime], they cannot now be heard to claim that the overtime boycott is justified because they were not obliged to work beyond eight hours.¹

In other words, in this Interphil case, a 12-hour workshift is validated by consent and its four-hour overtime work with overtime pay becomes a contractual commitment. Boycott of the established four-hour overtime is declared by the Court as an illegal strike.

**ART. 84. HOURS WORKED**

Hours worked shall include (a) all time during which an employee is required to be on duty or to be at a prescribed workplace, and (b) all time during which an employee is suffered or permitted to work.

Rest periods of short duration during working hours shall be counted as hours worked.

**COMMENTS AND CASES**

1. **HOURS WORKED**

   The Implementing Rules, elaborating on Article 84, states the guiding principles to determine compensable or noncompensable hours. These are general guidelines because myriad and minute situations cannot all be anticipated by law and rules. Gaps or vagueness in the law may be plugged by company regulations.

   Sec. 4. Principles in Determining Hours Worked. — The following general principles shall govern in determining whether the time spent by an employee is considered hours worked for purposes of this Rule:

   (a) All hours are hours worked which the employee is required to give to his employer, regardless of whether or not such hours are spent in productive labor or involve physical or mental exertion;

(b) An employee need not leave the premises of the workplace in order that his rest period shall not be counted, it being enough that he stops working, may rest completely and may leave his workplace, to go elsewhere, whether within or outside the premises of his workplace;

(c) If the work performed was necessary, or it benefited the employer, or the employee could not abandon his work at the end of his normal working hours because he had no replacement, all time spent for such work shall be considered as hours worked, if the work was with the knowledge of his employer or immediate supervisor;

(d) The time during which an employee is inactive by reason of interruptions in his work beyond his control shall be considered time either if the imminence of the resumption of work requires the employee’s presence at the place of work or if the interval is too brief to be utilized effectively and gainfully in the employee’s own interest.

1.1 Preliminary Activities

Preliminary (before work) activities and postliminary (after actual work) activities are deemed performed during working hours, where such activities are controlled or required by the employer and are pursued necessarily and primarily for the employer’s benefit.

1.2 Waiting Time: Engaged to Wait or Waiting to be Engaged?

Whether waiting time constitutes working time depends upon the circumstances of each particular case and is a question of fact to be resolved by appropriate findings of the trial court. The facts may show that the employee was engaged to wait or may show that he waited to be engaged. The controlling factor is whether waiting time spent in idleness is so spent predominantly for the employer’s benefit or for the employee’s. For instance, the mere fact that a large part of the time of the employees engaged in a stand-by capacity in the employer’s auxiliary fire-fighting service was spent in idleness or in playing cards and other amusement, the facilities for which were provided by the employer, did not render inapplicable the overtime provisions of the Act.\(^1\)

Similarly, a truck driver who has to wait at or near the jobsite for goods to be loaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer’s property, he is also working while waiting. In both cases, the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Manila to Dagupan, leaving at 6 a.m. and arriving at 12 noon, and is completely and specifically relieved from all duty

\(^{1}\)Armour vs. Wantock, 323 U.S. 126 L. ed. 118, 65 Sup. Ct. 165.
until 6 p.m. when he again goes on duty for the return trip, the idle time is not working time. He is waiting to be engaged.\(^1\)

Waiting time spent by an employee shall be considered as working time if waiting is considered an integral part of his work or if the employee is required or engaged by an employer to wait. Thus, the four (4) hours spent by an employee waiting for the start of his work time due to the unique scheduling of the school system may be considered an integral part of the work of the employee. Hence, his waiting time is considered compensable work time.\(^2\)

### 1.3 Working While Eating

The employee must be completely relieved from duty for the purpose of eating regular meals. The meal time is not compensable if he is completely freed from duties during his meal period even though he remains in the workplace.

But the employee is not relieved if he is required to perform his duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating.

In one case, the Supreme Court held that when “during the so-called one-hour meal period, the mechanics were required to stand-by for emergency work; that if they happened not to be available when called, they were reprimanded by the leadman; that as in fact it happened on many occasions, the mechanics had been called from their meals or told to hurry up eating to perform work during this period,” such meal period (after deducting 15 minutes) is not rest period but overtime work.\(^3\) In short, noncompensable meal break is free time, the employee’s own time. If it is not, then it is compensable, whether the worker is able to eat or not.

### 1.4 Working While Sleeping

A worker sleeping may be working.

Whether sleeping time allowed an employee will be considered as part of his working time will depend upon the express or implied agreement of the parties. In the absence of an agreement, it will depend upon the nature of the service and its relation to the working time. The rule is that sleeping time may be considered working time if it is subject to serious interruption or takes place under conditions substantially less desirable than would be likely to exist at the employee’s home. However, sleeping time will not be regarded as working time within the meaning of the Act if there is an opportunity for comparatively

---

1. Dept. of Labor Manual, Sec. 4323.0.
uninterrupted sleep under fairly desirable conditions, even though the employee is required to remain on or near the employer’s premises and must hold himself in readiness for a call to action employment.¹

When persons are employed as firemen, and are permitted to sleep a portion of the time they are on duty at the fire station away from their homes, such sleeping time constitutes hours worked, where it appears among other circumstances, that compensation is paid on a monthly basis without any express or implied understanding as to pay for the sleeping time, the plan requiring sleeping time at the fire station having been unilaterally imposed upon the employees over their objections, and that the employees were completely under the direction of the employer during the 8-hour sleeping period, and were subject to call under circumstances involving a probability of night alarms.²

1.5 “On Call”

When the work is not continuous, the time when the laborer can leave his work and rest completely shall not be counted in the computation. However, although the laborers can rest completely and may not be actually at work, if they are required to be in their place of work before or after the regular working hours and within the call of their employers, the time they stay in the place of work should not be discounted from their working hours. For example, a company driver who drives trucks for the company is required by the manager to be at the place of work before or after business hours; the fact that he does nothing at the place of work but could not leave because he may, at any time, be called to drive the trucks, will not prejudice him as to the time that he was not actually working. Likewise, where the employees stay in office after office hours because their employer required them to do so to perform other works incidental to their regular work, they shall be credited for the hours they stay in office.³

An employee who is required to remain on call on the employer’s premises or so close thereto that he cannot use the time effectively for his own purposes is working while “on call.”⁴ An employee who is not required to remain on the employer’s premises but is merely required to leave words at his home or with company officials where he may be reached is not working while on call.⁵

For public health workers, a specific provision of a special law provides for an “on call pay.” It states:

¹Skidmore vs. Swift and Co., 323 U.S. 134.
⁵Department of Labor Manual, Sec. 4323.03.
... the time when a public health worker is placed on “On Call” status shall not be considered as hours worked but shall entitle the public health worker to an “On Call” pay equivalent to fifty percent (50%) of his/her regular wage. “On call” status refers to a condition when public health workers are called upon to respond to urgent or immediate need for health/medical assistance or relief work during emergencies such that he/she cannot devote the time for his/her own use. (Sec. 15, R.A. No. 7305)

1.5a With Cellular Phone or Other Contact Device
If an employee is kept “within reach” through a mobile telephone or other contact device, is the employee “at work” beyond his regular work hours?

The answer appears to be in the negative. A US court ruling is in point: “Five marshals were not considered to be in work status during the time they are in on-call status where they were allowed to leave telephone numbers or to carry electronic device for purpose of being contacted, notwithstanding that they must remain within a certain geographical area.”1

1.6 Travel Time

Broadly, time spent walking, riding, or traveling to or from the place of work may or may not constitute working time. Time spent in traveling has been held to constitute working time within the overtime provisions of the Fair Labor Standards Act under some circumstances, but not under other circumstances. Among factors given significance are whether the employee is bound to travel in a conveyance furnished by the employer or is free to choose his conveyance, whether or not during the travel he is subject to the employer’s supervision and control, and whether or not the travel takes place under vexing and dangerous conditions.2

In the Philippines, the Department of Labor Manual states that the principles which apply in determining whether or not time spent in travel is working time depend upon the kind of travel involved. The subject is discussed under the headings “Travel from home to work,” “Travel that is all in the day’s work,” and “Travel away from home.”

(1) Travel from home to work. — An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home-to-work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different jobsites.

But while normal travel from home to work is not worktime, when an employee receives an emergency call outside of his regular working hours and

---


221 Am. Jur. 880.
HOURS OF WORK

is required to travel to his regular place of business or some other work site, all of the time spent in such travel is working time.

(2) *Travel that is all in the day’s work.* — Time spent by an employee in travel as part of his principal activity, such as travel from jobsite to jobsite during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick and to carry tools, the travel from the designated place to the workplace is *part of the day’s work* and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finished at 8 p.m. and is required to return to his employer’s premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer’s premises, the travel after 8 p.m. is home-to-work travel and is not hours worked.

(3) *Travel away from home.* — Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly worktime when it *cuts across* the employee’s workday. The employee is simply substituting travel for other duties. The time is hours worked not only on regular working days during normal working hours but also during the corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday, the travel time during these hours is worktime on Saturday and Sunday as well as on the other days. Regular meal period is not counted. As an enforcement policy, the Department will not consider as worktime those times spent in travel away from home *outside* of regular working hours as a passenger on an airplane, train, boat, bus or automobile.

Any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat, or airplane or an employee who is required to ride therein as an assistant or helper, is working while riding, except during *bona fide* meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

Under this rule, the time spent by an employee in traveling to a place outside Metro Manila to do installation jobs is considered time worked when the travel time cuts across or coincides with his regular work hours. Hence, he should be paid his regular salary for said time.\(^1\)

Similarly, the time spent by the driver of a delivery truck in getting the vehicle from and returning it to the Company bodega is deemed time worked.\(^2\)

---


1.7 Lectures, Meetings, and Training Programs

Attendance at lectures, meetings, training programs, and similar activities need not be counted as working time if the following three criteria are met:

1. Attendance is outside of the employee’s regular working hours;
2. Attendance is in fact voluntary; and
3. The employee does not perform any productive work during such attendance.

In the case of PRISCO vs. CIR, et al., G.R. No. L-13806, May 23, 1960, the Supreme Court held that the services rendered outside of the regular working hours partake the nature of overtime work. In that case, the security guards were directed to report for duty one hour in advance of the usual time for guard work for briefing purposes. It may be noted that in this case the criterion in number 2 above is not met.

1.8 Grievance Meeting

Time spent in adjusting grievance between employer and employees during the time the employees are required by the employer to be on the premises is hours worked. But in the event a bona fide union is involved, the counting of such time will, as a matter of enforcement policy, be left to the process of collective bargaining or to the custom or practice under the collective bargaining agreement.¹

1.9 Semestral Break

Regular full-time monthly paid teachers in a private school are entitled to salary and emergency cost-of-living allowance during semestral breaks.

University of Pangasinan Faculty Union vs. University of Pangasinan, No. L-63122, February 20, 1984 —

Facts: The petitioner’s members are full-time professors, instructors, and teachers of respondent University. The teachers in the college level teach for a normal duration of ten (10) months in a school year, divided into two (2) semesters of five months each, excluding the two-month summer vacation. These teachers are paid their salaries on a regular monthly basis.

In November and December, 1981, the petitioner’s members were fully paid their regular monthly salaries. However, from November 7 to December 5, during the semestral break, they were not paid their ECOLA or emergency cost-of-living allowance. The University claims that the teachers are not entitled thereto because the semestral break is not an integral part of the school year and there being no actual services rendered by the teachers during said period, the principle of “No work, no pay” applies.

¹Department of Labor Manual, Sec. 4323.03.
Ruling: It is beyond dispute that the petitioner’s members are full-time employees receiving their monthly salaries irrespective of the number of working days or teaching hours in a month. However, they find themselves in a most peculiar situation whereby they are forced to go on leave during semestral breaks. These semestral breaks are in the nature of work interruptions beyond the employees’ control. The duration of the semestral break varies from year to year dependent on a variety of circumstances, affecting at times only the private respondent but at other times, all educational institutions in the country. As such, these breaks cannot be considered as absences within the meaning of the law for which deductions may be made from monthly allowances. The “No work, no pay” principle does not apply in the instant case. The petitioner’s members received their regular salaries during this period. It is clear from the aforequoted provision of law that it contemplates a “no work” situation where the employees voluntarily absent themselves. Petitioners, in the case at bar certainly do not, *ad voluntatem*, absent themselves during semestral breaks. Rather, they are constrained to take mandatory leave from work. For this, they cannot be faulted nor can they be begrudged that which is due them under the law. To a certain extent, the private respondent can specify dates when no classes would be held. Surely, it was not the intention of the framers of the law to allow employers to withhold employee benefits by the simple expedient of unilaterally imposing “no work” days and consequently avoiding compliance with the mandate of the law for these days.

Furthermore, we may also by analogy apply the principle enunciated in the Omnibus Rules Implementing the Labor Code, *to wit*:

Sec. 4. Principles in Determining Hours Worked. — The following general principles shall govern in determining whether the time spent by an employee is considered hours worked for purposes of this Rule:

xxx xxx xxx

(d) The time during which an employee is inactive by reason of interruptions in his work beyond his control shall be considered time either if the imminence of the resumption of work required the employee’s presence at the place of work or if the interval is too brief to be utilized effectively and gainfully in the employee’s own interest. (*Italics ours.*)

The petitioner’s members, in the case at bar, are exactly in such a situation. The semestral break scheduled is an interruption beyond petitioner’s control and it cannot be used “effectively nor gainfully in the employee’s interest.” Thus, the semestral break may also be considered as “hours worked.” For this, the teachers are paid regular salaries and, for this, they should be entitled to ECOLA. Not only do the teachers continue to work during this short recess but much less do they cease to live for which the cost-of-living allowance is intended. The legal principles of “No work, no pay; No pay, no ECOLA” must necessarily give way to the purpose of the law to augment the income of employees to enable them to cope with the harsh living conditions brought about by inflation; and to protect employees and their wages against the ravages brought by these conditions.
CONDITIONS OF EMPLOYMENT

ART. 84

Note: The above ruling is reiterated in the case of Sibal vs. Notre Dame of Greater Manila, G.R. No. 75093, decided on February 23, 1990. Regarding pay of hourly-paid teachers on holidays, see Jose Rizal College case in comments to Article 94.

2. WORK HOURS OF SEAMEN

A seaman or sailor, obviously, is not land-based. Does this mean he is “at work” all the time he is on board the ship? The rule is that a laborer need not leave the premises of the factory, shop or boat in order that his period of rest shall not be counted, it being enough that he “ceases to work,” may rest completely and leave or may leave at his will the spot where he actually stays while working, to go somewhere else, whether within or outside the premises of said factory, shop or boat. If these requisites are complied with, the period of such rest shall not be counted.¹

A worker is entitled to overtime pay only for work in actual service beyond eight hours. Thus, the mere fact that a crew member of a vessel was required to be on board his barge all day so that he could immediately be called to duty when his services were needed did not imply that he should be paid overtime for sixteen hours a day, but that he should receive overtime compensation only for the actual service in excess of eight hours that he could prove.

Overtime work of seamen is further explained under Article 87.

3. HOURS WORKED: EVIDENCE AND DOUBT

In one case, the employee’s claim that he worked twelve (12) hours a day was disputed by the employer who asserted that the employee worked only four (4) hours a day. The employer presented alleged time records but the employee called them forgeries because, in fact, he was never required to submit time records.

OVERRULING the NLRC, the Court ruled that “when an employer alleges that his employee works less than the normal hours of employment as provided for in the law, he bears the burden of proving his allegation with clear and satisfactory evidence.”²

The Supreme Court (through Justice Romero) refused to rely solely on the supposed daily time records as they cannot be considered substantial evidence from which to conclude that the employee worked only for four hours. Considering the employee’s unequivocal statement that the DTRs were all falsified and that his signatures therein were forgeries, the employer should have presented relevant documents and records to controvert the employee’s assertion. This the employer did not do. No employment contract, payroll, notice

¹Luzon Stevedoring Co., Inc. vs. Luzon Marine Department Union, G.R. No. L-9265, April 29, 1957.
of assignment or posting, cash voucher or any other convincing evidence which may attest to the actual hours of work of the petitioner was even presented. Instead, what the private respondent offered as evidence was only petitioner’s daily time record, which the latter categorically denied ever accomplishing, much less signing.\(^1\)

In said alleged daily time record, it showed that petitioner started work at 10:00 p.m. and would invariably leave his post at exactly 2:00 a.m. Obviously, such unvarying recording of a daily time record is improbable and contrary to human experience. It is impossible for an employee to arrive at the workplace and leave at exactly the same time, day in day out. The very uniformity and regularity of the entries are “badges of untruthfulness and as such indices of dubiety.”\(^2\)

**ART. 85. MEAL PERIODS**

Subject to such regulations as the Secretary of Labor may prescribe, it shall be the duty of every employer to give his employees not less than sixty (60) minutes time-off for their regular meals.

**COMMENTS AND CASES**

1. **MEAL TIME**

   Article 85 requires the employer to give employees 60 minutes time-off for their regular meals. Meal time is not compensable except in cases where the lunch period or meal time is predominantly spent for the employer’s benefit or where it is less than 60 minutes.

   Lunch periods have been uniformly held not to constitute working time within the contemplation of the overtime provisions of the Fair Labor Standards Act, at least insofar as the employees are not required to stay on the premises during the lunch period, or they are free to do what they will during such period, although they may occasionally perform some emergency service. However, where the lunch period is spent predominantly for the employer’s benefit, and cannot be utilized in the employee’s own interests, such time constitutes work time.\(^3\)

1.1 **When Meal Time is Time Worked: Continuous Shifts**

   Where work is continuous for several shifts, the meal time breaks should be counted as working time for purposes of overtime compensation.

   *National Development Company vs. Court of Industrial Relations and National Textile Workers Union, G.R. No. L-15422, November 30, 1962 —

   **Facts:** At the petitioner company, there were four work shifts of eight hours each with one-hour meal time per shift. Petitioner credited the workers with eight

\(^{1}\)Prangan vs. NLRC, *et al.*, G.R. No. 126529, April 15, 1998.

\(^{2}\)Ibid.

\(^{3}\)31 Am. Jur. 881.
hours of work per shift and paid them for that number of hours. But since 1953, whenever workers in one shift were required to continue working until the next shift, petitioner, instead of crediting them with 8 hours of overtime work, has been paying them for only six hours. The employer claimed that the two hours corresponding to the meal time periods should not be included in computing compensation. The employees maintained the opposite view.

**Ruling:** The idle time that an employee may spend for resting during which he may leave the spot or place of work (though not the premises of his employer), is not counted as working time only where the work is broken or not continuous.

In this case, evidence showed that the work in the petitioner company is continuous, *to wit*, time cards showed work was uninterrupted; employees cannot freely leave their working places nor rest completely; and during the period covered by the computation, the work was on a 24-hour basis divided into shifts.

The work being continuous, the meal time breaks should be counted as working time for purposes of overtime compensation. Petitioner should therefore credit employees sixteen (16) hours when they work in two shifts and not fourteen.

### 1.2 Meal Time of Less Than 60 Minutes

Under Article 85 of the Code, the meal period should be not less than 60 minutes, in which case it is time-off or noncompensable time. The implementing rules¹ allow the meal time to be less than 60 minutes, under specified cases and in no case shorter than 20 minutes. But such shortened meal time (say, 30 minutes) should be with full pay, and, of course, the time when the employee cannot eat, because he is still working, should also be paid.

To shorten meal time to less than 20 minutes is not allowed. If the so-called “meal time” is less than 20 minutes, it becomes only a rest period and, under the same Implementing Rules, is considered working time.

The situations where the meal break may be shortened to less than 60 minutes, with full pay, are the following:

a) where the work is non-manual or does not involve serious physical exertion;

b) where the establishment regularly operates not less than sixteen (16) hours a day;

c) where there is actual or impending emergencies or there is urgent work to be performed on machineries, equipment or installation to avoid serious loss which the employer would otherwise suffer; and

d) where the work is necessary to prevent serious loss of perishable goods.

¹Sec. 7, Rule I, Book III.
The above situations of shortening the meal time are, logically, similar to the situations of emergency overtime work under Article 89. Indeed, why shorten the eating time if there is no very urgent work?

1.3 **Shortened Meal Break upon Employees’ Request**

But the employees themselves may request that their meal period be shortened so that they can leave work earlier than the previously established schedule. In such a situation, the shortened meal period is not compensable. For instance, the established work hours are from 8:00 a.m. to 5:00 p.m., with 12:00 noon to 1:00 p.m. as meal period. So that the employees could quit work at 4:30 p.m. (and have more time for leisure, family, or other personal activity), they may request, and management may agree, to shorten the meal time to thirty minutes (12:00 to 12:30 p.m.). This 30-minute meal time is not compensable. From 12:31 to 4:30 the employee resumes work and should be paid the regular rate. Work after 4:30 is overtime. The Department of Labor and Employment, in allowing such arrangement, imposes, however, certain conditions, namely:

1. The employees voluntarily agree in writing to a shortened meal period of 30 minutes and are willing to waive the overtime pay for such shortened meal period;
2. There will be no diminution whatsoever in the salary and other fringe benefits of the employees existing before the effectivity of the shortened meal period;
3. The work of the employees does not involve strenuous physical exertion and they are provided with adequate “coffee breaks” in the morning and afternoon;
4. The value of the benefits derived by the employees from the proposed work arrangement is equal to or commensurate with the compensation due them for the shortened meal period as well as the overtime pay for 30 minutes as determined by the employees concerned;
5. The overtime pay of the employees will become due and demandable if ever they are permitted or made to work beyond 4:30 pm; and
6. The effectivity of the proposed working time arrangement shall be of temporary duration as determined by the Secretary of Labor and Employment.1

---

1Drilon: Letter to Kodak Philippines, November 27, 1989; also Gilindro: BWC-WHSD Opinion No. 197, s. 1998.
2. **CHANGING LUNCH BREAK FROM PAID TO UNPAID**

   Where the practice has been to give employees only thirty minutes meal break, with pay, can the employer change this to one hour without pay? In one company, the work schedule was 7:45 a.m. to 3:45 p.m. with a 30-minute lunch break with pay. Sometime in 1992, the employer changed this schedule to 7:45 a.m. to 4:45 p.m., with lunch break from 12:00 noon to 1:00 p.m. without pay. The union of the affected employees complained against the change. The labor arbiter dismissed the complaint on the ground that the elimination of the 30-minute paid lunch break constituted a valid exercise of management prerogative and that the new work schedule, break time and one-hour lunch break did not have the effect of diminishing the benefits granted to factory workers as the working time did not exceed eight (8) hours.

   On appeal, the NLRC reversed the arbiter’s decision declaring that the new work schedule deprived the employees of the benefits of a time-honored company practice of providing its employees a 30-minute paid lunch break. The change, said the NLRC, violated Article 100 of the Labor Code.

   On review, the Supreme Court sustained the change. Speaking through Justice Bellosillo, the Court ruled:

   The right to fix the work schedules of the employees rests principally on their employer. In the instant case petitioner, as the employer, cites as reason for the adjustment the efficient conduct of its business operations and its improved production. It rationalizes that while the old work schedule included a 30-minute paid lunch break, the employees could be called upon to do jobs during that period as they were “on call.” Even if denominated as lunch break, this period could very well be considered as working time because the factory employees were required to work if necessary and were paid accordingly for working. With the new work schedule, the employees are now given a one-hour lunch break without any interruption from their employer. For a full one-hour undisturbed lunch break, the employees can freely and effectively use this hour not only for eating but also for their rest and comfort which are conducive to more efficiency and better performance in their work. Since the employees are no longer required to work during this one-hour lunch break, there is no more need for them to be compensated for this period. We agree with the Labor Arbiter that the new work schedule fully complies with the daily work period of eight (8) hours without violating the Labor Code. Besides, the new schedule applies to all employees in the factory similarly situated, whether they are union members or not.

   Necessarily, the Court dismissed the union’s contention that the change in work schedule constituted unfair labor practice. Because the change applied
to all factory employees engaged in the same line of work whether or not they are union members, it cannot be said that the new scheme prejudices the right to self-organization.

**ART. 86. NIGHT SHIFT DIFFERENTIAL**

Every employee shall be paid a night shift differential of not less than ten percent (10%) of his regular wage for each hour of work performed between ten o’clock in the evening and six o’clock in the morning.

**COMMENTS AND CASES**

1. **RATIONALE OF NIGHT SHIFT DIFFERENTIAL**

   “Night work cannot be regarded as desirable, either from the point of view of the employer or the wage earner. It is uneconomical unless overhead costs are unusually heavy. Frequently, the scale of wages is higher as an inducement to employment on the night shift, and the rate of production is generally lower.

   “xxx The lack of sunlight tends to produce anemia and tuberculosis and to predispose to other ills. Night work brings increased liability to eyestrain and accident. Serious moral dangers also are likely to result from the necessity of traveling the street alone at night, and from the interference with normal home life. From an economic point of view, moreover, the investigations showed that night work was unprofitable, being inferior to day work both in quality and in quantity. Wherever it had been abolished, in the long run the efficiency both of the management and of the workers was raised. Furthermore, it was found that night work laws are a valuable aid in enforcing acts fixing the maximum period of employment.”¹

2. **NIGHT SHIFT DIFFERENTIAL NOT WAIVABLE**


   The respondent court’s ruling on additional compensation for work done at night is not without evidence. Moreover, the petitioner-company did not deny that the private respondents rendered nighttime work. In fact, no additional evidence was necessary to prove that the private respondents were entitled to additional compensation, for whether or not they were entitled to the same is a question of law which the respondent court answered correctly. The “waiver rule” is not applicable in the case at bar. Additional compensation for nighttime work is founded on public policy, hence the same cannot be waived (Article 6, Civil Code). On this matter, we believe that the respondent court acted according to justice and equity and the substantial merits of the case, without regard to technicalities or legal forms and should be sustained.

It is argued that the laborer can rest during the day after having worked the whole night. But can the repose by day produce to the human body the same complete recuperative effects which only the natural rest at night can give him? It is also said that due to our warm climate, some prefer to work at night, thus avoiding the heat of the day. But this is true only in words but not in actual practice. We believe that since time immemorial the universal rule is that a man works at night due to some driving necessity rather than for reasons of convenience.¹

3. **BURDEN OF PROOF OF PAYMENT**

Who has the burden of proving a claim for night shift differential pay: the worker who claims not to have been paid night shift differential, or the employer who has custody of pertinent documents that can prove the fact of payment?

Mr. Justice Bellosillo, speaking for the Supreme Court, provides the answer in *National Semiconductor (HK) Distribution, Ltd. vs. NLRC and Santos*, G.R. No. 123520, June 26, 1998.

The fact that Santos [complainant employee] neglected to substantiate his claim for night shift differentials is not prejudicial to his cause. After all, the burden of proving payment rests on petitioner NSC [the employer]. Santos’ allegation of non-payment of this benefit, to which he is by law entitled, is a negative allegation which need not be supported by evidence unless it is an essential part of his cause of action. It must be noted that his main cause of action is his illegal dismissal, and the claim for night shift differential is but an incident of the protest against such dismissal. Thus, the burden of proving that payment of such benefit has been made rests upon the party who will suffer if no evidence at all is presented by either party.²

**ART. 87. OVERTIME WORK**

Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work an additional compensation equivalent to his regular wage plus at least twenty-five (25%) percent thereof. Work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus at least thirty (30%) percent thereof.

1. OVERTIME PAY

1.1 Definition

Overtime compensation is additional pay for service or work rendered or performed in excess of eight hours a day by employees or laborers in employment covered by the Eight-hour Labor Law [C.A. No. 444, now Article 87] and not exempt from its requirements. It is computed by multiplying the overtime hourly rate by the number of hours worked in excess of eight.\(^1\)

1.2 Rationale

Why is a laborer or employee who works beyond the regular hours of work entitled to extra compensation called, in this enlightened time, overtime pay? Verily, there can be no other reason than that he is made to work longer than what is commensurate with his agreed compensation for the statutorily fixed or voluntarily agreed hours of labor he is supposed to do. When he thus spends additional time to his work, the effect upon him is multi-faceted; he puts in more effort, physical and/or mental; he is delayed in going home to his family to enjoy the comforts thereof; he might have no time for relaxation, amusement or sports; he might miss important pre-arranged engagements; etc. It is thus the additional work, labor or service employed and the adverse effects just mentioned of his longer stay in his place of work that justify and are the real reasons for the extra compensation that is called overtime pay.\(^2\)

1.3 Night Differential and Overtime Pay

When the tour of duty of a laborer falls at nighttime [between 10:00 PM and 6:00 AM], the receipt of overtime pay will not preclude the right to night differential pay. The latter is payment for work done during the night while the other is payment for the excess of the regular eight-hour work.\(^3\)

1.4 Overtime Rate Based on Regular Wage

The overtime pay is compensation added to the “regular wage,” according to Article 87. “Regular base pay” or “basic pay” is explained by the Supreme Court in two cases decided in 1981 and 1986.

The term “regular base pay” excludes money received by an employee in different concepts, such as Christmas bonus and other fringe benefits. The phrase “regular base pay” is clear, unequivocal and requires no interpretation. It means regular basic pay and necessarily excludes money received in different concepts such as Christmas bonus and other fringe benefits. In this connection, it is

\(^1\)National Shipyards and Steel Corporation vs. Court of Industrial Relations, 3 SCRA 890 [1961].

\(^2\)PNB vs. PEMA and CIR, 115 SCRA 507 [1982].

\(^3\)Naric vs. Naric Workers Union, 105 Phil. 891 [1959].
necessary to remember that in the enforcement of previous collective bargaining agreements containing the same provision of overtime pay at the rate of “regular base pay plus 50% thereof,” the overtime compensation was invariably based only on the regular basic pay, exclusive of Christmas bonus and other fringe benefits. Appellant union knew all the while of such interpretation and precisely attempted to negotiate for a provision in the subject collective bargaining agreement that would include the Christmas bonus and other fringe benefits in the computation of the overtime pay. Significantly, the appellee company did not agree to change the phrase “regular base pay” as it could not consent to the inclusion of the fringe benefits in the computation of the overtime pay.\(^1\)

**OVERTIME PAY RATES COMPUTATION\(^2\)**

The COLA shall not be included in the computation of overtime pay. The minimum overtime pay rates vary according to the day the overtime work is performed, as follows:

1. *For work in excess of eight (8) hours performed on ordinary working days: Plus 25% of the hourly rate.*

<table>
<thead>
<tr>
<th>Sector/Industry</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-agriculture</td>
<td>P404.00</td>
<td>P404/8 \times 125% = P50.50 \times 125% \times \text{number of hours OT work}</td>
</tr>
<tr>
<td>Retail/Service Establishment</td>
<td>P367.00</td>
<td>P367/8 \times 125% = P45.88 \times 125% \times \text{number of hours OT work}</td>
</tr>
</tbody>
</table>

\(^1\)Bisig ng Manggagawa ng Philippine Refining Co., Inc. vs. Philippine Refining Co., Inc., G.R. No. L-27761, September 30, 1981.

**HOURS OF WORK**

**ART. 87**

2. For work in excess of eight (8) hours performed on a scheduled rest day or a special day: Plus 30% of the hourly rate on said days.

<table>
<thead>
<tr>
<th>Sector/Industry</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-agriculture</td>
<td>P404.00</td>
<td>P404/8 x 130% x 130% = P50.50 x 130% x 130% x number of hours OT work</td>
</tr>
<tr>
<td>Retail/Service Establishment</td>
<td>P367.00</td>
<td>P367/8 x 130% x 130% = P45.88 x 130% x 130% x number of hours OT work</td>
</tr>
</tbody>
</table>

3. For work in excess of eight (8) hours performed on a regular holiday: Plus 30% of the hourly rate on said days.

<table>
<thead>
<tr>
<th>Sector/Industry</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-agriculture</td>
<td>P404.00</td>
<td>P404/8 x 200% x 130% = P50.50 x 200% x 130% x number of hours OT work</td>
</tr>
<tr>
<td>Retail/Service Establishment</td>
<td>P367.00</td>
<td>Not covered by the rule on holiday pay</td>
</tr>
<tr>
<td>employing less than 10 workers</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. For work in excess of eight (8) hours performed on a regular holiday which falls on a scheduled rest day: Plus 30% of the hourly rate on said days.

<table>
<thead>
<tr>
<th>Sector/Industry</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-agriculture</td>
<td>P404.00</td>
<td>P404/8 x 260% x 130% = P50.50 x 260% x 130% x number of hours OT work</td>
</tr>
<tr>
<td>Retail/Service Establishment</td>
<td>P367.00</td>
<td>Not covered by the rule on holiday pay</td>
</tr>
<tr>
<td>employing less than 10 workers</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1.5 **Premium Pay; When Included or Excluded in Computing Overtime Pay**

Generally, the premium pay for work performed on rest days, special days, or regular holidays [Articles 93 and 94] is included as part of the regular rate of the employee in the computation of overtime pay for overtime work rendered on said days, especially if the employer pays only the minimum overtime rates prescribed by law. The employees and employer, however, may stipulate in their collective agreement the payment of overtime work at rates higher than those provided by law.¹

In other words, unless there is an agreement more favorable to the worker, the overtime rate is 30% of the rate for the first eight hours on a holiday or rest day. Thus, the holiday or rest day premium should first be added to the regular base pay before computing the overtime pay on such day.

1.6 **CBA May Stipulate Higher Overtime Pay Rate**

The basis of computation of overtime pay beyond that required by CA 444 [now Article 87] must be the collective agreement. It is not for the court to impose upon the parties anything beyond what they have agreed upon which is not tainted with illegality. On the other hand, where the parties fail to come to an agreement, on a matter not legally required, the court abuses its discretion when it obliges any of them to do more than what is legally obliged.²

1.7 **Conversion of Monthly to Daily Rate; Actual Work Days as Divisor**

In *PALEA vs. PAL, Inc.*, 70 SCRA 244 [1976], the Philippine Air Lines Employees’ Association (PALEA) and the Philippine Air Lines Supervisors’ Association (PALSA), on February 14, 1963, commenced an action against the Philippine Air Lines (PAL) in the Court of Industrial Relations, praying that PAL be ordered to revise the method of computing the basic daily and hourly rates of its monthly-salaried employees, and necessarily to pay them their accrued salary differentials.

PAL’s formula in computing wages of its employees was as follows:

\[
\text{Monthly salary} \times 12 \div 365 \text{ (No. of calendar days in a year)} = x \text{ (Basic daily rate)}
\]

\[
\frac{x}{8} = \text{Basic hourly}
\]

The unions would like PAL to modify the above formula in this wise:

\[
\text{Monthly salary} \times 12 \div \text{No. of actual working days} = x \text{ (Basic daily rate)}
\]

\[
\frac{x}{8} = \text{Basic hourly}
\]


²PNB vs. PNB Employees Assn. [PEMA], 115 SCRA 507 [1982].

208
The Supreme Court agreed with the position of the Court of Industrial Relations, *i.e.*, that the unions’ way of computation was the correct one.

“Since during his off days an employee is not compelled to work, he cannot, conversely, demand for his corresponding pay. If, however, a worker works on his off day, our welfare laws duly reward him with a premium higher than what he would receive when he works on his regular working day.

Such being the case, the divisor in computing an employee’s basic daily rate should be the actual working days in a year. The number of off days are not to be counted precisely because on such off days, an employee is not required to work.”

Using the number of actual work days as divisor finds particular relevance in situations where the employee’s monthly salary, when reduced into its daily equivalent, would only suffice to meet the daily minimum wage requirement under pertinent wage orders. In this situation, the use of a bigger divisor may even show noncompliance with the minimum wage law.\(^1\)

### 1.7a Paid Unworked days of a Monthly-paid Employee

A divisor lower than “365” does not necessarily mean that the employee is not monthly-paid. An employer may stipulate that the employee’s monthly salary constitutes payment for all the days of the month, including rest days and holidays, *where the employee’s monthly salary, when converted by the increased divisor into its daily equivalent, would still meet minimum wage*. This situation is legally permissible because the unworked days, included in the employee’s monthly salary, are considered paid.

A monthly-paid employee cannot claim payment for unworked half-day of Saturday and a whole day of Sunday where it is shown that his monthly salary, computed by the formula Daily Rate = (Monthly Wage x 12 ÷ 365), yields a daily rate meeting or exceeding the legal minimum wage. This conclusion is not changed by the fact that the employer uses “304” as divisor to compute the per day leave credits of the employees. Such divisor does not necessarily prove that the monthly salary does not include pay for 61 days. The “304” divisor is favorable to the employees as it yields a higher rate than “365” divisor.\(^2\)

In the case of *Acedera, et al. vs. ICTSI*, there is no stipulation in the CBA as to what divisor to use to compute the monthly salary, but the company, upon request of the union, had earlier shifted from 304 days to 365 days divisor. Some seven years later, the same union wanted it changed to 250. The NLRC, sustained by the CA and not reversed by the SC, found the union’s demand untenable. The CA said —

---

Considering that herein petitioners themselves requested that 365 days be used as the divisor in computing their wage increase and later did not raise or object to the same during the negotiations of the new CBA, they are clearly estopped to now complain of such computation only because they no longer benefit from it. Indeed, the 365 divisor for the past seven (7) years has already become practice and law between the company and its employees. (Acedera, et al. vs. International Container Terminal Services, Inc., et al., G.R. No. 146073, January 13, 2003)

1.8 How “Work Day” is Counted

For purposes of the Act, that is, the Eight-hour Labor Law (now Article 87 of the Code), a “day” (or “daily”) is understood to be the twenty-four-hour period which commences from the time the employee regularly starts to work. It is not the same as a calendar day (like Monday, Tuesday, etc.) from 12 o’clock midnight to 12 o’clock midnight, unless the employee starts working at 12 midnight, in which case the start of the 24-hour period in computing his work day coincides with the start of the calendar day. Thus, if an employee regularly works from 8:00 a.m. to 4:00 p.m., the work day of such employee is from 8:00 a.m. to 8:00 a.m. the following day. In other words, the period from 8:00 a.m. to 4:00 p.m. is the regular working hours or shift of the employee while the period from 8:00 a.m. to 8:00 a.m. the following day is his work day. Any work in excess of eight hours within the twenty-four-hour period is considered as overtime work regardless of whether the work covers two calendar days. Conversely, any work in excess of eight hours not falling within the twenty-four-hour period is not considered as overtime work.¹

a. Broken Hours of Work. — The minimum normal working hours fixed by the Act need not be continuous to constitute as the “legal working day” of eight hours as long as the eight hours is within a work day. For example, an employee may be required to work four hours in the morning and another four hours in the evening of the same work day to complete an eight-hour working period. The four hours work in the evening in this case is not overtime work under the Act.

b. Work in Different Shifts in a Work Day. — Work in excess of eight hours within a work day is considered as overtime regardless of whether this is performed in a work shift other than at which the employee regularly works. For example, a situation may happen in an establishment which operates 24 hours a day when a worker takes a shift of another who is absent. For instance, a worker whose regular tour of duty is from 10:00 p.m. to 6:00 a.m. the following day is asked to take the place of another whose working hours are from 2:00 p.m. to 10:00 p.m., the second shift in the establishment. The work performed by the substituting worker during the second shift is

¹Department of Labor Manual, Sec. 4323.01.
overtime work if this is rendered after completing his regular tour of duty since the second shift is still within his work day from 10:00 p.m. to 10:00 p.m.\textsuperscript{1}

1.9 Factual and Legal Basis of Claim

An express instruction from the employer to the employee to render overtime work is not required for the employee to be entitled to overtime pay; it is sufficient that the employee is permitted or suffered to work.\textsuperscript{2}

Neither is an express approval by a superior a prerequisite to make overtime work compensable. In the case of Manila Railroad Co. vs. CIR, No. L-4614, July 31, 1952, the Court held that: “If the work performed was necessary, or that it benefited the company or that the employee could not abandon his work at the end of his eight-hour work because there was no substitute ready to take his place and he performed overtime services upon the order of his immediate superior, notwithstanding the fact that there was a standing circular to the effect that before overtime work may be performed with pay, the approval of the corresponding department head should be secured, such overtime services are compensable in spite of the fact that said overtime services were rendered without the prior approval of the Department Head.”\textsuperscript{3}

A verbal instruction to render overtime work prevails over a memorandum prohibiting such work. Petitioner claims that the Court of Industrial Relations erred in disregarding the memorandum of the company prohibiting respondent from working in excess of eight hours daily. Such memorandum could not fairly apply to respondent because there was sufficient evidence showing that in spite of it, respondent had received verbal instructions from superior authority to inspect the first trip, noon trip, and last trip; that he had submitted to petitioner a daily report of inspection which stated the period or number of hours he had worked for the day; that respondent had been rendering overtime service with full knowledge of petitioner. All these show conclusively that the Court of Industrial Relations was right in awarding to respondent the corresponding overtime compensation.\textsuperscript{4}

However, the Court has also ruled that a claim for overtime pay is not justified in the absence of a written authority to render overtime after office hours during Sundays and holidays.\textsuperscript{5}

---

\textsuperscript{1}See National Development Co. vs. CIR National Textile Workers Union, G.R. No. L-15422, November 20, 1962.

\textsuperscript{2}See Article 84, Labor Code.

\textsuperscript{3}Reotan vs. National Rice and Corn Corporation, G.R. No. L-16223, February 27, 1962; Manila Railroad Co. vs. CIR, G.R. No. L-4614, July 31, 1952; Reofar vs. National Rice Corn Corp., 4 SCRA 418.


\textsuperscript{5}Global Incorporated vs. Atienza, 143 SCRA 69 [1986].
Neither is overtime claim justified for days where no work was required and no work could be done by employees on account of shutdown due to electrical power interruptions, machine repair and lack of raw materials.\footnote{Durabuilt Recapping Plant Company vs. NLRC, 152 SCRA 328 [1987].}

In other words, a claim for overtime pay will not be granted for want of factual and legal basis. Thus, where the employee’s time record shows that she had no time-in and time-out during the Sundays and holidays for which she claimed overtime pay, and that the time records show that she regularly left the office at or a few minutes after 5:00 p.m., her claim for overtime pay was properly denied.\footnote{Global vs. Atienza, G.R. Nos. 51612-13, July 22, 1986.}

### 1.10 Substantial Evidence; Burden of Proof

Rendition of work must be proved by substantial evidence by the claimant. On the other hand, the employer who avers payment must prove it.

*Pigcaulan vs. Security and Credit Investigation, Inc., et al., G.R. No. 173648, January 16, 2012 —*

The Labor Arbiter ordered reimbursement of overtime pay, holiday pay, service incentive leave pay and 13\textsuperscript{th} month pay for the year 2000 in favor of Canoy and Pigcaulan. The Labor Arbiter relied heavily on the itemized computations they submitted which he considered as representative daily time records to substantiate the award of salary differentials. The NLRC then sustained the award on the ground that there was substantial evidence of underpayment of salaries and benefits.

We [the Supreme Court] find that both the Labor Arbiter and the NLRC erred in this regard. The handwritten itemized computations are self-serving, unreliable and unsubstantial evidence to sustain the grant of salary differentials, particularly overtime pay. Unsigned and unauthenticated as they are, there is no way of verifying the truth of the handwritten entries stated therein. Written only in pieces of paper and solely prepared by Canoy and Pigcaulan, these representative daily time records, as termed by the Labor Arbiter, can hardly be considered as competent evidence to be used as basis to prove that the two were underpaid of their salaries. We find nothing in the records which could substantially support Pigcaulan’s contention that he rendered service beyond eight hours to entitle him to overtime pay and during Sundays to entitle him to rest day pay. Hence, in the absence of any concrete proof that additional service beyond the normal working hours and days had indeed been rendered, we cannot affirm the grant of overtime pay to Pigcaulan.

In the same *Pigcaulan* decision cited above, the Court reiterates that on the employer rests the burden of proving payment of statutory benefits. The decision says: [The employer] presented payroll listings and transmittal letters to the bank to show that Canoy and Pigcaulan received their salaries as well
as benefits which it claimed are already integrated in the employees’ monthly salaries. However, the documents presented do not prove [the employer’s] allegation. [The employer] failed to show any other concrete proof by means of records, pertinent files or similar documents reflecting that the specific claims have been paid. With respect to 13th month pay, [it] presented proof that this benefit was paid but only for the years 1998 and 1999. To repeat, the burden of proving payment of these monetary claims rests on [the security agency] being the employer. It is a rule that one who pleads payment has the burden of proving it. “Even when the plaintiff alleges non-payment, still the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.” Since [the employer] failed to provide convincing proof that it has already settled the claims, Pigcaulan should be paid his holiday pay, service incentive leave benefits and proportionate 13th month pay for the year 2000.

While we disallow the grant of overtime pay and restday pay in favor of Pigcaulan, he is nevertheless entitled, as a matter of right, to his holiday pay, service incentive leave pay and 13th month pay for year 2000. Hence, the CA is not correct in dismissing Pigcaulan’s claims in its entirety.

1.11 Overtime Work of Seamen

Seamen are required to stay on board their vessels by the very nature of their duties, and it is for this reason that, in addition to their regular compensation, they are given free living quarters to be on board. It could not have been the purpose of the law to require their employers to pay them overtime pay even when they are not actually working; otherwise, every sailor on board a vessel would be entitled to overtime for sixteen hours each day, even if he had spent all those hours resting or sleeping in his bunk, after his regular tour of duty. The correct criterion in determining whether or not sailors are entitled to overtime pay is not, therefore, whether they were on board and cannot leave ship beyond the regular eight working hours a day, but whether they actually rendered service in excess of said number of hours.1

Hence, the fact that the tugboat was navigated four hours beyond 5 o’clock in the afternoon does not necessarily mean that during those days the appellee performed service beyond eight hours. His presence on board for more than eight hours a day might have been required by the nature of his service, but there is no specific evidence that he had been working all that time. It was not absolutely necessary for him to be continuously attending to the motor of the tugboat. He could leave the motor during part of said time and get rested completely. He had an assistant who could watch it and inform him of whatever

disorder may develop therein. The fact that he was subject to call in case some disorder may develop in the motor does not necessarily mean he was working.¹

In a similar case, the Court reiterated that the rendition of overtime work and the submission of sufficient proof that said work was actually performed are conditions to be satisfied before a seaman could be entitled to overtime pay which should be computed on the basis of 30% of the basic monthly salary. Even if the contract guarantees the right to overtime pay, the entitlement to such benefit must first be established by proving the actual rendition of overtime work. Realistically speaking, a seaman, by the very nature of his job, stays on board a ship or vessel beyond the regular eight-hour work schedule. For the employer to give him overtime pay for the extra hours when he might be sleeping or attending to his personal chores or even just whiling away his time would be extremely unfair and unreasonable.²

Along the same line, Sundays and holidays cannot be considered as work days in the computation of overtime compensation of the crew members of a vessel merely on the allegation that being on board the vessel on these days was “part and parcel of” and “inherent” in their work.³

1.12 Action to Recover Compensation

The principles of estoppel and laches cannot be invoked against employees or laborers in an action for the recovery of compensation for past overtime work. In the first place, it would be contrary to the spirit of the Eight-hour Labor Law, under which the laborers cannot waive their right to extra compensation. In the second place, the law principally obligates the employer to observe it, so much so that it punishes the employer for its violation and leaves the employee free and blameless. In the third place, the employee or laborer is in such a disadvantageous position as to be naturally reluctant or even apprehensive in asserting a claim which may cause the employer to devise a way for exercising his right to terminate the employment. Moreover, an employee or laborer, who cannot expressly renounce the right to extra compensation under the Eight-hour Labor Law, may be compelled to accomplish the same thing by mere silence or lapse of time, thereby frustrating the purpose of the law by indirection.⁴ However, there may be causes in which the silence of the employee or laborer who lets the time go by for quite

³William Lines, Inc. vs. Lopez, 96 SCRA 593.
⁴Manila Terminal Co. vs. Court of Industrial Relations, et al., 91 Phil. 625, off. Gaz. 2725.
a long period without claiming or asserting his right to overtime compensation may favor the inference that he may not have worked any such overtime or that his extra work has been duly compensated, but this is not so in the case at bar.\(^1\)

Overtime pay in arrears retroacts to the date when services were actually rendered. Fear of possible unemployment is sometimes a very strong factor that gags the workingman from demanding payment for such extra services and it may take him months or years before he could be made to present a claim against his employer. To allow the workingman to be compensated only from the date of the filing of the petition with the court would be to penalize him for his acquiescence or silence, which is beyond the intent of the law. It is not just and humane that he should be deprived of what is lawfully his under the law, for the true intendment of Commonwealth Act No. 444 is to compensate the worker for services rendered beyond the statutory period and this should be made to retroact to the date when such services were actually performed.\(^2\)

1.13 Waiver or Quitclaim; No Waiver of Overtime Pay, Generally

The right to overtime pay cannot be waived. The right is intended for the benefit of the laborers and employees. Any stipulation in the contract that the laborer shall work beyond the regular eight hours without additional compensation for the extra hours is contrary to law and null and void. Thus, in a case where the appellant allegedly signed a quitclaim deed in favor of the appellee to the effect that he was renouncing any and all kinds of claim against the appellee, the Supreme Court held that said quitclaim deed cannot deprive the appellant of his right to collect overtime and legal holiday wages under the provisions of the Eight-hour Labor Law.\(^3\)

In another case, the petitioner employer stressed that the employment contract of its watchmen required them to work 12 hours a day, at certain rate of pay, including overtime compensation. Rejecting this contention, the Supreme Court ruled that where the contract of employment requires work for more than eight hours at specified wage per day, without providing for a fixed hourly rate or that the daily wages include overtime pay, said wages cannot be considered as including overtime compensation required under the Eight-hour Labor Law. The right of the laborer to overtime compensation cannot be waived expressly or impliedly.\(^4\)

In a similar 1996 case, the issue was whether overtime pay was included in the 12-hour normal work per day stipulated in the employment contract. The NLRC ruled that overtime pay was not included in the 12-hour scheme and,

\(^1\)Luzon Stevedoring vs. Luzon Marine Dept. Union, 101 Phil. 257.

\(^2\)Ibid.

\(^3\)Cruz vs. Yee Sing, G.R. No. L-12046, October 1959.

\(^4\)Manila Terminal Co. vs. CIR, O.G. 2725, etc., G.R. No. L-9265, April 29, 1957.
therefore, the employer should pay for the four hours overtime work each day. Appealing to the Supreme Court, the petitioner employer argued that the award of overtime pay was “plain and simple unjust and illegal enrichment” and that such award “in effect sanctioned and approved the grant of payment to (the employee) which will result in double payment for the overtime work rendered by said employee.” The argument did not persuade the High Court. It declared that there can be no undue enrichment in claiming what legally belongs to private respondent (employee).¹

In the same 1996 case of PAL employees, the Supreme Court further ruled that payment of overtime pay cannot cause salary distortion. The petitioner employer had argued that the agreed salary rate in the employment contract which provided for 12 normal working hours per day, should be deemed to cover overtime pay (although the amount thereof was not sufficient to include overtime pay); otherwise, serious distortions in wages would result “since a mere company guard will be receiving a salary much more than the salaries of other employees who are much higher in rank and position than him in the company.” Unconvinced, the Supreme Court retorted: “How can paying an employee the overtime pay due him cause serious distortions in salary rates or scales? And how can ‘other employees’ be aggrieved when they did not render any overtime service?”²

1.14 Quitclaim, Why Invalid

_Pampanga Sugar Development Co., Inc. vs. Court of Industrial Relations and Sugar Workers Association, G.R. No. L-39387, June 29, 1982 —_

A central issue in this case was the validity of quitclaims signed by claimant workers. The Court found the quitclaims invalid for several reasons.

Firstly, said quitclaims were secured on December 27, 1972 by petitioner employer after it lost its case in the lower court when the latter promulgated its decision on December 4, 1972. Obviously, in its desire to deny what was due the sugar workers concerned and frustrate the decision of the lower court awarding benefits to them, it used its moral ascendancy as employer over the workers to secure the quitclaims.

Secondly, while rights may be waived, the same must not be contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.³ The quitclaim agreements contain the following provisions in paragraph II, No. 3, thereof:

3. Nothing herein stipulated shall be construed as an admission and/or recognition by the Party of The Second Part of its failure, refusal and/or

¹PAL Employees Savings and Loan Association, Inc. [PESALA] vs. NLRC, _et al._, G.R. No. 105963, August 22, 1996.
²Ibid.
³Article 6, New Civil Code.
omission as employer, to faithfully comply with the pertinent laws, rules and
regulations and/or agreements, nor its liability therefor and thereunder.

Needless to state, the foregoing provisions are contrary to law. It exempts the
petitioner from any legal liability. The above-quoted provision renders the quitclaim
agreements void ab initio in their entirety since they obligated the workers concerned
to forego their benefits, while at the same time, exempted the petitioner from any
liability that it may choose to reject. This runs counter to Article 22 of the New Civil
Code, which provides that no one shall be unjustly enriched at the expense of another.

Thirdly, the alleged quitclaim agreements are contrary to public policy. Once a
civil action is filed in court, the cause of action may not be the subject of compromise
unless the same is by leave of the court concerned. Otherwise, this will render the
entire judicial system irrelevant to the prejudice of the national interest. Parties to
litigations cannot be allowed to trifle with the judicial system by coming to court and
later on agreeing to a compromise without the knowledge and approval of the court.
This converts the judiciary into a mere tool of party-litigants who act according to
their whims and caprices. This is more so when the court has already rendered its
decision on the issues submitted.

In another case, Mercury Drug Co., Inc. vs. Dayao, G.R. No. L-30452,
September 30, 1982, the employees signed contracts fixing annual compensation,
with express waiver of compensation for work on Sundays and holidays. It was
held that such waiver is not binding and does not bar claims for extra compensation.

The court explains:

The petitioner’s contention that its employees fully understood what
they signed when they entered into the contracts of employment and that
they should be bound by their voluntary commitments is anachronistic in
this time and age.

The Mercury Drug Co., Inc. maintains a chain of drugstores that
are open every day of the week and, for some stores, up to very late at
night because of the nature of the pharmaceutical retail business. The
respondents knew that they had to work Sundays and holidays and at
night, not as exceptions to the rule but as part of the regular course of
employment. Presented with contracts setting their compensation on an
annual basis with an express waiver of extra compensation for work on
Sundays and holidays, the workers did not have much choice. The private
respondents were at a disadvantage insofar as the contractual relationship
was concerned. Workers in our country do not have the luxury or freedom
of declining job openings or filing resignations even when some terms and
conditions of employment are not only onerous and iniquitous but illegal.
It is precisely because of this situation that the framers of the Constitution
embodied the provisions on social justice (Section 6, Article II) and
protection to labor (Section 9, Article II) in the Declaration of Principles
and State Policies.
1.15 When Valid; Waiver in Exchange for Certain Benefits

There is justifiable exception to the rule that overtime compensation cannot be waived. When the alleged waiver of overtime pay is in consideration of benefits and privileges which may be more than what will accrue to them in overtime pay, the waiver may be permitted. In one case, it appears that some laborers of the petitioning union chose to work in the motor pool of the company and to be paid under Plan-A wherein they were being paid a monthly rate equivalent to 30 times their daily wage, in addition to regular sick leave, vacation leave, and other privileges of a regular employee. They also had the privilege of taking 4 days off with pay every month, plus time off with pay on such days when the executive or official using the car does not need their service of more than 8 hours a day in lieu of overtime. The Supreme Court held that the petitioner cannot just assume that the waiver of overtime compensation by the drivers who preferred to work in the motor pool is against the law, it appearing that such waiver was to be in consideration for certain valuable privileges they were to enjoy, among them that of being given tips when doing overtime work, and there being no proof that the value of those privileges did not compensate for such work.1

Note: Waiver and compromise are further discussed under Article 233 in Volume II of this work.

1.16 Overtime Pay Integrated in Basic Salary

May the employer and employee stipulate that the latter’s regular or basic salary already includes the overtime pay, such that when the employee actually works overtime he cannot claim overtime pay? This arrangement, called in practice “composite” or “package” pay or “all-inclusive salary,” is not per se illegal. The arrangement is not unusual for executives or managers who, in the first place, are not entitled to overtime pay and other benefits from Article 82 to 96. But may such arrangement be made with a nonmanagerial employee?

In Damasco vs. NLRC, the complainant employee was a sales clerk who claimed that she was made to work “from 8:30 in the morning up to 9:30 in the evening continuously from Monday to Sunday without having been paid overtime pay, rest day pay, or holiday pay.” The respondent employer admitted in his pleadings that the complainant “starts at 8:30 in the morning and ends up at 6:30 in the evening daily, except Sundays and holidays.” But he alleged further that complainant’s daily salary of P140.00 is “more than enough to cover the one hour excess work” and that it was their agreement that the overtime pay was already included in such daily rate.

If that were so, the Court ruled, **there should have been express agreement** to that effect. We quote:

“Moreover, such arrangement, if there be any, must appear in the manner required by law on how overtime compensation must be determined. For it is necessary to have a clear and definite delineation between an employee’s regular and overtime compensation to thwart violation of the labor standards provision of the Labor Code.” *(Damasco vs. NLRC, et al., G.R. No. 115755, December 4, 2000)*

The requisites therefore of “base pay with integrated overtime pay” are firstly, a clear written agreement knowingly and freely entered into by the employee, and, secondly, the mathematical result shows that the agreed legal wage rate and the overtime pay, computed separately, are equal to or higher than the separate amounts legally due. An illustration of this is found in the case of PESALA where the Court, by simple arithmetic, debunked the employer’s claim that the overtime pay was already included in the basic salary. Said the Court:

Based on petitioner’s [employer’s] own computations, it appears that the basic salary plus emergency allowance given to private respondent [complainant employee] did not actually include the overtime pay claimed by [the employee]. Following the computations, it would appear that by adding the legal minimum monthly salary which at the time was P1,413.00 and the legal overtime pay of P877.50, the total amount due the [employee] as basic salary should have been P2,290.50. By adding the emergency cost of living allowance (ECOLA) of P510.00 as provided by the employment contract, the total basic salary plus emergency allowance should have amounted to P2,800.50. However, petitioner admitted that it actually paid private respondent P1,990.00 as basic salary plus P510.00 emergency allowance or a total of only P2,500.00. Undoubtedly, private respondent was shortchanged in the amount of P300.50. Petitioner’s own computations thus clearly establish that private respondent’s [employee’s] claim for overtime pay is valid. *(PAL Employees Savings and Loan Association, Inc. [PESALA], petitioner vs. National Labor Relations Commission and A.V. Esquejo, respondents, G.R. No. 105963, August 22, 1996)*

### 1.17 Built-in Overtime Pay in Government-Approved Contract

On the other hand, in another case, involving a government contract, the court’s finding validated a built-in overtime pay.

The Supreme Court ruled that nonpayment by the employer of overtime pay to the employee was valid, as said overtime pay was already provided in the written contract with a built-in overtime pay and signed by the Director of the Bureau of Employment Services and enforced by the employer. “We hold that under the particular circumstances of this case, the Acting Minister of Labor and Director De la Cruz committed a grave abuse of discretion amounting to lack of jurisdiction in awarding overtime pay and in disregarding a contract that
De la Cruz himself, who is supposed to know the Eight-Hour Labor Law, had previously sealed with his imprimatur. Because of that approval, the petitioner acted in good faith in enforcing the contract.”

Furthermore, the claimant had not denied that he was a managerial employee. As such he was not entitled to overtime pay.1

2. COMPRESSED WORKWEEK; DOLE ADVISORY NO. 02-04

Another instance of waiver of overtime pay is the compressed workweek (CWW) arrangement. Under this scheme, the number of work days is reduced but the number of work hours in a day is increased to more than eight, but no overtime pay may be claimed. Thus, a CWW scheme is an alternative arrangement whereby the normal workweek is reduced to less than six days but the total number of normal work hours per week shall remain at 48 hours. The normal workday is increased to more than eight hours without corresponding overtime premium. The scheme can apply as well, with some adjustments, to 40 or 44-hour workweek firms.

CWW is treated in DOLE Advisory No. 02, series of 2004. The Advisory, taking into account the emergence of new technology and the continuing restructuring and modernization of the work process, encourages voluntary adoption of compressed workweek schemes. But, although encouraged, adoption of the CWW scheme is valid only if the conditions stated in the Advisory are observed; otherwise, overtime pay may still be claimed.

The conditions are:

(1.) The scheme is expressly and voluntarily supported by majority of the employees affected.

(2.) In firms using substances, or operating in conditions that are hazardous to health, a certification is needed from an accredited safety organization or the firm’s safety committee that work beyond eight hours is within the limits or levels of exposure set by DOLE’s occupational safety and health standards.

(3.) The DOLE regional office is duty notified.

2.1 Effects

If adopted according to the preceding conditions, the CWW arrangement produces the following effects:

(1.) Unless there is a more favorable practice existing in the firm, work beyond eight hours will not be compensable by overtime premium, provided the total number of hours worked per day shall not exceed twelve (12) hours. In any case, any work performed beyond 12 hours a day or 48 hours a week shall be subject to overtime premium.

(2.) Consistent with Articles 85 of the Labor Code, employees under a CWW scheme are entitled to meal periods of not less than sixty (60) minutes. The right of employees to rest day as well as to holiday pay, rest day pay or leaves in accordance with law or applicable collective bargaining agreement or company practice, shall not be impaired.

(3.) Adoption of the CWW scheme shall in no case result in diminution of existing benefits. Reversion to the normal eight-hour workday shall not constitute a diminution of benefits. The reversion shall be considered a legitimate exercise of management prerogative, provided that the employer shall give the employees prior notice of such reversion within a reasonable period of time.

For purposes of administering or enforcing existing law and rules on work hours, overtime compensation and other relevant labor standards, DOLE shall recognize only those CWW schemes that have been entered into consistent with the Advisory.

2.2 Validity of Waiver in CWW Program

The Supreme Court has upheld the validity of waiver of the right to overtime pay under a compressed workweek program. In a case where a memorandum of agreement was signed between the union and the management, confirming that 8:00 a.m. to 6:12 p.m. from Monday to Friday shall be “regular working hours” without overtime pay, the Court debunked the union president’s contention that the MOA he himself signed was unenforceable as it was illegal.

The Court ruled: “Where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quit claim is credible and reasonable, the transaction must be recognized as a valid and binding understanding.”

The Court noted that the MOA conformed with the conditions set forth in DOLE Order No. 21, Series of 1990 [precursor of DOLE Advisory No. 02, Series of 2004] titled Guidelines on the Implementation of Compressed Work Week. Citing the reasons for a CWW scheme, the Court agreed that the employees would derive benefits from the adoption of the program.1

3. FLEXIBLE WORK ARRANGEMENTS (FWA)

The CWW program is just one of the coping mechanisms and remedial measures that employers may adopt in times of economic difficulties and national emergencies. As explained in Department Advisory No. 2, Series of 2009 (dated January 29, 2009), adoption of flexible work arrangements (FWA) is considered as a better alternative than the outright termination of the services of employees or the closure of the establishment. Flexible work arrangements

---

refer to alternative arrangements or schedules other than the traditional or standard work hours, workdays or workweek. Employers may adopt them after due consultation with employees, taking into account the adverse consequence of the situation on the performance and financial condition of the company. The effectivity and implementation of FWA shall be temporary. In addition to compressed workweek, the FWAs include:

1. **Reduction of workdays** where the normal workdays per week are reduced but should not last for more than six months.

2. **Rotation of workers** where the employees are rotated or alternately provided work within the workweek.

3. **Forced leave** where the employees are required to go on leave for several days or weeks, utilizing their leave credits if there are any.

4. **Broken-time schedule** where the work schedule is not continuous but the number of work hours within the day or week is not reduced.

5. **Flexi-holiday schedule** where the employees agree to avail themselves of the holidays at some other days, provided that there is no diminution of existing benefits as a result of such arrangement.

Administration of the FWA should be threshed out by the employer and the employees. Prior to the FWA implementation, the DOLE Regional Office should be notified through a prescribed report form.1

Reduction of work days which entails reduction or deduction in pay is taken up under Article 113.

**ART. 88. UNDERTIME NOT OFFSET BY OVERTIME**

Undertime work on any particular day shall not be offset by overtime work on any other day. Permission given to the employee to go on leave on some other day of the week shall not exempt the employer from paying the additional compensation required in this Chapter.

**COMMENTS.**

**UNDERTIME DOES NOT OFFSET OVERTIME**

Where a worker incurs undertime hours during his regular daily work, said undertime hours should not be offset against the overtime hours. If it were otherwise, the unfairness would be evident from the fact that the undertime hours represent only the employee’s hourly rate of pay while the overtime hours reflect both the employee’s hourly rate of pay and the appropriate overtime premium such that, not being of equal value, offsetting the undertime hours against the overtime hours would result in the undue deprivation of the employees’ overtime premium. The situation is even more unacceptable where the undertime hours

---

1Department Advisory No. 2, Series of 2009.
are not only offset against the overtime hours but are also charged against the accrued leave of the employee, for under this method the employee is made to pay twice for his undertime hours because his leave is reduced to that extent while he is made to pay for the undertime hours with work beyond the regular working hours. The proper method should be to deduct the undertime hours from the accrued leave but to pay the employee the overtime compensation to which he is entitled. Where the employee has exhausted his leave credits, his undertime hours may simply be deducted from his day’s wage, but he should still be paid his overtime compensation for work in excess of eight hours a day.¹

This ruling in NWSA forbids offsetting the overtime work on the same day, although what Article 88 prohibits is offsetting on another day. It may be said therefore that the offsetting of undertime work by overtime work, whether on the same or on another day, is prohibited by jurisprudence and by statute.

**ART. 89. EMERGENCY OVERTIME WORK**

Any employee may be required by the employer to perform overtime work in any of the following cases:

(a) When the country is at war or when any other national or local emergency has been declared by the National Assembly or the Chief Executive;

(b) When it is necessary to prevent loss of life or property or in case of imminent danger to public safety due to an actual or impending emergency in the locality caused by serious accidents, fire, flood, typhoon, earthquake, epidemic, or other disaster or calamity;

(c) When there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to the employer or some other cause of similar nature;

(d) When the work is necessary to prevent loss or damage to perishable goods; and

(e) Where the completion or continuation of the work started before the eighth hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer.

Any employee required to render overtime work under this Article shall be paid the additional compensation required in this Chapter.

**COMMENTS**

**COMPULSORY OVERTIME WORK**

Article 89 describes the situations where the employer may legally compel his workers to render overtime work with corresponding overtime pay.

¹NWSA vs. NWSA Consolidated Unions, 11 SCRA 766; Rodrigo Sto. Domingo vs. Phil. Rock Products, Inc., NLRC, Case No. RB 9341-77, June 30, 1980.
In addition to the instances mentioned in Article 89, the Rules Implementing the Labor Code authorizes compulsory overtime work when it is necessary “to avail of favorable weather or environmental conditions where performance or quality of work is dependent thereon.”\(^1\)

In cases not falling within any of the enumerated instances, no employee may be made to work beyond eight (8) hours a day against his will.\(^2\) In the enumerated instances, therefore, overtime work is an obligation. Outside of these instances, overtime work is optional.

**ART. 90. COMPUTATION OF ADDITIONAL COMPENSATION**

For purposes of computing overtime and other additional remuneration as required by this Chapter the “regular wage” of an employee shall include the cash wage only, without deduction on account of facilities provided by the employer.

**COMMENTS**

This provision should be clarified or modified. The “regular wage” includes the cash wage plus the value of facilities. Regular wage is therefore bigger than cash wage. The OT rate should be based on the regular wage (cash plus value of facilities), not on the cash wage only.

---

\(^1\)Sec. 10, Rule I, Book III, Rules to Implement the Labor Code.

\(^2\)Ibid.
Chapter II
WEEKLY REST PERIODS

Overview/Key Questions:
1. When is an employee’s rest day? Is a manager entitled to a rest day?
2. May an employer require work on the employee’s rest day? on a non-working special day?

ART. 91. RIGHT TO WEEKLY REST DAY
(a) It shall be the duty of every employer, whether operating for profit or not, to provide each of his employees a rest period of not less than twenty-four (24) consecutive hours after every six (6) consecutive normal work days.
(b) The employer shall determine and schedule the weekly rest day of his employees subject to collective bargaining agreement and to such rules and regulations as the Secretary of Labor may provide. However, the employer shall respect the preference of employees as to their weekly rest day when such preference is based on religious grounds.

ART. 92. WHEN EMPLOYER MAY REQUIRE WORK ON A REST DAY
The employer may require his employees to work on any day:
(a) In case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety;
(b) In cases of urgent work to be performed on the machinery, equipment, or installation, to avoid serious loss which the employer would otherwise suffer;
(c) In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;
(d) To prevent loss or damage to perishable goods;
(e) Where the nature of the work requires continuous operations and the stoppage of work may result in irreparable injury or loss to the employer; and
(f) Under other circumstances analogous or similar to the foregoing as determined by the Secretary of Labor.
ART. 93. COMPENSATION FOR REST DAY, SUNDAY OR HOLIDAY WORK

(a) Where an employee is made or permitted to work on his scheduled rest day, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage. An employee shall be entitled to such additional compensation for work performed on Sunday only when it is his established rest day.

(b) When the nature of the work of the employee is such that he has no regular workdays and no regular rest days can be scheduled, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage for work performed on Sundays and holidays.

(c) Work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee. Where such holiday work falls on the employee’s scheduled rest day, he shall be entitled to an additional compensation of at least fifty percent (50%) of his regular wage.

(d) Where the collective bargaining agreement or other applicable employment contract stipulates the payment of a higher premium pay than that prescribed under this Article, the employer shall pay such higher rate.

COMMENTS

1. HOLIDAY, GENERALLY

An explanation of “holiday,” in general, given in a Secretary of Justice Opinion in 1954, still rings true today. Holiday has reference to a day set apart for worship, reverence to the memory of a great leader and benefactor, to rejoice over some great national or historical event, or rekindle the flames of an ideal. It means a consecrated day, religious festival or day on which ordinary occupations are suspended, a day of exception, that is, a cessation from work, or day of festivity, recreation or amusement.1

[On] holidays, being days of rest and cessation from work, laborers are given the opportunity to satisfy their mental, moral and spiritual needs... A laborer is deprived of that opportunity to satisfy those needs when he is compelled to work during holidays, and it is that deprivation which the law seeks to compensate in requiring the employers to give additional compensation for service rendered by their laborers during those days.2

On any holiday, work and/or classes are suspended, and, as a rule, where there is no work, there is no pay. But a holiday may be one of two kinds. First, it may be a “special” no-work holiday, of which at present there are three in a year.

2Department of Labor Manual, Section 4325.02.
If a daily-paid employee does not work on a special no-work holiday, he gets no pay; if he works he gets his daily basic rate plus 30 percent. Article 93 applies.

Second, the holiday may be “regular” of which at present there are twelve in a year. A daily-paid or monthly-paid employee, even if he does not work on a regular holiday, gets 100% of his usual pay; if he does work on that day he gets 200%. Article 94, with the implementing rules, applies.

Outside of Article 93 or 94, a certain day may be declared by the president or the local government unit as “special.” It may or may not mean suspension of work and/or classes. The general rule of “no work, no pay” applies.

2. SPECIAL (NON-WORKING) DAYS

Unless otherwise modified by law, order, or proclamation, the following are the three (3) special days in a year under Executive Order No. 292, as amended by Republic Act No. 9849, that shall be observed in the Philippines:

- Ninoy Aquino Day Monday nearest August 21
- All Saints Day November 1
- Last Day of the Year December 31

R.A. No. 9256, approved on February 25, 2004, declared Ninoy Aquino Day as a national nonworking special day to commemorate the martyrdom of the late Senator Benigno “Ninoy” S. Aquino, Jr. who fought up to his death on August 21 the 20 years of the depraved and detested Marcos Dictatorship.

Presidential proclamation also declares December 24 as special nonworking day.

The “no work, no pay” principle applies during special days and on such other special days as may be proclaimed by the President or by Congress. Hence, workers who are not required or permitted to work on special days are not entitled to any compensation. This, however, is without prejudice to any voluntary practice or provision in the Collective Bargaining Agreement (CBA) providing for payment of wages and other benefits for days declared as special days even if unworked.

On the other hand, work performed on special days merits additional compensation of at least thirty percent (30%) of the basic pay or a total of one hundred thirty percent (130%). Where the employee works on special day falling on his rest day, he/she shall be entitled to an additional compensation of at least fifty percent (50%) of his/her basic wage or a total of one hundred fifty percent (150%).

3. SPECIAL (WORKING) DAYS

For work performed on a declared Special Work Day, an employee is entitled only to his/her daily wage rate. No premium pay is required since work

---

performed on said day is considered work on an ordinary workday. For example, February 25, the EDSA Revolution Anniversary, is a working day, but no-class day in schools. It honors the people’s uprising in 1986 against the widely condemned Marcos Dictatorship.

4. **PREMIUM PAY RATES**¹

The COLA shall not be included in the computation of premium pay.* The minimum statutory premium pay rates are as follows:

a. **For work performed on rest days or on special days:**
   
   Plus 30% of the daily basic rate of 100% or a total of 130%.

<table>
<thead>
<tr>
<th>Sector/Industry</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-agriculture</td>
<td>P404.00</td>
<td>P404 x 130% = P525.20</td>
</tr>
<tr>
<td>Retail/Service</td>
<td>P367.00</td>
<td>P367 x 130% = P477.10</td>
</tr>
</tbody>
</table>

   b. **For work performed on a rest day which is also a special day:**
      
      Plus 50% of the daily basic rate of 100% or a total of 150%.

<table>
<thead>
<tr>
<th>Sector/Industry</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-agriculture</td>
<td>P404.00</td>
<td>P404 x 150% = P606.00</td>
</tr>
<tr>
<td>Retail/Service</td>
<td>P367.00</td>
<td>P367 x 150% = P550.50</td>
</tr>
</tbody>
</table>

   c. **For work performed on a regular holiday which is also the employee’s rest day (not applicable to employees who are not covered by the holiday-pay rule).**
      
      Plus 30% of the regular holiday rate of 200% based on his/her daily basic wage rate or a total of 260%.

<table>
<thead>
<tr>
<th>Sector/Industry</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-agriculture</td>
<td>P404.00</td>
<td>P404 x 260% = P1,050.40</td>
</tr>
<tr>
<td>Retail/Service</td>
<td>P367.00</td>
<td>Not covered by holiday pay rule</td>
</tr>
</tbody>
</table>


*This statement is correct if the COLA is not part of the legal minimum wage. If it is part of the prescribed minimum, the COLA is included to compute the premium pay. – CAA.
Chapter III
HOLIDAYS, SERVICE INCENTIVE LEAVES AND SERVICE CHARGES

Overview/Key Questions:
1. What is holiday pay and who are the employees entitled to it?
2. What is service incentive leave? Is a part-time worker entitled to S.I.L. to the same extent as a full-timer?
3. Aside from S.I.L. what other kinds of leave are granted by law?

ART. 94. RIGHT TO HOLIDAY PAY
(a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;
(b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate; and
(c) As used in this Article, “holiday” includes: New Year’s Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth of December and the day designated by law for holding a general election.

COMMENTS AND CASES
1. HOLIDAY PAY FOR ONLY TWELVE REGULAR HOLIDAYS

Article 94 is the so-called holiday pay law which is a carry-over from Presidential Decree No. 850 issued on December 16, 1975. Note that in view of later laws, the listing of ten holidays in paragraph (c) is already obsolete.

Holiday pay is a one-day pay given by law to an employee even if he does not work on a regular holiday. This gift of a day's pay is limited to each of the twelve regular (also called legal) holidays. It is not demandable for any other kind of nonworking day. Since there are twelve legal holidays in a year, there are only twelve occasions — no more, no less — when holiday pay should be paid, except that there are places where Muslim holidays also have to be observed.
ART. 94  CONDITIONS OF EMPLOYMENT

Every employee covered by the holiday pay rule is entitled to the minimum wage rate (daily basic wage and COLA). This means that the employee is entitled to at least 100% of his/her minimum wage rate even if he/she did not report for work, provided he/she is present or is on leave of absence with pay on the work day immediately preceding the holiday.

Work performed on a legal holiday merits at least twice (200%) the daily wage rate of the employee.

Illustration: Using the NCR minimum wage rate (daily basic wage and COLA) of P404.00 + P22.00 per day for the non-agricultural sector, effective May 26, 2011 under Wage Order No. NCR-16.

For work within eight (8) hours:

Plus 100% of the minimum wage rate of 100% or a total of 200%

<table>
<thead>
<tr>
<th>Sector/Industry</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-agriculture</td>
<td>P426.00</td>
<td>P426 x 200% = P852.00</td>
</tr>
<tr>
<td>Retail/Service Establishment employing less than 10 workers</td>
<td>P367.00</td>
<td>Not covered or exempted</td>
</tr>
</tbody>
</table>

Where the holiday falls on the scheduled rest day of the employee, work performed on said day merits at least an additional 30% of the employee’s regular holiday rate of 200% or a total of at least 260%.

When a regular holiday falls on a Sunday, the following Monday shall not be a holiday, unless a proclamation is issued declaring it a special day.

The purpose of a holiday pay is obvious: that is, to prevent diminution of the monthly income of the workers on account of work interruptions declared by the State. In other words, although the worker is forced by law to take a rest, he is not deprived of what he should earn.\(^1\)

But to receive the holiday pay, certain conditions should be met. One is that the employee should not have been absent without pay on the working day preceding the regular holiday. If he was absent without pay, the assumption is that he would have been absent also on the following day if it were not a holiday. The other conditions, which are self-explanatory, are specified in the Implementing Rules (Part Two of this volume).

\(^1\)Jose Rizal College vs. NLRC and NATOW, G.R. No. 65482, December 1, 1987.
ART. 94

1.1 The Twelve Regular Holidays

Unless otherwise modified by law, order, or proclamation, the following are the twelve (12) regular holidays in a year under Executive Order No. 292 (Administrative Code of 1987), as amended by R.A. No. 9849:

- New Year’s Day: January 1
- Maundy Thursday: Movable Date
- Good Friday: Movable Date
- Araw ng Kagitingan: Monday nearest April 9
- Labor Day: Monday nearest May 1
- Independence Day: Monday nearest June 12
- National Heroes’ Day: Last Monday of August
- Eidul Fitr: Movable Date
- Eidul Adha: Movable Date
- Bonifacio Day: Monday nearest November 30
- Christmas Day: December 25
- Rizal Day: Monday nearest December 30

The regular holidays increased from ten to twelve because two days that used to be holidays only in Muslim areas have been added as national regular holidays, i.e., Eidul Fitr by R.A. No. 9177 on November 13, 2002 and Eidul Adha by R.A. No. 9849 on February 19, 2010. Eidul Fitr is the first day following the thirty-day fasting period of Ramadan. Eidul Adha is a tenth day in the month of Hajj or Islamic Pilgrimage to Mecca when Muslims pay homage to Abraham’s supreme sacrifice signifying obedience to God. Eidul Fitr and Eidul Adha follow the Islamic calendar and their dates are announced by presidential proclamations.

1.2 Coverage of Holiday Pay Law

This holiday pay benefit applies to all employees except:

1. Government employees, whether employed by the National Government or any of its political subdivisions, including those employed in government-owned and/or controlled corporations with original charters or created under special laws;
2. Those of retail and service establishments regularly employing less than ten (10) workers;
3. Househelpers and persons in the personal service of another;
4. Managerial employees, if they meet all of the following conditions:
   4.1 Their primary duty is to manage the establishment in which they are employed or of a department or subdivision thereof;
   4.2 They customarily and regularly direct the work of two or more employees therein;
4.3 They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to hiring, firing, and promotion, or any other change of status of other employees are given particular weight.

5. Officers or members of a managerial staff, if they perform the following duties and responsibilities:
   5.1 Primarily perform work directly related to management policies of their employer;
   5.2 Customarily and regularly exercise discretion and independent judgment;
   5.3 (a) Regularly and directly assist a proprietor or managerial employee in the management of the establishment or subdivision thereof in which he or she is employed; or (b) executed, under general supervision, work along specialized or technical lines requiring special training, experience, or knowledge; or (c) execute, under general supervision, special assignments and tasks; and
   5.4 Do not devote more than twenty percent (20%) of their hours worked in a workweek to activities which are not directly and closely related to the performance of the work described in paragraphs 5.1, 5.2, and 5.3 above.

6. Field personnel and other employees whose time and performance is unsupervised by the employer, including those who are engaged on task or contract basis, purely commission basis or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.

1.3 Muslim Holidays
   Specifically for the Muslim areas, P.D. No. 1083, in its Book V, Title I, recognizes the five (5) Muslim holidays, namely:
   1. *Amun Jadid (New Year)* which falls on the first day of the lunar month of Muharram;
   2. *Maulid-un-Nabi (Birthday of the Prophet Muhammad)* which falls on the twelfth day of the third lunar month of Rabi-ul-Awwal;
   3. *Lailatul Isra Wal Mi Rai (Nocturnal Journey and Ascension of the Prophet Muhammad)* which falls on the twenty-seventh day of the seventh lunar month of Rajab;
   4. *Id-ul-Fitr (Hari Raja Pausa)* which falls on the first day of the tenth lunar month of Shawwal commemorating the end of the fasting season; and
   5. *Id-ul-Adha (Hari Raha Haji)* which falls on the tenth day of the twelfth lunar month of Dhu’l-Hijja.
HOLIDAYS, SERVICE INCENTIVE LEAVES AND SERVICE CHARGES

[As noted above, Eid’l Fitr and Eid’l Adha have been added to the list of legal holidays that are observed nationally, not only in the Muslim areas.]

These official Muslim holidays are officially observed in the provinces of Basilan, Lanao del Norte, Lanao del Sur, Maguindanao, North Cotabato, Sultan Kudarat, Sulu, Tawi-tawi, Zamboanga del Norte and Zamboanga del Sur and in the cities of Cotabato, Iligan, Marawi, Pagadian and Zamboanga, and in such other Muslim provinces and cities as may be created. Upon proclamation by the President of the Philippines, Muslim holidays may also be officially observed in other provinces and cities.

The dates of Muslim holidays are determined by the Office of the President of the Philippines in accordance with the Muslim Lunar Calendar (Hijra).

Presidential Proclamation No. 1198, which took effect on October 26, 1973, provides as follows:

“All private corporations, offices, agencies and entities or establishments operating within the provinces and cities enumerated herein shall observe the legal holidays as proclaimed, provided, however, that all Muslim employees working outside of the Muslim provinces and cities shall be excused from work during the observance of the Muslim holidays as recognized by law, without diminution or loss of salary or wages during the said period. xxx.”

Considering that all private corporations, offices, agencies and entities or establishments operating within the designated Muslim provinces and cities are required to observe Muslim holidays, both Muslims and Christians working within the Muslim areas may not report for work on the days designated by law as Muslim holidays and still be paid their regular rate.

Muslim employees working outside of the Muslim provinces and cities shall be excused from reporting for work during the observance of the Muslim holidays as recognized by law, without diminution of salary or wages during the period.

Workers who do not report for work on said days are entitled to holiday pay equivalent to one hundred percent (100%) of their basic pay if they are present or on leave of absence with pay on the working day immediately preceding the Muslim holiday while those who are permitted or suffered to work on such holidays are entitled to at least two hundred percent (200%) of their basic pay.\(^1\)

Not only Muslim but also Christian employees in the designated provinces and cities are entitled to holiday pay on the Muslim holidays. Wages and other emoluments granted by law to the working man are determined on the basis of the criteria laid down by laws and certainly not on the basis of the worker’s faith or religion.\(^2\)

\(^1\)No. II[C] DOLE Handbook on Workers Statutory Monetary Benefits.
1.4  **Relation to Agreements**

Nothing in the law or the rules shall justify an employer in withdrawing or reducing any benefits, supplements or payments for unworked regular holidays as provided in existing individual or collective agreement or employer practice or policy.¹

1.5  **Formulas to Compute Wages on Holidays; M.C. No. 10, Series of 2004**

To guide the computation of wages on legal holidays and on special days, the DOLE issued Memorandum Circular No. 1, dated 8 March 2004 which is reproduced below. Among the regular holidays, *Eidul Fitr* and *Eidul Adha* should be added.

“Pursuant to the provisions of the Labor Code, as amended in relation to the observance of declared holidays and in response to the queries received every time a Presidential Proclamation or a law is enacted by Congress which declares certain days either as a regular holiday, a special holiday or a special working holiday, the following guidelines shall be observed by all employers in the private sector:

1)  For **regular holidays** as provided for under EO 203 (incorporated in EO 292) as amended by R.A. No. 9177. [See list of twelve legal holidays, above.]
   a)  If it is an employee’s regular workday
       If unworked — 100%
       If worked:
           1st 8 hrs. — 200%  
           Excess of 8 hours — plus 30% of hourly rate on said day
   b)  If it is an employee’s rest day
       If unworked — 100%
       If worked:
           1st 8 hrs. — plus 30% of 200%
           Excess of 8 hrs — plus 30% of hourly rate on said day

2)  For declared **special days** such as Special Non-Working Day, Special Public Holiday, Special National Holiday, in addition to the three nationwide special [nonworking] days (listed in the comments to Article 93), the following rules shall apply:

¹Sec. II, Rule IV, Book III, Rules to Implement the Labor Code.
ART. 94

a) If unworked —
   No pay, unless there is a favorable company policy, practice or collective bargaining agreement (CBA) granting payment of wages, on special days even if unworked.

b) If worked —
   1st 8 hrs. — plus 30% of the daily rate of 100%
   Excess of 8 hrs. — plus 30% of hourly rate on said day

c) Falling on the employee’s rest day and if worked —
   1st 8 hrs. — plus 50% of the daily rate of 100%
   Excess of 8 hrs. — plus 30% of hourly rate on said day

3) For those declared as special working holidays, the following rules shall apply:
   For work performed, an employee is entitled only to his basic rate. No premium pay is required since work performed on said days is considered work on ordinary working days.”

1.6 ECOLA on Regular Holiday

Is an employee entitled to the emergency cost-of-living allowance on a regular holiday? In other words, is ECOLA part of the “holiday pay”?

In a formal letter dated 9 September 2003 in reply to a query, the DOLE Secretary, after much debate and disagreement among experts, answered the query affirmatively and emphasized that it was the Department’s “official position on the matter.” Part of the letter reads:

“Section 1 of Wage Order No. NCR-09 provides, among others, that “xxx all private sector workers and employees in the National Capital Region receiving daily wage rates of Two Hundred Fifty Pesos (P250.00) up to Two Hundred Ninety Pesos (P290.00) shall receive an emergency cost of living allowance in the amount of Thirty Pesos (P30.00) per day x x x.”

Hence, applying the provision of the said Wage Order to your query, an employee is entitled to the ECOLA if he/she is paid his basic pay during regular holiday, regardless of whether or not worked [read “work”] is performed.”

Not departing from the DOLE Advisory, above, the BWC Handbook on monetary benefits, 2006 edition (p. 11) states that “every employee covered by the Holiday Pay rule is entitled to his/her daily basic wage and ECOLA.” However, the words “and ECOLA” are deleted in the 2010 edition of the same Handbook. Does this mean the ECOLA is no longer to be paid on a legal holiday? No. The reason is that if the minimum wage is defined in the wage order as consisting of
a “basic rate” and an “ECOLA,” then everytime the basic rate is paid the ECOLA must also be paid, otherwise the minimum wage law will be violated.

On the other hand, if the applicable wage order does not require ECOLA as part of the minimum wage, or if the subject employee’s regular basic rate (without ECOLA) is equal to or higher than the minimum wage, then any ECOLA that exceeds and is not part of such regular rate need not be paid as part of a holiday pay. For example, in March 1974, LOI No. 174 categorically stated that the emergency allowance need not be considered as part of the employee’s regular or basic wage for purposes of determining overtime and premium pay, as well as premium contributions to social security, Medicare and private welfare plans.

Again, if the minimum wage is defined (e.g., W.O. No. NCR-14) as inclusive of ECOLA, then ECOLA should be included as basis for computing night shift differential (Article 86), overtime pay (Article 87), premium pay (Article 93), and thirteenth-month pay (P.D. No. 851). (See the Revised Guidelines on the 13th Month Pay, dated November 16, 1987.)

As this edition went to print, the BWC Handbook on Workers’ Statutory Monetary Benefits 2012 edition, was just released. It removes any doubt on whether COLA is to be paid on a legal holiday. In its page 9, it clearly states: “Every employee covered by the Holiday Pay Rule is entitled to the Minimum wage rate (daily basic wage and COLA).”

2. HOLIDAY PAY; ENTITLEMENT OF MONTHLY-PAID EMPLOYEES

Is a monthly-paid employee entitled to the 12-day holiday pay? A monthly-paid employee is one whose salary covers all days of a month including unworked rest days, special days and regular holidays. In contrast, a daily-paid employee is paid only for days actually worked except that by law he is paid for the 12 regular holidays although unworked. Does this holiday pay privilege apply to a monthly-paid employee? The Minister (now Secretary) of Labor issued in 1976 Policy Instruction No. 9 with implementing rules which stated that the holiday pay law was “intended to benefit principally daily employees.” It further said that the monthly-paid are entitled “only if their monthly salary did not yet include the holiday pay.” When this virtual exclusion of the monthly-paid was challenged in the IBAA case, the High Court declared it invalid.

“Section 2, Rule IV, Book III of the Implementing Rules and Policy Instructions No. 9 issued by the Secretary [then Minister] of Labor are null and void since in the guise of clarifying the Labor Code’s provisions on holiday pay, they in effect amended them by enlarging the scope of their exclusion.

“The Labor Code is clear that monthly-paid employees are not excluded from the benefits of holiday pay.
“In Policy Instructions No. 9, the Secretary of Labor went as far as to categorically state that the benefit is intended primarily for daily-paid employees when the law clearly states that every worker shall be paid their regular holiday pay.”

2.1 Divisor

By the 1984 IBAA ruling above, it is already settled that the monthly-paid employee is entitled to holiday pay. Since a monthly salary covers all days of the month, the salary, if converted to daily, should be equal to or greater than the legal minimum wage multiplied by the number of days in a month. If the monthly salary is P20,000.00 multiplied by 12 months then divided by 365 days in a year, the result (P657.53) may be higher than the legal minimum pay in the region of the workplace. If that legal rate is, say, P400.00 a day, then P657.53 more than meets the minimum. Therefore, the salary is monthly rate and holiday pay is part of it.

In the above example, the divisor used is “365.” But if the divisor is lower, say “251,” is it still true that all days of the month are covered in the salary? Two hundred fifty-one (251) is the result of subtracting 52 Saturdays, 52 Sundays and 10 regular holidays from 365 days. In the Chartered Bank case where the divisor was 251 to convert the monthly salary to daily, the complainant union won by its argument that the divisor 251 proved that the employees’ monthly salary did not include pay for ten legal holidays. The divisor therefore is crucial. The Court said: “One strong argument in favor of the petitioner’s [union’s] stand is the fact that the Chartered Bank, in computing overtime compensation for its employees, employs a ‘divisor’ of 251 days. The 251 working days divisor is the result of subtracting all Saturdays, Sundays and the ten (10) legal holidays from the total number of calendar days in a year. If the employees are already paid for all nonworking days, the divisor should be 365 and not 251.”

The Court further said that the divisor used to compute a holiday pay should be the same divisor for computing overtime rate, or sick leave/vacation cash value. Said the Court: “There is furthermore a similarity between overtime pay, which is computed on the basis of 251, working days a year, and holiday pay, which should be similarly treated notwithstanding the public respondents’ issuances. In both cases — overtime work and holiday work — the employee works when he is supposed to be resting. In the absence of an express provision of the CBA or the law to the contrary, the computations should be similarly handled.”


2.2 Divisor Should be Explained

“365” divisor is good evidence to show inclusion of holiday pay in the monthly salary, but is 365 favorable to the employee? As illustrated above, divisor 365 yields a P657.53 daily equivalent. If the divisor is 251, the equivalent is P956.17. The bigger the divisor, the smaller the daily equivalent.

When claiming cash value of accrued leave or overtime pay, or other per-day or per-hour benefit, the employee prefers of course the bigger per-day equivalent. But the bigger per-day equivalent is unfavorable to the employee when pay deduction will be done because of tardiness or absence without pay or for other valid deductions.

Understandably, in Odango vs. ANTECO, the Court explains that the use of a divisor lower than 365 days does not automatically make the employer liable for underpayment. “Even if the divisor to convert the salary form “monthly” to “daily” is lower than 365, the employee is still “monthly-paid” and all the days of the month including the legal holidays are deemed paid if the quotient is equal to or greater than the legal minimum rate.”

“The facts show that petitioners are required to work only from Monday to Friday and half of Saturday. Thus, the minimum allowable divisor is 287, which is the result of 365 days, less 52 Sunday and less 26 Saturdays (or 52 half Saturdays). Any divisor below 287 days means that ANTECO’s workers are deprived of their holiday pay for some or all of the ten legal holidays. The 304 days divisor used by ANTECO is clearly above the minimum of 287 days.”

We know from experience that there are kind employers who use a lower divisor for purposes of paying to the employee the per-day value of a benefit, but they use a bigger divisor (say 365) for purposes of deductions from the employee’s pay. Whether a lower or higher divisor is used, the purpose and meaning of the divisor should be adequately explained to the employees, preferably in writing.

2.3 Start of Entitlement of Monthly-Paid Employees

Union of Filipro Employees vs. Benigno Vivar, Jr., NLRC, and Nestlé Phil., Inc. (formerly Filipro, Inc.), G.R. No. 79255, January 20, 1992 —

From what year does the entitlement to holiday pay of monthly-paid employees begin? 1976? Or 1984?

In Insular Bank of Asia and America Employees’ Union (IBAAEU) vs. Inciong, see above, the Court declared that Sec. 2, Rule IV, Book III of the implementing rules and Policy Instructions No. 9, issued by the then Secretary of Labor on February 16, 1976 and April 23, 1976, respectively, which excluded monthly-paid employees from holiday pay benefits, are null and void.

However, prior to their being declared null and void, the implementing rule and policy instruction enjoyed the presumption of validity and, hence, Nestlé’s nonpayment of the holiday benefit up to the promulgation of the IBAA case on October 23, 1984 was in compliance with these presumably valid rule and policy instruction.

In the case of De Aghayani vs. Philippine National Bank (38 SCRA 429 [1971]), the Court discussed the effect to be given to a legislative or executive act subsequently declared invalid:

x x x In the language of an American Supreme Court decision: The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular relations, individual and corporate, and particular conduct, private and official. (Chicot County Drainage Dist. vs. Baxter States Bank, 308 US 371, 374 [1940])

The “operative fact” doctrine realizes that in declaring a law or rule null and void, undue harshness and resulting unfairness must be avoided. It is now almost the end of 1991. To require various companies to reach back to 1975 now and nullify acts done in good faith is unduly harsh. 1984 is a fairer reckoning period under the facts of this case.

The Court hereby resolves that the grant of holiday pay be effective, not from the date of promulgation of the Chartered Bank case nor from the date of effectivity of the Labor Code, but from October 23, 1984, the date of promulgation of the IBAA case.

2.4 Holiday Falling on a Sunday

There was an old rule that when a holiday falls on a Sunday the following Monday becomes a holiday. This is no longer true. Letter of Instruction No. 1087, dated 26 November 1980, states:

“3. When a legal holiday falls on a Sunday, the following Monday shall not be a holiday, unless a proclamation is issued declaring it a special public holiday.”

Pertinently, the Supreme Court has ruled in Wellington case that a legal holiday falling on a Sunday creates no legal obligation for the employer to pay extra, aside from the usual holiday pay, to its monthly-paid employees. The Court explains further how monthly salary satisfies the law on minimum wage.
Every worker should, according to the Labor Code, “be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers”; this, of course, even if the worker does no work on these holidays.

Particularly as regards employees who are uniformly paid by the month, “the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve.” This monthly salary shall serve as compensation “for all days in the month whether worked or not,” and “irrespective of the number of working days therein.” In other words, whether the month is of thirty (30) or thirty-one (31) days’ duration, or twenty-eight (28) or twenty-nine (29) (as in February) the employee is entitled to receive the entire monthly salary. So, too, in the event of the declaration of any special holiday, or any fortuitous cause precluding work on any particular day or days (such as transportation strikes, riots, or typhoons or other natural calamities), the employee is entitled to the salary for the entire month and the employer has no right to deduct the proportionate amount corresponding to the days when no work was done. The monthly compensation is evidently intended precisely to avoid computations and adjustments resulting from the contingencies just mentioned which are routinely made in the case of workers paid on daily basis.

In Wellington’s case, there seems to be no question that at the time of the inspection conducted by the Labor Enforcement Officer on August 6, 1991, it was and had been paying its employees “a salary of not less than the statutory or established minimum wage,” and that the monthly salary thus paid was “not less than the statutory minimum wage multiplied by 365 days divided by twelve,” supra. There is, in other words, no issue that to this extent, Wellington complied with the minimum norm laid down by law.

Apparently, the monthly salary was fixed by Wellington to provide for compensation for every working day of the year including the holidays specified by law — and excluding only Sundays. In fixing the salary, Wellington used what it calls the “314 factor”; that is to say, it simply deducted 51 Sundays from the 365 days normally comprising a year and used the difference, 314, as basis for determining the monthly salary. The monthly salary thus fixed actually covers payment for 314 days of the year, including regular and special holidays, as well as days when no work is done by reason of fortuitous cause, as above specified, or causes not attributable to the employees.

There is no provision of law requiring any employer to make such adjustments in the monthly salary rate set by him to take account of legal holidays falling on Sundays in a given year, or, contrary to the legal provisions bearing on the point, otherwise to reckon a year at more than 365 days. As earlier mentioned, what the law requires of employers opting to pay by the month is to assure that “the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve,” and to pay that salary “for all days in the month whether worked or not,” and “irrespective of the number of working days therein.”

Wellington Investment and Manufacturing Corporation vs. Cresenciano B. Trajano, Undersecretary of Labor and Employment, Elmer Abadilla, and 34 others, G.R. No. 114698, July 3, 1995 —
2.5 **Double Holiday: Two Regular Holidays on the Same Day**

The Department of Labor and Employment issued on March 11, 1993 an *Explanatory Bulletin on Workers’ Entitlement to Holiday Pay on 9 April 1993, Araw ng Kagitingan and Good Friday*.

**If unworked.** — On the correct payment of holiday compensation on April 9, 1993 which, apart from being Good Friday is also *Araw ng Kagitingan*, i.e., two (2) regular holidays falling on the same day, the Department of Labor and Employment is of the view that the covered employees are entitled to at least two hundred percent (200%) of their basic wage even if said holiday is unworked.

The first one hundred percent (100%) represents holiday pay for April 9, 1993 as *Good Friday* and the second one hundred percent (100%) is holiday pay for the same date as *Araw ng Kagitingan*. The Labor Code, as amended, provides that every employee shall be paid his regular daily wage on regular holidays (except those in retail and service establishments regularly employing less than ten [10] employees) on all the ten [now twelve] regular holidays in a year regardless of when the holiday falls, *i.e.*, whether the holiday falls on an ordinary day, a scheduled rest day or on another holiday. To pay the covered employees only 100% as holiday pay on April 9, 1993, if unworked would, in effect, constitute a diminution of a fixed statutory monetary benefit. It is tantamount to reducing the number of paid holidays from [twelve] as mandated by law, to only [eleven].

**If worked.** — In situations where the employee is permitted or suffered to work on April 9, 1993, he is entitled to compensation equivalent to at least 300% of his basic wage. The 100% in addition to 200% stated above represents the basic pay for working not more than eight hours in consonance with the requirement of wage legislations. Meanwhile, if April 9, 1993, a Friday, happens to be the employee’s scheduled rest day, and he is permitted or suffered to work, he is entitled to an additional 30% of his wage for that day, that is, 300% of his daily rate, or a total of 390%.

The DOLE Explanatory Bulletin does not cover cases where there are existing agreements or employer policy or practice providing for more liberal benefits than those that would result with the application of said issuance.

When double holiday occurred again on April 9, 1998 (*Araw ng Kagitingan* and *Maundy Thursday*), the DOLE, through the Bureau of Working Conditions, reiterated the regulations contained in the Explanatory Bulletin of March 11, 1993.

---

ART. 94 — CONDITIONS OF EMPLOYMENT

2.5a Double Holiday Rule for Monthly-Paid Employees

For covered employees whose monthly salaries are computed based on factor 365 days and for those other employees who are paid using factors 314, or 262, or any other factor which already considers the payment for the ten (10) [read 12 to include Eidul Fitr and Eidul Adha] regular holidays under Executive Order No. 203, no additional payment is due them. The inclusion of 12 holiday pays in their monthly salary is enough compliance. If work, however, is to be rendered on April 9, 1998, [or any other legal holiday], an additional compensation of 100% of the regular salary shall be paid to the employees. This is without prejudice to any agreement, company policy or practice which grants better or more favorable benefits to employees on said day.¹

2.6 Successive Regular Holidays

Where there are two (2) successive regular holidays, like Holy Thursday and Good Friday, an employee may not be paid for both holidays if he absents himself from work on the day immediately preceding the first holiday, unless he works on the first holiday, in which case, he is entitled to his holiday pay on the second holiday.²

2.7 Hourly-Paid Teachers: No Pay on Regular Holiday, but with Pay on Special Public Holidays and other No-class Days

Jose Rizal College vs. National Labor Relations Commission, G.R. No. 65482, December 1, 1987 —

Holiday pay is provided for in the Labor Code and in the Implementing Rules and Regulations, Rule IV, Book III, which reads:

SEC. 8. Holiday pay of certain employees. — (a) Private school teachers, including faculty members of colleges and universities, may not be paid for the regular holidays during semestral vacations. They shall, however, be paid for the regular holidays during Christmas vacations. x x x

Under the foregoing provisions, apparently, the petitioner, although a nonprofit institution, is under obligation to give pay even on unworked regular holidays to hourly-paid faculty members subject to the terms and conditions provided for therein.

We [the Supreme Court] believe that the aforementioned implementing rule is not justified by the provisions of the law which after all is silent with respect to faculty members paid by the hour who because of their teaching contracts are obliged to work and consent to be paid only for work actually done (except when an emergency or a fortuitous event or a national need calls for the declaration of special holidays). Regular holidays specified as such by law are known to both school and faculty members as “no class days”; certainly the latter do not expect payment for said unworked days, and this was clearly in their minds when they entered into the teaching contracts.

¹BWG-WHSD Opinion No. 053, s. 1998.
²Sec. 10, Rule IV, Book III, Rules to Implement the Labor Code.
On the other hand, both the law and the Implementing Rules governing holiday pay are silent as to payment on Public Holidays.

It is readily apparent that the declared purpose of the holiday pay which is the prevention of diminution of the monthly income of the employees on account of work interruptions is defeated when a regular class day is canceled on account of a special public holiday and class hours are held on another working day to make up for time lost in the school calendar. Otherwise stated, the faculty member, although forced to take a rest, does not earn what he should earn on that day. Be it noted that when a special public holiday is declared, the faculty member paid by the hour is deprived of expected income, and it does not matter that the school calendar is extended in view of the days or hours lost, for their income that could be earned from other sources is lost during the extended days. Similarly, when classes are called off or shortened on account of typhoons, floods, rallies, and the like, these faculty members must likewise be paid, whether or not extensions are ordered.

The decision of respondent National Labor Relations Commission is set aside, and a new one is RENDERED:

(a) exempting petitioner from paying hourly paid faculty members their pay for regular holidays, whether the same be during the regular semesters of the school year or during semestral, Christmas, or Holy Week vacations;

(b) but ordering petitioner to pay said faculty members their regular hourly rate on days declared as special holidays or for some reason classes are called off or shortened for the hours they are supposed to have taught, whether extensions of class days be ordered or not; in case of extensions said faculty members shall likewise be paid their hourly rates should they teach during said extensions.

2.8 Holiday Pay; Field Personnel Not Covered

Union of Filipro Employees vs. Benigno Vivar, Jr., NLRC, and Nestlé Phil., Inc., G.R. No. 79255, January 20, 1992 —

Under Article 82, where we cited this case, field personnel are not entitled to holiday pay. Said article defines field personnel as “nonagricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.”

The controversy centers on the interpretation of the clause “whose actual hours of work in the field cannot be determined with reasonable certainty.”

It is undisputed that these sales personnel start their field work at 8:00 a.m. after having reported to the office and come back to the office at 4:00 p.m. or 4:30 p.m. if they are Makati-based.

The petitioner Union maintains that the period between 8:00 a.m. to 4:00 or 4:30 p.m. comprises the sales personnel’s working hours which can be determined with reasonable certainty.
The Court does not agree. The law requires that the actual hours of work in the field be reasonably ascertained. The company has no way of determining whether or not these sales personnel, even if they report to the office before 8:00 a.m. prior to field work and come back at 4:30 p.m., really spend the hours in-between in actual field work....

The theoretical analysis that salesmen and other similarly-situated workers regularly report for work at 8:00 a.m. and return to their home station at 4:00 or 4:30 p.m., creating the assumption that their field work is supervised, is surface projection. Actual field work begins after 8:00 a.m. when the sales personnel follow their field itinerary, and ends immediately before 4:00 or 4:30 p.m. when they report back to their office. The period between 8:00 a.m. and 4:00 or 4:30 p.m. comprises their hours of work in the field, the extent or scope and result of which are subject to their individual capacity and industry and which ‘cannot be determined with reasonable certainty.’ This is the reason why effective supervision over field work of salesmen and medical representatives, truck drivers and merchandisers is practically a physical impossibility.

2.9 Holiday Pay of a Part-timer

If the work is partial, the pay should also be partial. This is a fair principle that applies to the entitlement to holiday pay of a part-time worker. He works part only of the normal eight-hour shift, hence he should not expect a full day’s pay on a holiday.

The DOLE Explanatory Bulletin on Part-time Employment (January 2, 1996) states that the amount of holiday pay of a part-timer is to be determined on a case-to-case basis. The basis is any of the following, whichever yields the highest amount: (1) the regular wage per day; (2) the basic wage on the working day preceding the regular holiday if the employee is present or on leave with pay on the last working day immediately prior to the regular holiday; (3) the average of his basic wages for the last seven working days for employees who are paid by results; or (4) the basic wage on the particular holiday, if worked.

2.10 Holiday Pay: Piece-Rate Workers

Entitlement of piece-rate workers to holiday pay is taken up under the next Article.

3. Exemption of Retail and Service Establishments

The holiday pay requirement does not apply to retail and service establishments regularly employing less than ten (10) workers (Article 94[a]). Since the minimum wage law, beginning with Article 99, similarly exempts “retail and service establishments,” this category of business is explained under Article 99. The explanation there may be adopted in interpreting the exemption from the holiday pay law.

---

1The Bulletin is reproduced in the Labor Law Source Book (2003 edition) by this writer.
ART. 95. **RIGHT TO SERVICE INCENTIVE LEAVE**

(a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b) This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor after considering the viability or financial condition of such establishment.

(c) The grant of benefit in excess of that provided herein shall not be made a subject of arbitration or any court of administrative action.

**COMMENTS AND CASES**

1. **RIGHT TO SERVICE INCENTIVE LEAVE (S.I.L.)**

   Every covered employee who has rendered at least one (1) year of service shall be entitled to a yearly service incentive leave of five (5) days with pay.¹ Leave with pay means an employee gets paid despite absence from work.

   1.1 **Meaning of “One Year of Service”**

   The phrase “one year of service” means service within twelve (12) months, whether continuous or broken, reckoned from the date the employee started working. The period includes authorized absences, unworked weekly rest days, and paid regular holidays. If through individual or collective bargaining, company practice or policy, the period of working days is less than twelve (12) months, said period shall be considered as one year for the purpose of determining the entitlement to the service incentive leave.²

   1.2 **SIL of Part-Time Workers**

   In an advisory opinion, the Bureau of Working Conditions holds that part-time workers are entitled to the full benefit of the yearly five (5) days service incentive leave with pay. The reason is that the provisions of Article 95 of the Labor Code and its implementing rules speak of the number of months in a year for entitlement to said benefit. Consequently, part-time employees are also entitled to the **full five days** service incentive leave benefit and not on a pro-rata basis.³

---

¹Sec. 2, Rule V, Book III, Rules to Implement the Labor Code.
³Bureau of Working Conditions, Advisory Opinion to Philippine Integrated Exporters, Inc. on the query about Conditions of Employment of Part-Time Workers.
Attention should be called, however, to the DOLE’s Explanatory Bulletin on Part-time Employment (dated January 2, 1996) which allows “proportionate” entitlement and commutation of the SIL. We quote verbatim:

With regard to service incentive leave, the Implementing Rules and Regulations of the Labor Code, as amended, provides that every employee who has rendered at least “one year of service” (as defined therein) shall be entitled to a yearly service incentive leave of five days with pay. Thus, a part-time worker is entitled to service incentive leave whether the service within 12 months is continuous or broken or where the working days in the employment contract as a matter of practice or policy is less than 12 months. The availment and commutation of the same can be proportionate to the daily work rendered and the regular daily salary, respectively.

1.3 “On Contract” Workers

Teachers of private schools on contract basis are entitled to service incentive leave. In Cebu Institute of Technology vs. Hon. Blas Ople, 156 SCRA 531 [1987], petitioner employer claims that the complainant employees are engaged by the school on a contract basis as shown by the individual teacher’s contract which defines the nature, scope and period of employment; hence, the complaining teachers are not entitled to the said benefit, according to Book III, Rule V of the Implementing Rules and Regulations of the Labor Code, to wit:

Sec. 1. Coverage. — This rule [on Service Incentive Leave] shall apply to all employees, except: x x x d) Field personnel and other employees whose performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid in a fixed amount for performing work irrespective of the time consumed in the performance thereof.

The phrase “those who are engaged on task or contract basis” should, however, be related with “field personnel” applying the rule on ejusdem generis that general and unlimited terms are restrained and limited by the particular terms that they follow.1 Clearly, petitioner’s teaching personnel cannot be deemed doing field duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.2 The school’s claim that the teachers are not entitled to the service incentive leave benefit, therefore, cannot be sustained.

1.4 Piece-Rate Workers

In Makati Haberdashery, Inc. vs. NLRC, G.R. Nos. 83380-81, November 15, 1989, the Court ruled that “while respondents [piece-rate employees] are entitled to minimum wage, COLA and 13th-month pay, they are not entitled to service incentive leave pay.”

---

1Vera vs. Cuevas, 90 SCRA 379 [1979].
2Book III, Title I, Article 82, par. 3, Labor Code.
However, this ruling which denies service incentive leave to piece-rate employees, is reexamined in the comments to Article 101 regarding workers paid by result. The Supreme Court appears to have changed its mind in the later Labor Congress case.

1.5 Excluded Employer; Burden of Proof

One of those excluded from the obligation to grant SIL are “establishments regularly employing less than ten (10) workers.”

The clear policy of the Labor Code is to include all establishments, except a few classes, under the coverage of the provision granting service incentive leave to workers. When an employer claims that it falls within the exception, it is the employer’s duty, not of the employees, to prove that there are less than ten (10) employees in the company. If it fails to discharge its task, the employer must be deemed to be covered by the rule, notwithstanding the employees’ failure to allege the exact number of employees of the corporation.¹

2. COMMUTATION OF S.I.L.

The Code has no provision on the commutation, i.e., conversion to cash of unused service incentive leave. But the implementing rules, made by the Department of Labor and Employment, requires it. It provides: “The service incentive leave shall be commutable to its money equivalent if not used or exhausted at the end of the year.”²

2.1 Questionable Commutation Rule

Is the requirement of converting unused SIL into cash valid? As the conversion is not in the law, has the Department of Labor exceeded its rule-making authority in requiring the commutation?

The commutation requirement gives rise to another question. Both the law and the rules state that the SIL need not be given to employees already enjoying vacation leave (VL) with pay of at least five days. The question is: If a company is granting, say, 15 days VL, is the company obliged to pay the cash equivalent of at least 5 days VL unused at the end of the year? In other words, if 5 of the 15 days VL is SIL, does it follow that at least 5 of the 15 days VL must be converted to cash if unused at year’s end? If the employer does not do so, does the employer violate the law on SIL?

2.2 Basis of Computation

The basis of conversion shall be the salary rate at the date of commutation. The use and commutation of the service incentive leave benefit may be on a pro-rata basis.³

²Sec. 5, Rule V, Omnibus Rules Implementing the Labor Code.
³No. VI[C], DOLE Handbook on Workers’ Statutory Monetary Benefits.
Illustration:
An employee was hired on January 1, 2000 and resigned on March 1, 2001. Assuming that he has not used or commuted any of his/her accrued SIL, he/she is entitled upon his resignation to the commutation of his accrued SIL as follows:

SIL earned as of December 31, 2000 — Five (5) days
Proportionate SIL for Jan. and Feb. 2001 (2/12 x 5 days) — 0.833 day
Total accrued SIL as of March 2001 — 5.833 days

(DOLE Handbook on Workers’ Statutory Monetary Benefits based on opinion of DOLE Legal Service)

2.3 SIL of Kasambahay not Commutable
R.A. No. 10361 grants SIL to domestic workers but their SIL need not be converted to cash or carried over to succeeding years. (See Notes to Article 139).

3. SICK LEAVE AND VACATION LEAVE AS VOLUNTARY BENEFITS
While the five-day service incentive leave is mandatory because it is legally required, vacation and sick leave are voluntary. Their grant in a private enterprise results from the employer’s discretionary policy or from bargaining with the employees or their representative.

Sick leave benefits, like other economic benefits stipulated in a CBA, are intended as replacements for income which an employee will not earn while on leave. Leave benefits are non-contributory, in the sense that the employees have no monetary contribution to the creation of the benefits. By their nature, upon agreement of the parties, they are intended to alleviate the economic condition of the workers.1

The purpose of vacation leave is to afford to a laborer a chance to get a much needed rest to replenish his worn out energies and acquire new vitality to enable him to efficiently perform his duties and not merely to give him additional salary or bounty. This privilege must be demanded in its opportune time and if an employee allows the years to go by in silence, he waives it. It becomes a mere concession or act of grace of the employer.2

In the administration of the leave privileges of employees, the employer may impose certain conditions as for other voluntary benefits. For instance, the employer’s rules and regulations may provide for the accumulation of sick leave up to a maximum of six months but such sick leave is not commutable or payable.

---

in cash upon the employee’s option. In cases of dispute, the court will resolve it by construing the employer’s written policy on the matter. Thus, in a case of San Miguel Brewery, Inc., the Supreme Court adopted the interpretation that under the employer’s regulations, if an employee does not choose to enjoy his yearly sick leave of thirty days, he may accumulate such leave up to a maximum of six months and enjoy his six months sick leave at the end of the sixth year but may not commute it to cash.\(^1\)

### 3.1 Commutation of Sick Leave

In another case, the company granted and paid the cash equivalent of the unused portion of the sick leave benefits of some intermittent workers. The company did this on several instances in the past spanning more than three years. Under the circumstances, these acts may be deemed to have ripened into company practice or policy which cannot be peremptorily withdrawn.\(^2\)

SL/VL benefits and their conversion to cash are voluntary, not statutory. Entitlement to them, especially by a corporate executive, must be proved. This requirement is dramatically illustrated in the case of Mr. Kwok against his father-in-law.

**Kwok vs. PCMC, G.R. No. 149252, April 28, 2005 —**

**Facts:** Mr. Kwok was general manager of PCMC which he and his father-in-law, Mr. Lim, set up in 1965. When Mr. Kwok retired in 1996, he asked for the cash value of VL/SL credits amounting to more than P7 million. Mr. Lim, president of the corporation, denied the claim. Mr. Kwok insisted that Mr. Lim had promised him such benefit, and that Mr. Lim was denying it only because Mr. Kwok had fallen out of marriage with his wife, Mr. Lim’s daughter.

**Ruling:** In the present case, the petitioner, Mr. Kwok, relied principally on his testimony to prove that Lim made a verbal promise to give him vacation and sick leave credits, as well as the privilege of converting the same into cash upon retirement. The Court agrees that those who belong to the upper corporate echelons would have more privileges. However, the Court cannot presume the existence of such privileges or benefits. Mr. Kwok has to prove not only the existence of such benefits but also that he is entitled to them, especially considering that such privileges are not inherent to the positions occupied by him in the corporation, son-in-law of its president or not.

...[E]ven assuming that PCMC President Mr. Lim did promise the cash conversion, we agree that this cannot bind the company in the absence of any Board resolution to that effect. We must stress that the personal act of the company president cannot bind the corporation. As explicitly stated by the Supreme Court in *People’s Aircargo and Warehousing Co., Inc. vs. Court of Appeals:*

\(^1\)Baltazar vs. San Miguel Brewery, Inc., L-23076, February 27, 1969, 27 SCRA 71, 74-75.

“The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. A corporation is a juridical person, separate and distinct from its stockholders and members, ‘having xxx powers, attributes and properties expressly authorized by law or incident to its existence.’

We are not convinced by Mr. Kwok’s claim that Mr. Lim capriciously deprived him of his entitlement to the cash conversion simply because of his estrangement from his wife, who happens to be Lim’s daughter. Mr. Kwok did not adduce any evidence to show that he appealed to the corporation’s board of directors for the implementation of the said privilege which was allegedly granted to him.

3.2 Rationale for accumulation and conversion

In a case involving the accumulation of leave credits and their conversion into cash as provided in the Collective Bargaining Agreement, the Court noted that cash equivalent is aimed primarily at encouraging workers to work continuously and with dedication for the company. Companies offer incentives, such as the conversion of the accumulated leave credits into their cash equivalent, to lure employees to stay with the company. Leave credits are normally converted into their cash equivalent based on the last prevailing salary received by the employee.1

4. PATERNITY AND MATERNITY LEAVE

R.A. No. 8187, which took effect on July 5, 1996, grants paternity leave of seven days with full pay to all married male employees in the private and public sectors. Paternity leave is available only for the first four deliveries of the legitimate spouse with whom the husband is living. “Delivery” includes childbirth, miscarriage or abortion. The purpose of paternity leave is to enable the husband to lend support to his wife during the period of recovery and/or in the nursing of the newly born child.

The Revised Implementing Rules and Regulation of R.A. No. 8187 jointly issued by DOLE and the Department of Health, dated March 13, 1997, provide for the conditions to entitlement to paternity leave benefits, and they are explained in the book Special Labor Laws.

Maternity leave benefit is granted under the social security law in relation to Article 131 of the Labor Code. The discussion under that article should be consulted.

5. PARENTAL (SOLO PARENT) LEAVE

Additional to the list of paid leaves granted by law is the “parental leave,” known also as solo parent’s leave because it is given to solo parents by the Solo

1Republic Planters Bank, now known as PNB-Republic Bank vs. NLRC, et al., G.R. No. 117460, January 6, 1997.

The rules and regulations implementing R.A. No. 8972 state in Section 18 that the seven-day parental leave shall be non-cumulative.

The parental leave, it should be noted, is in addition to the legally mandated leaves, namely, the SIL, the SSS sick leave, the SSS maternity leave and the paternity leave under R.A. No. 8187.¹

6. OTHER LEAVES

Other kinds of leaves should be added to the lengthening list of paid absences for female employees, namely, the so-called “battered woman leave,” and the 60-day special leave under the Magna Carta of Women. As this pertains to female employees only, it is taken up under Article 131.

ART. 96. SERVICE CHARGES

All service charges collected by hotels, restaurants and similar establishments shall be distributed at the rate of eighty-five percent (85%) for all covered employees and fifteen percent (15%) for management. The share of the employees shall be equally distributed among them. In case the service charge is abolished, the share of the covered employees shall be considered integrated in their wages.

COMMENTS

1. COVERAGE AND DISTRIBUTION

Article 96 and its implementing rules (Rule VI, Book III), apply only to establishments collecting service charges, such as hotels, restaurants, lodging houses, night clubs, cocktail lounges, massage clinics, bars, casinos and gambling houses, and similar enterprises, including those entities operating primarily as private subsidiaries of the government.²

The Rule applies to all employees of covered employers, regardless of their positions, designations or employment status, and irrespective of the method by which their wages are paid, except to managerial employees. Section 3 of Rule VI allows management to retain the 15% to answer for losses and breakages and for distribution to managerial employees, at the discretion of management in the latter case.³

¹The full text of the law and the Implementing Rules are reproduced in the book Special Labor Laws.
²Sec. 1, Rule VI, Book III, Rules to Implement the Labor Code.
ART. 96

CONDITIONS OF EMPLOYMENT

The shares shall be distributed and paid to the employees not less than once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days.¹

2. RULE IF COLLECTION OF SERVICE CHARGE IS ABOLISHED

In case the service charge is abolished, the share of covered employees shall be considered integrated in their wages. The basis of the amount to be integrated shall be the average monthly share of each employee for the past twelve (12) months immediately preceding the abolition or withdrawal of such charges.²

3. TIPS

Tips are handled similarly as service charges. If a restaurant or similar establishment does not collect service charges but has a practice or policy of monitoring and pooling the tips given by customers, the pooled tips should be monitored, accounted and distributed in the same manner as the service charges.³

In many restaurants, a waiter must drop in a tip box the tips he received; otherwise, he commits “tip pocketing,” a serious offense of dishonesty that may cost him his job.

Title II
WAGES

Chapter I
PRELIMINARY MATTERS

Box 11

Overview/Key Questions:
1. What is wage? What does it include? To determine whether one’s wage meets the legal minimum, should non-cash benefits be included in the computation?
2. “Facilities” are wage-deductible, “supplements” are not. How are they differentiated?
3. What establishments may be exempted from observance of the minimum wage law?

ART. 97. DEFINITION

As used in this Title: (a) “Person” means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) “Employer” includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the Government and all its branches, subdivision and instrumentalities, all government-owned or -controlled corporations and institutions, as well as non-profit private institutions, or organizations.

(c) “Employee” includes any individual employed by an employer.

(d) “Agriculture” includes farming in all its branches and, among other things, includes the cultivation and tillage of soil, dairying, the production, cultivation, growing and harvesting of any agricultural and horticultural commodities, the raising of livestock or poultry, and any practices performed by a farmer on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing or processing of sugar, coconuts, abaca, tobacco, pineapples or other farm products.

(e) “Employ” includes to suffer or permit to work.

(f) “Wage” paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money,
whether fixed or ascertained on a time, task, piece, or commission basis, or
other method of calculating the same, which is payable by an employer to
an employee under a written or unwritten contract of employment for work
done or to be done, or for services rendered or to be rendered and includes
the fair and reasonable value, as determined by the Secretary of Labor, of
board, lodging, or other facilities customarily furnished by the employer to
the employee. “Fair and reasonable value” shall not include any profit to
the employer or to any person affiliated with the employer.

COMMENTS AND CASES

1. “WAGE” AND “SALARY” DEFINED

The term “wages,” as distinguished from “salary,” applies to the
compensation for manual labor, skilled or unskilled, paid at stated times, and
measured by the day, week, month, or season, while “salary” denotes a higher
degree of employment, or a superior grade of services, and implies a position
or office; by contrast, the term “wages” indicates inconsiderable pay for a lower
and less responsible character of employment, while “salary” is suggestive of a
larger and more permanent or fixed compensation for more important service.
By some of the authorities, it has been noted that the word “wages” in its ordinary
acceptance, has a less extensive meaning than the word “salary,” “wages” being
ordinarily restricted to sums paid as hire or reward to domestic or menial
servants and to sums paid to artisans, mechanics, laborers, and other employees
of like class, as distinguished from the compensation of clerks, officers of public
corporations, and public offices. In many situations, however, the words “wages”
and “salary” are synonymous.

Our Supreme Court reached the same conclusion, i.e., the words “wages”
and “salary” are in essence synonymous.

1.1 “Wage” includes Sales Commissions

“Salary,” the etymology of which is the Latin word “solarium,” is often
used interchangeably with “wage,” the etymology of which is the Middle English
word “wagen.” Both words generally refer to one and the same meaning, that is,
a reward or recompense for services performed. Likewise, “pay” is the synonym
of “wages” and “salary.” Inasmuch as the words “wage,” “pay” and “salary” have
the same meaning, and commission is included in the definition of “wage,” the
logical conclusion is, in the computation of the separation pay, the salary base
should include also the earned sales commissions.

---


**Facts:** Zuelig terminated the services of Songco, and others, on the ground of retrenchment due to financial losses. During the hearing, the parties agreed that the sole issue to be resolved was the basis of computation of the separation pay. The salesmen received monthly salaries of at least P400.00 (yes, P400) and commissions for every sale they made.

The Collective Bargaining Agreement between Zuelig and the union of which Songco, et al. were members contained the following provision: “Any employee who is separated from employment due to old age, sickness, death or permanent lay-off, not due to the fault of said employee, shall receive from the company a retirement gratuity in an amount equivalent to one (1) month’s salary per year of service.”

The Labor Arbiter ordered Zuelig to pay Songco, et al., separation pay equivalent to their one month salary (exclusive of commissions, allowances, etc.) for every year of service with the company.

**Issue:** Whether the earned sales commissions and allowances should be included in the monthly salary of Songco, et al. for the purpose of computing their separation pay.

**Ruling:** In the computation of backwages and separation pay, account must be taken not only of the basic salary of the employee but also of the transportation and emergency living allowances.

Even if the commissions were in the form of incentives or encouragement, so that the salesman would be inspired to put a little more industry on the jobs particularly assigned to them, still these commissions are direct remunerations for services rendered which contributed to the increase of income of the employer. Commission is the recompense compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. The nature of the work of a salesman and the reason for such type of remuneration for services rendered demonstrate that commissions are part of Songco, et al.’s wage or salary.

The Court takes judicial notice of the fact that some salesmen do not receive any basic salary but depend on commissions and allowances or commissions alone, although an employer-employee relationship exists.

If the opposite view is adopted, i.e., that commissions do not form part of the wage or salary, then in effect, we will be saying that this kind of salesmen does not receive any salary and therefore, not entitled to separation pay in the event of discharge from employment. This narrow interpretation is not in accord with the liberal spirit of the labor laws and considering the purpose of separation pay which is, to alleviate the difficulties which confront a dismissed employee thrown to the streets to face the harsh necessities of life.

In Soriano vs. NLRC, 155 SCRA 124, we held that the commissions also claimed by the employee (override commission plus net deposit incentive) are not properly
CONDITIONS OF EMPLOYMENT

includible in such base figure since such commissions must be earned by actual market transactions attributable to the petitioner [salesman]. Since the commissions in the present case were earned by actual transactions attributable to Songco, et al., these should be included in their separation pay. In the computation thereof, what should be taken into account is the average commission earned during their last year of employment.

In another case, certain workers received compensation on a percentage commission based on the gross sale of the fish-catch, i.e., 13% of the proceeds of the sale if the total proceeds exceed the cost of the crude oil consumed during the fishing trip, otherwise only 10% of the proceeds of the sale. Such compensation falls, according to the court, within the scope and meaning of the term “wage” as defined under Article 97(f) of the Labor Code.¹ [The issue about wage and commission or allowance arises also in computing the 13th month pay, the separation pay, and the retirement pay.]

1.2 Wage Includes Facilities or Commodities

Article 97(f) further provides that “wage” includes the fair and reasonable value of board, lodging, or other facilities customarily furnished by the employer to the employee. This means that an employer may provide, for instance, food and housing to his employees but he may deduct their values from the employees’ wages. But it is not always easy to decide what items are wage-deductible and how much should be their value. The employer’s estimate may be so high that not much cash is left of the employees’ wages who, therefore, will complain of underpayment of wages.

Because of this problem, the Article and its implementing rule authorize the Secretary of Labor and Employment to fix from time to time the fair and reasonable value of board, lodging and other facilities customarily furnished by an employer. The Implementing Rule (Book III, Rule VII, Sec. 4) states that, as regards meals and snacks, the employer may deduct from the wages not more than 70% of the value of the meals and snacks enjoyed by the employees, provided that such deduction is authorized in writing by the employees. The remaining 30% of the value has to be subsidized by the employer.

For a lodging facility, its fair and reasonable value is determined to be the cost of operation and maintenance, including adequate depreciation plus reasonable allowance (but not more than 5 1/2% interest on the depreciated amount of capital invested by the employer); provided that if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale) the fair rental value shall be the reasonable cost of the

operation and maintenance. The rate of depreciation and depreciated amount computed by the employer shall be those arrived at under good accounting practices.

The term “good accounting practices” shall not include accounting practices which have been rejected by the Bureau of Internal Revenue for income tax purposes. The term “depreciation” shall include obsolescence.

In order that the cost of facilities furnished by the employer may be charged against an employee, his acceptance of such facilities must be voluntary.

2. “FACILITIES” DISTINGUISHED FROM “SUPPLEMENTS”

Sometimes the issue is not the value of the facility but whether the “facility” itself is legally chargeable to the wage or not. The Article and the Implementing Rules mention board, lodging, snacks, and “other facilities.” What can “facilities” include? The term “facilities,” says the Implementing Rule, shall include articles or services for the benefit of the employee or his family but shall not include tools of the trade or articles or service primarily for the benefit of the employer or necessary to the conduct of the employer’s business.¹

Is work uniform a facility and therefore wage-deductible? or safety shoes? or raincoats? or a car? “Facilities” should be distinguished from “supplements.” Facilities are wage-deductible, supplements are not. The distinction is explained in the 1963 case of State Marine, quoting the earlier case of Atok-Big Wedge, and in the 1997 case of Mabeza.


Facts: Since the beginning of the operation of the petitioner’s business, all the crew of their vessels have been signing “shipping articles” which contained, among others, a stipulation that “the said master hereby agrees to pay to the said crew, as wages, the sum expressed in the contract; and to supply them with provisions x x x” and “such daily subsistence as shall be mutually agreed upon or, in lieu of such subsistence the crew may reserve the right to demand adequate daily rations.” It is, therefore, apparent that, aside from the payment of the respective salaries or wages, set opposite the names of the crew members, the petitioners bound themselves to supply the crew with ship’s provisions, daily subsistence or daily rations, which include food.

This was the situation before August 4, 1951, when the Minimum Wage Law became effective. After this date, however, the companies began deducting the cost of meals from the wages or salaries of crew members; but no such deductions were made from the salaries of the deck officers and engineers.

The query converges on the legality of such deductions. The petitioners contend that the deductions are legal; the respondent union claims that they are illegal, and reimbursement should be made.

¹Book III, Rule VII, Sec. 5.
**Ruling:** We hold that such deductions are not authorized. In the coastwise business of transportation of passengers and freight, the men who compose the complement of a vessel are provided with free meals by the shipowners, operators or agents.

It is argued that the food or meals given to the deck officers, marine engineers and unlicensed crew members in question were mere “facilities” which should be deducted from wages, and not “supplements” which, according to said Section 19 [R.A. No. 602, Minimum Wage Law] should not be deducted from such wages. It is provided therein: “Nothing in this Act shall deprive an employee of the right to such fair wage xxx or in reducing supplements furnished on the date of enactment.”

In the case of *Atok-Big Wedge Assn. vs. Atok-Big Wedge Co.*, 97 Phil. 294, the two terms are defined as follows —

“Supplements” constitute extra remuneration or special privileges or benefits given to or received by the laborers over and above their ordinary earnings or wages. “Facilities,” on the other hand, are items of expense necessary for the laborer’s and his family’s existence and subsistence, so that by express provision of law (Sec. 2 [g]), they form part of the wage and when furnished by the employer are deductible therefrom, since if they are not so furnished, the laborer would spend and pay for them just the same.

In short, the benefit or privilege given to the employee which constitutes an extra remuneration above and over his basic or ordinary earning or wage, is supplement; and when said benefit or privilege is part of the laborer’s basic wages, it is a facility. The criterion is not so much with the kind of the benefit or item (food, lodging, bonus or sick leave) given, but its purpose.

Considering, therefore, as definitely found by the respondent court that the meals were freely given to crew members prior to August 4, 1951, while they were on the high seas “not as part of their wages but as a necessary matter in the maintenance of the health and efficiency of the crew personnel during the voyage,” the deductions therein made for the meals given after August 4, 1951, should be returned to them, and the operator of the coastwise vessels affected should continue giving the same benefit.

Because the meals were viewed as benefits or *supplements* to the employees’ wages, their value therefore, is not deductible from the wages.

**2.1 Requirements for Deducting Value of Facilities**

In the 1997 case of *Mabeza vs. NLRC* (discussed also under Article 258), one of the issues is underpayment of wages to the complainant employee who stays in the premises of the employer hotel. The employer denies the alleged underpayment by claiming that the employees’ wages include the cost of board and lodging that he provides. Based on this allegation, according to the labor arbiter, there was no underpayment of wages. But the Supreme Court sharply reversed the ruling. It explained that the distinction between a facility and a supplement is in the purpose, not the kind, of the item. Moreover, there are three
requirements before the value of a facility may be deducted from the employee’s wage. Without satisfying these requirements, the employer simply cannot deduct the value from the employee’s wages.

First, proof must be shown that such facilities are customarily furnished by the trade.

Second, the provision of deductible facilities must be voluntarily accepted in writing by the employee.

Finally, facilities must be charged at fair and reasonable value.

These requirements were not met in the Mabeza case. The employer “failed to present any company policy or guideline to show that the meal and lodging (are) part of the salary”; he failed to provide proof of the employee’s written authorization, and he failed to show how he arrived at the valuations.

More significantly, the food and lodging, or the electricity and water consumed by the employee were not facilities but supplements. A benefit or privilege granted to an employee for the convenience of the employer is not a facility. The criterion in making a distinction between the two not so much lies in the kind (food, lodging) but the purpose. Considering, therefore, that hotel workers are required to work different shifts and are expected to be available at various odd hours, their ready availability is a necessary matter in the operations of a small hotel, such as the private respondent’s hotel.

It is therefore evident that petitioner is entitled to the payment of the deficiency in her wages equivalent to the full wage.1

Note: “Facilities” and “supplements” are further explained under Article 100.

2.2 Salary Excludes Allowances

Existing laws exclude allowances from the basic salary or wage in the computation of the amount of retirement and other benefits payable to an employee. The Supreme Court will not adopt a different meaning of the terms “salaries or wages” to mean the opposite, i.e., to include allowances in the concept of salaries or wages.2

3. Salary Distinguished from Gratuity

A gratuity is something given freely, or without recompense; a gift; something voluntarily given in return for a favor or services; a bounty; a tip. It is that which is paid to the beneficiary for past services rendered purely out of the generosity of the giver or grantor. The very term “gratuity” differs from the

---

1Mabeza vs. NLRC, et al., G.R. No. 118506, April 18, 1997.
word “salary” or “compensation” in leaving the amount thereof, within the limits of reason, to the arbitration [sic] of the giver.¹

Gratuity pay is not intended to pay a worker for actual services rendered. It is a money benefit given to the workers whose purpose is “to reward employees or laborers who have rendered satisfactory and efficient service to the company.” While it may be enforced once it forms part of a contractual undertaking, the grant of such benefit is not mandatory so as to be considered a part of labor standard law unlike the salary, cost-of-living allowances, holiday pay, leave benefits, etc., which are covered by the Labor Code.²

4. **FAIR DAY’S WAGE FOR FAIR DAY’S LABOR**

A fair day’s wage for a fair day’s labor continues to govern the relation between labor and capital and remains a basic factor in determining employees’ wages. If there is no work performed by the employee there can be no wage or pay unless the laborer was able, willing and ready to work but was prevented by management or was illegally locked out, suspended or dismissed. Where the employee’s dismissal was for a just cause, it would neither be fair nor just to allow the employee to recover something he has not earned and could not have earned.³

Thus, where the failure of workers to work was not due to the employer’s fault, the burden of economic loss suffered by the employees should not be shifted to the employer. Each party must bear his own loss.⁴

5. **EQUAL PAY FOR EQUAL WORK**

Employees working in the Philippines, if they are performing similar functions and responsibilities under similar working conditions, should be paid under the principle of “equal pay for equal work.”

*International School Alliance of Educators (ISAE) vs. Hon. Leonardo A. Quisumbing, et al., G.R. No. 128845, June 1, 2000 —*

**Facts:** International School, Inc., pursuant to P.D. No. 732, is a domestic educational institution established primarily for dependents of foreign diplomatic personnel and other temporary residents. The decree authorizes the School to employ its teaching and management personnel selected by it either locally or abroad, from Philippine or other nationalities, such personnel being exempt from otherwise

¹Plastic Town Center Corporation vs. National Labor Relations Commission, G.R. No. 81176, April 19, 1989, citing various cases.
²Ibid.
applicable laws and regulations attending their employment, except laws that have been or will be enacted for the protection of employees.

Accordingly, the School hires both foreign and local teachers as members of its faculty, classifying the same into two: (1) foreign-hires and (2) local-hires.

The School grants foreign-hires certain benefits not accorded local-hires. These include housing, transportation, shipping costs, taxes, and home leave allowance. Foreign-hires are also paid a salary rate twenty-five percent (25%) more than that of local-hires. The School justifies the difference on two “significant economic disadvantages” that foreign-hires have to endure, namely: (a) the “dislocation factor” and (b) limited tenure.

Petitioner union claims that the point-of-hire classification employed by the School is discriminatorily to Filipinos and that the grant of higher salaries to foreign-hires constitutes racial discrimination.

When the CBA negotiation reached a deadlock, the Secretary of Labor assumed jurisdiction.

The Acting Secretary upheld the point-of-hire classification for the distinction in salary rates, as he said:

The principle “equal pay for equal work” does not find application in the present case. The international character of the School requires the hiring of foreign personnel to deal with different nationalities and different cultures, among the student population.

**Issue:** Is the ruling of the Acting Secretary of Labor justified?

**Ruling:** If an employer accords employees the same position and rank, the presumption is that these employees perform equal work.

There is no evidence that foreign-hires perform 25% more efficiently or effectively than the local-hires. Both groups have similar functions and responsibilities, which they perform under similar working conditions.

While the need of the School to attract foreign-hires is recognized, salaries should not be used as an enticement to the prejudice of local-hires. The local-hires perform the same services as foreign-hires and they ought to be paid the same salaries as the latter. For the same reason, the “dislocation factor” and the foreign-hires’ limited tenure also cannot serve as valid bases for the distinction in salary rates. The dislocation factor and limited tenure affecting foreign-hires are adequately compensated by certain benefits accorded them which are not enjoyed by local-hires, such as housing, transportation, shipping costs, taxes and home leave travel allowances.

The State has the right and duty to regulate the relations between labor and capital. These relations are not merely contractual but are so impressed with public interest that labor contracts, collective bargaining agreements included, must yield to the common good. Should such contracts contain stipulations that are contrary to public policy, courts will not hesitate to strike down these stipulations.
We find the point-of-hire classification employed by respondent School to justify the distinction in the salary rates of foreign-hires and local hires to be an invalid classification. There is no reasonable distinction between the services rendered by foreign-hires and local-hires.

6. **“AGRICULTURAL” WORK**

   For minimum wage law purposes, agricultural employees are differentiated from the industrial. Agricultural work is defined in Article 97(d). Work on the soil and its harvests is, generally, agricultural work. When the harvests are processed into finished product or transformed to another product, the processing work is industrial. The differentiation is important because the agricultural pay rate is generally lower than the industrial. The following are considered agricultural activities:

   1. Preparation of the soil, planting of ramie stalks and transporting them to the stripping sheds, stripping the fibers with the use of deccorticating machines run by electricity, drying the wet fibers, passing them through the brusher to cleanse them of impurities, and baling the fibers for the market.\(^1\)

   2. Planting and harvesting sugar cane and other chores incidental to ordinary farming operations.\(^2\)

   Where the enterprise is highly mechanized and carries on processing activities not merely incidental to purely farming operations, employees employed in operations other than purely agricultural work are deemed industrial employees. Thus, on a hacienda where milling is carried out, the following are deemed industrial workers: mill laborers, chemists, fuelmen, oilers, tractor and truck drivers, etc.\(^3\)

   It is, therefore, the nature of the work which classifies a worker as one falling under the exemption as ‘agricultural laborers’ in petitioner’s haciendas, the principal work of which is planting and harvesting sugar canes and other chores incidental to ordinary farming operations. They are agricultural laborers.\(^4\)

---

\(^1\)Rileco vs. Mindanao Congress of Labor-Ramie United Farm Workers Ass’n., 26 SCRA 224, 226-227 [1968].

\(^2\)Victorias Milling Co. vs. CIR, 7 SCRA 543, 545; Del Rosario vs. CIR, 20 SCRA 650, 652.

\(^3\)Del Rosario vs. CIR, 20 SCRA 650, 653.

\(^4\)Victorias Milling Co., Inc. vs. CIR, et al., L-17281, March 30, 1963, 7 SCRA 543.
The following activities have also been categorized as agricultural:

1. Tillage of the soil, raising of crops including discovery of plant pests and their eradication by means of insecticides done in the Bureau of Plant Industry Experimental Station in Davao City.\(^1\)

2. Business of fishpond.\(^2\)

3. Employees of the International Rice Research Institute employed in direct farm operations in its experimental farm as well as employees in farm machinery shop, repair shop, carpentry shop, etc.\(^3\)

However, the employees in housing compound of the International Rice Research Institute and professional staff, attending to the security and maintenance services and landscape of the compound, are not agricultural employees.\(^4\)

A corporation, engaged in manufacturing steel products, intended “to cultivate a lot it owned in Quezon City as vegetable garden and employed 5 to 10 farmhands or agricultural workers.” The Secretary of Labor opined that such act could not be considered farming nor would it fall under any specific farming operation listed under the primary meaning of agriculture. The farmhands to be employed to cultivate the vegetable garden cannot be classified as agricultural workers within the primary meaning of the term “agriculture.”\(^5\) Therefore, they should be paid the industrial rate.

**ART. 98. APPLICATION OF TITLE**

This Title shall not apply to farm tenancy or leasehold, domestic service and persons working in their respective homes in needle work or in any cottage industry duly registered in accordance with law.

---

\(^1\) Celestial vs. The Southern Mindanao Experimental Station, L-12950, December 9, 1959.

\(^2\) Opinion of the Undersecretary of Labor, 1959.

\(^3\) Opinion of the Secretary of Labor, 1965.


\(^5\) Sec. Ople, February 8, 1973 in a letter to Atty. De los Angeles.
Overview/Key Questions:
1. Minimum wage rates are regionalized, \textit{i.e.}, they vary among the regions. How is this justified?
2. What is the rule on nondiminution of benefits? Does it apply to benefits negotiated through a collective bargaining agreement (CBA) or to conditional benefits such as bonus?
3. What is the thirteenth-month pay and who are entitled to it? On what basis is it computed? Are commissions part of the pay?
4. Wages calculated according to work output, instead of time spent, is lawful. On what conditions?
5. What statutory benefits are piece-rate workers entitled to?

\textbf{ART. 99. REGIONAL MINIMUM WAGES}

The minimum wage rates for agricultural and non-agricultural employees and workers in each and every region of the country shall be those prescribed by the Regional Tripartite Wages and Productivity Boards.\textsuperscript{1}

\section*{COMMENTS AND CASES}

\subsection*{1. MINIMUM WAGE DEFINITION; RATIONALE}

"Statutory minimum wage" is the lowest wage rate fixed by law that an employer can pay his workers.\textsuperscript{2} Compensation which is less than such minimum rate is considered an underpayment that violates the law.

Article 99 recognizes that there are minimum wage rates for agricultural and for non-agricultural employees, and these are determined for each region by the regional wage boards.\textsuperscript{3}

\textsuperscript{1}As amended by R.A. No. 6727 (Wage Rationalization Act, approved on June 9, 1989.). By virtue of R.A. No. 6727 the regional wage boards or RTWPBs have issued wage orders fixing the minimum wages for their respective regions. The wage orders are too voluminous to be included in this book. They are available in DOLE regional offices.

\textsuperscript{2}Rules Implementing R.A. No. 6727.

\textsuperscript{3}See Article 122.
In sustaining minimum wage legislation, the U.S. Supreme Court has made an observation that equally applies to the Philippine setting, thus —

The legislature was entitled to adopt measures to reduce the evils of the “sweating system,” the exploiting of workers at wages so low as to be insufficient to meet the bare cost of living, thus making their very helplessness the occasion of a most injurious competition. The legislature had the right to consider that its minimum wage requirements would be an important aid in carrying out its policy of protection.

There is an additional and compelling consideration which recent economic experience has brought into a strong light. The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well-being but casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. (*West Coast Hotel vs. Parrish, 300 U.S. 79*)

Minimum wage determination is discussed in Chapter V, this Title, which embodies the amendments made by R.A. No. 6727.

1.1 Minimum Wage; Need for Margin Over the Minimum Wage

A person’s needs increase as his means increase. This is true not only as to food but as to everything else — education, clothing, entertainment, etc. The law guarantees the laborer a fair and just wage. The minimum must be fair and just. The “minimum wage” can by no means imply only the actual minimum. Some margin or leeway must be provided, over and above the minimum, to take care of contingencies, such as increase of prices of commodities and increase in wants, and to provide means for a desirable improvement in his mode of living.¹

The establishment of the minimum wage benefits directly the low-paid employees, who now receive inadequate wages on which to support themselves and their families. It benefits all wage earners indirectly by setting a floor below which their remuneration cannot fall. It raises the standard of competition among employers, since it would protect the fair-minded employer... from the competition of the employer who... [pays] his workers a wage below subsistence.

Lastly, it should be noted that the establishment of minimum wages is a prerequisite to the adoption of needed social security program. This program would require contributions from the employees themselves, and it would be unjust to require such a contribution of those whose wages are not enough for their subsistence. It is not reasonable to ask a man to set aside something for the future when he does not have enough to eat today.²

¹*Atok Big Wedge Mining Co., Inc. vs. Atok Big Wedge Mutual Benefit Association, G.R. No. L-5276, March 3, 1953.*

²*Explanatory Note, H.B. 1476 and S.B. No. 22.*
2. ABILITY TO PAY IMMATERIAL

The employer cannot exempt himself from liability to pay minimum wages because of poor financial condition of the company, the payment of minimum wages not being dependent on the employer’s ability to pay. Thus, in one case, the heirs of a market cleaner of the Municipality of Ilagan sued for underpayments under the Minimum Wage Law. The municipality raised the defense that it was not liable for lack of funds. It was held that the lack of funds is not a valid defense on the part of the municipality to excuse the latter from paying the minimum wage because the payment of such wage is a mandatory statutory obligation that is not dependent upon one’s ability to pay.1

If, in fact, the employer cannot pay a subsistence wage, then he should not continue his operation unless he improves his methods and equipment so as to make the payment of the minimum wage feasible for him; otherwise, the employer is wasting the toil of the workers and the material resources used in the employment. Sound methods of operation, progressive and fair-minded management, and an adequate minimum wage go hand in hand.2

3. EMPLOYEES NOT ESTOPPED TO SUE FOR DIFFERENCE IN AMOUNT OF WAGES

The acceptance by an employee of the wages paid him without objection does not give rise to estoppel precluding him from suing for the difference between the amount received and the amount he should have received pursuant to a valid minimum wage law where it does not appear that the employer changed his position to his own prejudice.3

A laborer who accepts a lower wage than what the law sets as minimum wage for laborers shall be entitled to receive the deficiency.4 In other words, the law gives the employee the right to be paid at least the minimum wage. Such legal right cannot be waived or given away even if he does not complain at the time he receives a wage below the legal minimum.

4. EXEMPTIONS

4.1 Exceptions Under the Implementing Rules

The Implementing Rules contains the following exceptions to the coverage of the Rule on minimum wages:

a. household or domestic helpers, including family drivers and persons in the personal service of another;5

---

2Explanatory Note, H.B. No. 1476 and S.B. No. 22.
4Ibid.
5See Article 141 with comment.
b. homeworkers engaged in needle-work;

c. workers employed in any establishment duly registered with the National Cottage Industries and Development Authority in accordance with R.A. No. 3470 provided that such workers perform the work in their respective homes;

d. workers in any duly registered cooperative when so recommended by the Bureau of Cooperative Development and upon approval of the Secretary of Labor and Employment; Provided, however, That such recommendation shall be given only for the purpose of making the cooperative viable and upon finding and certification of said Bureau supported by adequate proof, that the cooperative cannot resort to other remedial measures without serious loss or prejudice to its operation except through its exemption from the requirements of the Rules. The exemption shall be subject to such terms and conditions and for such period of time as the Secretary of Labor and Employment may prescribe.¹

The law on cooperatives (R.A. No. 9520) and its implementing rules contain no provision superseding or contradicting the exceptions mentioned above. Therefore, the Labor Code’s implementing rules on this matter still stands.

4.1a Cooperatives may still be Exempted from Minimum Wage Law

The eligibility of cooperatives for exemption from minimum wage law is recognized not only in the Rules Implementing the Labor Code but also in an Opinion dated January 18, 1990 of the Secretary of Justice. It pertinently states:

We find no such irreconcilable inconsistency between the special law on cooperatives and the minimum wage laws, which manifests unequivocally a legislative intent to repeal the said earlier special law. The exemption granted to cooperatives by P.D. No. 175, as amended, can be enforced without affecting the objectives or purposes of the later minimum wage laws or without derogating from any of their provisions. Besides, the said exemption is not absolute in character but may be availed of only in appropriate cases as may be determined by the officials concerned of the Department of Labor and Employment.

In view of the foregoing, we hold that cooperatives may still be exempted from the statutory minimum wage.

4.2 Exemption of BMBEs

A minimum wage law or order is essentially a labor-protection measure. But, ironically, it can also harm the interest of labor. Business people, particularly those in small and medium scale business, may avoid setting up businesses for fear of being unable to meet the legal rate. In that case, the minimum wage law

¹Sec. 3, Rule VII, Book III, Rules to Implement the Labor Code.
discourages rather than promotes the creation of jobs. This is one reason behind the passage of R.A. No. 9178, or the “BMBE Act of 2002,” approved on November 13, 2002. This law encourages the establishment of “barangay micro business enterprises” (BMBE) to serve as seedbeds for developing entrepreneurship and to integrate the informal with the formal sectors of the economy. To achieve this, certain incentives and benefits are given, among which is exemption from the minimum wage law. Its Sec. 8 reads:

“Sec. 8. Exemption from the Coverage of the Minimum Wage Law. – The BMBEs shall be exempt from the Coverage of Minimum Wage Law: Provided, that all employees covered under this Act shall be entitled to the same benefits given to any regular employee such as social security and health care benefits.”

Furthermore, the law (Section 7) exempts the BMBE from income tax.

A “barangay micro business enterprise” is defined as “any business entity or enterprise engaged in the production, processing or manufacturing of products or commodities, including agro-processing, trading and services, whose total assets including those arising from loans but exclusive of the land on which the particular business entity’s office, plant and equipment are situated, shall not be more than Three Million Pesos (P3,000,000.00).” This category, according to government statistics, comprises no less than ninety percent (90%) of Philippine employers.

4.3 Exemption of Retail and Service Establishments

R.A. No. 6727 known as the Wage Rationalization Act (approved on June 9, 1989), amended Article 99 and incorporated in the Code Articles 120, 121, 122, 123, 124, 126 and 127. This Act provides for the statutory minimum wage rate of all workers and employees in the private sector. But its Section 4 exempts “retail and service establishments.” It reads:

Retail/service establishments regularly employing not more than ten (10) workers may be exempted from the applicability of this Act upon application with and as determined by the appropriate Regional Board in accordance with the applicable rules and regulations issued by the Commission. Whenever an application for exemption has been duly filed with the appropriate Regional Board, action on any complaint for alleged non-compliance with this Act shall be deferred pending resolution of the application for exemption by the appropriate Regional Board.

In the event that applications for exemptions are not granted, employees shall receive the appropriate compensation due them as provided for by this Act plus interest of one percent (1%) per month retroactive to the effectivity of this Act.
The exemption of “retail/service establishments” in R.A. No. 6727 is similar to the exceptions stated in Articles 94 on holiday pay and Article 95 on service incentive leave (SIL). Note, however, the difference in the qualifying number of employees.

Exemptions from holiday pay and SIL apply to establishments employing “less than ten” employees, meaning one to nine. On the other hand, the minimum wage exemption specifies “not more than ten” employees, meaning one to ten. With nine or fewer employees the establishment is exempt from holiday pay and SIL, while with ten or fewer employees the establishment is exempt from the minimum wage standard.

Note further that the exemption from minimum wage law has to be obtained by applying for it with the regional wage board.1

In contrast, the exemptions from holiday pay (Article 94) and from service incentive leave (Article 95) are granted by the Labor Code itself and may be availed of by the employer without need of a prior application for exemption. But, of course, if the claimed exemption is unwarranted, the employees may question it.

4.3a “Retail/Service,” Definitions

What is a “retail/service establishment” that qualifies for exemption? And what is meant by “regularly employing not more than ten employees.” The DOLE Manual has adopted explanations of pertinent provisions of the Federal Fair Labor Standards Act (FLSA) after which our original minimum wage law (R.A. No. 602) was patterned. Such explanations, the Manual also says, will guide the department “until it is otherwise directed by authoritative decisions of the court, or concludes, upon re-examination of an interpretation, that it is incorrect.”

To qualify for exemption, the retail or service enterprise must prove that it is engaged in selling goods and services or both. A “retail enterprise” is one engaged in the sale of goods that are commonly bought by private individuals for personal or household use and is characterized by small sales. A “service enterprise,” on the other hand, is engaged predominantly in providing personal service to individuals for their own or household use...The exemption has reference only to sale of services of the type performed by establishments that are traditionally recognized as retail service establishments such as restaurants, sari-sari stores, repair shops, etc. The intention of the Act is to exempt only those establishments which are recognized in the particular industry as retail sale or service....

Typically, a retail or service establishment serves the everyday needs of the community in which it is located. It performs a function in the business

---

1C. Planas Commercial vs. NLRC and Ofilada, et al., G.R. No. 144619, November 11, 2005.
organization of the nation which is at the very end of the stream of distribution, disposing in small quantities of the products and skills of such organization and does not take part in the manufacturing process.¹

4.3b “Regularly Employing”

The same DOLE Manual gives an interpretation of “regularly employing not more than [ten] workers.” The word “regular” means steady, uniform in course, practice or occurrence and “regularly” means in a regular manner. As used in the Act, the term “regularly employ” has reference to the more or less uniform or usual number of employees employed by a retail or service enterprise during its normal operations. Thus, it can be said that casual or seasonal employees (except when the retail or service enterprise operates on a seasonal basis) are not regularly employed within the meaning of the law. Accordingly, those employed during certain seasons only, like Christmas and Holy Week, or those employed in order to meet an extraordinary or abnormal business demand should not be considered in determining the number of employees regularly employed by a retail or service enterprise for purposes of the exemption. On the other hand, those employed on probational or those employed as learners or apprentices (with compensation) shall be considered in determining the exemption of the enterprise.²

4.3c Additional Exemptions

The NWPC Guidelines on Exemption from wage orders adds categories of exemptible enterprises such as distressed establishments, new business enterprises, and establishments adversely affected by natural calamities. Moreover, it allows the regional wage boards to add exemptible categories of employers, but the addition needs strong justification and is subject to review or approval by the NWPC. The Guidelines recognizes three reasons justifying exemptions. They are: (1) to assist establishments experiencing temporary difficulties due to losses to maintain the financial viability of their businesses and continued employment of their workers; (2) to encourage the establishment of new business and their creation of jobs particularly in areas outside the National Capital Region and Export Processing Zones, in line with the policy on industry dispersal; and (3) to ease the burden of micro establishments, particularly in the retail and service sector, that have a limited capacity to pay.³

4.4 Other Exemptions

Wage Orders issued by the wage boards (“Regional Tripartite Wage and Productivity Board”) under Articles 99 and 122 may provide for other exemptions from the minimum wage law.

¹Sec. 4312.02, DOLE Manual.
²Ibid.
³Sec. 2, NWPC Guidelines No. 01, Series of 1996.
ART. 100. PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS

Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

COMMENTS AND CASES

1. NONDIMINUTION OF BENEFITS

So that the rule against diminution of supplements or benefits may apply, it must be shown that (1) the grant of the benefit is founded on a policy or has ripened into a practice over a long period; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer.

In line with Article 100, it has been held that cash conversion of unused sick leave paid by the company to its intermittent workers has ripened into a practice after three years and may no longer be withdrawn or diminished by the employer unilaterally.¹

With regard to the length of time, the company practice should have been exercised to constitute voluntary employer practice which cannot be unilaterally withdrawn by the employer, we [the Supreme Court] hold that jurisprudence has not laid down any rule requiring a specific minimum number of years. In Davao Fruits Corporation vs. Associated Labor Unions, the company practice lasted for six (6) years. In another case, Davao Integrated Port Stevedoring Service vs. Abarquez, the employer, for three (3) years and nine (9) months, approved the commutation to cash of the unenjoyed portion of the sick leave with pay benefits of its intermittent workers. In Tiangco vs. Leogardo, Jr., the employer carried on the practice of giving a fixed monthly emergency allowance from November 1976 to February 1980, or three (3) years and four (4) months. In all these cases, this Court held that the grant of these benefits has ripened into company practice or policy which cannot be peremptorily withdrawn. In the case at bar, petitioner Sevilla Trading kept the practice of including non-basic benefits such as paid leaves for unused sick leave and vacation leave in the computation of their 13th-month pay for at least two (2) years. This, we rule likewise, constitutes voluntary employer practice which cannot be unilaterally withdrawn by the employer without violating Article 100 of the Labor Code. (Emphasis supplied)²

Jurisprudence has not laid down any rule specifying a minimum number of years within which a company practice must be exercised in order to constitute voluntary company practice. Thus, it can be six (6) years, three (3) years, or even as short as two (2) years. Petitioner cannot shirk away from its responsibility by merely claiming that it was a mistake or an error.\textsuperscript{1}

The extent of the “nondiminution rule” is illustrated further in the following cases.

\subsection*{1.1 Food or Meal Allowance}

In \textit{Cebu Autobus Company vs. United Cebu Autobus Employees Assn}, L-9742, October 27, 1955, the company used to pay its drivers and conductors, who were assigned outside of the city limits, aside from their regular salary, a certain percentage of their daily wage, as allowance for food. Upon the effectivity of the Minimum Wage Law, however, that privilege was stopped by the company. The order of the CIR to the company to continue granting this privilege was upheld by the Court.

\subsection*{1.2 Noncontributory Retirement Plan}


The employer’s contention that employees have no vested demandable right to a noncontributory retirement plan, has no merit, for employees do have a vested and demandable right over existing benefits voluntarily granted to them by their employer. The latter may not unilaterally withdraw, eliminate or diminish such benefits.

The fact that the retirement plan is noncontributory, \textit{i.e.}, that the employees contribute nothing to the operation of the plan, does not make it a non-issue in the CBA negotiations. As a matter of fact, almost all of the benefits that the employer has granted to its employees under the CBA — salary increase, rice allowances, midyear bonuses, 13th-and 14th-month pay, seniority pay, medical and hospitalization plans, health and dental services, vacation, sick and other leaves with pay — are noncontributory benefits.

Though noncontributory, those retirement benefits have become vested and cannot be unilaterally discontinued or diminished.

\subsection*{1.3 Monthly ECOLA}


\textbf{Facts:} Petitioner R. Tiangco was a fishing operator engaged in deep-sea fishing while V. Tiangco was a fishbroker.

\footnotesize{\textsuperscript{1}Arco Metal Products, \textit{et al.} vs. Samahan ng mga Manggagawa sa Arco Metal-NAFLU, G.R. No. 170734, May 14, 2008.}
Mr. Ilustrisimo and 26 others were *batillios* engaged by petitioners to unload fishcatch from the vessels and take them to the fish stall. The work of these *batillios* was limited to days of arrival of the fishing vessels, hence, they work only a few days in a month averaging 4 hours a day.

In April 1980, Mr. Illustrisimo, and others filed a complaint against the Tiangcos for (1) nonpayment of legal holiday pay, (2) service incentive leave pay, as well as (3) underpayment of emergency cost-of-living allowances, [ECOLA] which used to be paid in full irrespective of their work days.

The Tiangcos denied the laborers’ contentions. But as regards the claim for emergency allowance differentials, they admitted that they discontinued their practice of paying a fixed monthly allowance, and allowances for nonworking days. They invoked the principle of “No work, no pay.”

**Ruling:** The workers’ claim is valid. Since the Tiangcos had been paying the workers a fixed monthly emergency allowance since November 1976 to February 1980, as a matter of practice and/or verbal agreement between the parties, the discontinuance of the practice and/or verbal agreement between the petitioners and the private respondents contravened the provisions of the Labor Code, particularly Article 100. It prohibits the elimination or diminution of existing benefits such as the ECOLA. [Note that the monthly allowance was initiated in November 1976, two years after the Labor Code was promulgated in 1974.]

Section 15 of the rules on P.D. No. 525 and Sec. 16 of the rules on P.D. No. 1123 also prohibit the diminution of any benefit granted to the employees under existing laws, agreements and voluntary employer practice.

### 1.4 Full Thirteenth Month Pay

In one case, the company has paid full instead of proportionate thirteenth month pay to some employees who have not rendered a full year’s service. The company “corrected” this “error” but the affected employees complained of illegal diminution of benefits. The company explained that the “error” could not be considered an established practice because it happened to only seven employees in a span of six years; it was just an oversight.

The Court disagrees and invokes constitutional basis for the so-called nondiminution rule in Article 100. The Court says:

Any benefit and supplement being enjoyed by employees cannot be reduced, diminished, discontinued or eliminated by the employer. The *principle of non-diminution of benefits* is founded on the Constitutional mandate to “protect the rights of workers and promote their welfare,” and “to afford labor full protection.” Said mandate in turn is the basis of Article 4 of the Labor Code which states that “all doubts in the implementation and interpretation of this Code, including its implementing rules and regulations shall be rendered in favor of labor.” Jurisprudence is replete with cases which recognize the right of employees to benefits which
were voluntarily given by the employer and which ripened into company practice… (Arco Metal Products, et al. vs. Samahan ng mga Manggagawa sa Arco Metal-NAFLU, G.R. No. 170734, May 14, 2008)

2. CRITIQUE: WHY APPLY ARTICLE 100 TO BENEFITS INITIATED LONG AFTER PROMULGATION OF THE LABOR CODE?

Article 100 prohibits elimination or diminution of supplements or employment benefits being enjoyed as of May 1, 1974, the date the Labor Code was promulgated. And yet the Supreme Court, as in Tiangco case, above, applied Article 100 to prohibit the discontinuance of monthly allowance which the employer started giving in 1976. In Arco Metal, the claimed benefit started in 1992. The rulings obviously extended or expanded the coverage of Article 100 by referring even to benefits initiated after May 1, 1974.

There is strong reason to believe that Article 100 is really referring only to benefits being enjoyed as of May 1, 1974. It is intended, we believe, to protect or preserve those benefits despite the Code’s introduction of new statutory benefits and imposition of minimum wage. Note that this non-diminution provision comes next to Article 99 stating that the minimum wage rates shall be those prescribed by the regional wage boards. Article 100 is a device against compliance by substitution. The Code writers were wary of employers’ complying with new wage or benefits requirements by substituting them for the benefits already in place at that time. For instance, the five-day service incentive leave was introduced by the Code; at that time many employers were giving sick leave or vacation leave, usually ten days each. Article 100 means that the ten VL or SL should not be reduced or discontinued just because the new Code (in Article 95) requires only SIL of five days. Without the anticipatory prohibition, there would be compliance with the new provision but existing benefits would be eliminated or reduced. Such off-setting Article 100 wanted to prevent. Similarly, service charge share was introduced by Article 96. Article 100 did not want employers to discontinue, for instance, free meal benefit in place of share in the service charges under the new code. This prevention of substitution or diminution explains why Article 100 categorically refers only to “benefits being enjoyed” when the Code was issued on May 1, 1974.

Preservation of existing benefits when a law introduces a new benefit is not an unusual safeguard. It is done in Section 10 of the Rules and Regulations Implementing P.D. No. 851 (13th Month Pay) dated December 22, 1975. The same anticipatory safeguard is repeated in Section 8 of the Revised Guidelines dated November 16, 1987. It states: “Nothing herein shall be construed to authorize any employer to eliminate or diminish in any way, supplements or other employee benefits or favorable practice being enjoyed by the employee at the time of the promulgation of this issuance.”

In Arco Metal, Mr. Justice Brion, a former labor secretary, confirms that, indeed, Article 100 refers only to benefits being enjoyed at the time of the
promulgation of the Code. Nevertheless, he cites the “mutuality of contract” principle in Article 1308 of the Civil Code to justify non-diminution of employment benefits. He says:

I concur separately to clarify that the basis for the prohibition against diminution of established benefits is not really Article 100 of the Labor Code as the respondents claimed and as the cases cited in the ponencia mentioned. Article 100 refers solely to the non-diminution of benefits enjoyed at the time of the promulgation of the Labor Code. Employer-employee relationship is contractual and is based on the express terms of the employment contract as well as on its implied terms, among them, those not expressly agreed upon but which the employer has freely, voluntarily and consistently extended to its employees. Under the principle of mutuality of contracts embodied in Article 1308 of the Civil Code, the terms of a contract – both express and implied – cannot be withdrawn except by mutual consent or agreement of the contracting parties. In the present case, the lack of consent or agreement was precisely the basis for the employees’ complaint. (Arco Metal Products et al. vs. Samahan ng mga Manggagawa sa Arco Metal-NAFLU, G.R. No. 170734, May 14, 2008)

3. EXCEPTIONS TO THE NONDIMINUTION RULE

Jurisprudence recognizes exceptions to the application of Article 100, as illustrated in the following cases, indicating (1) correction of error; (2) negotiated benefits; (3) wage order compliance; (4) benefits on reimbursement basis; (5) reclassification of position; (6) contingent benefits or conditional bonus; and (7) productivity incentives.

3.1 Not Established Practice; Mistake in Application of Law

Globe Mackay Cable vs. National Labor Relations Commission, G.R. No. 74156, June 29, 1988 —

Facts: Wage Order No. 6, which took effect on October 30, 1984, increased the cost-of-living allowance (COLA) of nonagricultural workers in the private sector. Globe Mackay complied with the said wage order by paying its monthly-paid employees the mandated P3.00 per day COLA. But, in computing the COLA, Globe Mackay multiplied P3.00 per day COLA by 22 days, which was the number of working days in the company.

The Union disagreed with the computation, claiming that the daily COLA should be multiplied by 30 days to arrive at the monthly COLA rate. The Union further alleged that before Wage Order No. 6 took effect, the employer had been computing and paying the monthly COLA based on 30 days per month. This, the Union said, was an employer practice which should not be unilaterally withdrawn.

Ruling: Payment in full by the employer of the COLA before the execution of the Collective Bargaining Agreement in 1982 and in compliance with Wage Orders Nos. 1 (March 26, 1981) to 5 (June 11, 1984) should not be construed as constitutive
of voluntary employer practice, which cannot later be unilaterally withdrawn by the employer. To be considered as such, it should have been practiced over a long period of time and must be shown to have been consistent and deliberate.

Absent clear administrative guidelines, the employer cannot be faulted for erroneous application of the law. Payment may be said to have been made by reason of a mistake in the construction or application of a “doubtful or difficult question of law.”

If it is a past error that is being corrected, no vested right may be said to have arisen nor any diminution of benefit under Article 100 of the Labor Code may be said to have resulted by virtue of the correction.

Samahang Manggagawa sa Top Form Manufacturing-United Workers of the Philippines (SNTFM-UWP) vs. NLRC, et al., G.R. No. 113856, September 7, 1998 —

Facts: The employer granted an across-the-board wage increase to its employees when the minimum wage was raised by R.A. No. 6727 in 1989. When the regional wage board issued W.O. No. 01 in October 1990 followed by W.O. No. 02 in December of the same year, the union demanded that the wage increases be implemented again across-the-board, i.e., the wage increase should be given to all, even to those whose pay was above the minimum. When the employer refused to do so, the union charged the company with ULP and violation of Article 100 of the Labor Code.

Ruling: The Supreme Court, through Justice Romero, sustained the dismissal of the complaint. It said:

We agree with the Labor Arbiter and the NLRC that no benefits or privileges previously enjoyed by petitioner union and the other employees were withdrawn as a result of the manner by which private respondent implemented the wage orders. Granted that private respondent had granted an across-the-board increase pursuant to Republic Act No. 6727, that single instance may not be considered an established company practice.

This case of Top Form is related also to Article 272, regarding interpretation of the CBA as a contract.

3.2 Negotiated Benefits

Benefits initiated through negotiation between employer and employees, such as those contained in a collective bargaining agreement, are not within the prohibition of Article 100 because, as products of bilateral contract, they can only be eliminated or diminished bilaterally. What the law forbids is elimination or modification done unilaterally by the employer.

1Article 2155, Civil Code, in relation to Article 2154, Civil Code.
Moreover, under Article 263, a party to a CBA may propose changes to the CBA within sixty days before it expires. The changes may not always be to add to but also to subtract from, or otherwise modify, the existing benefits.

The giving of a salary increase across-the-board to comply with a CBA stipulation cannot be said to have ripened into a company practice. Article 100 is not violated if the giving of across-the-board pay increase is discontinued when such provision is removed from the CBA through negotiation.

3.2a Diminution Suggested by Employees

To save their employer from total closure because of losses, the employees’ union in Waterfront Insular Hotel in Davao proposed to the management not only to suspend for ten years their collective bargaining agreement but also to waive some benefits and privileges granted under the CBA. It was a self-sacrificing act suggested by the employees themselves to save the business and save their jobs. But some co-employees questioned the legality of the memorandum of agreement (MOA) between the management and the union as illegal diminution of benefits. The High Court, finding that the majority of the employees ratified the MOA, upheld its legality.1

3.3 Wage Order Compliance

Similarly, the giving of across-the-board salary increases so as to rectify a salary distortion caused by compliance with a wage order cannot be said to have ripened into a company practice. Hence, if there is no salary distortion to cure, the previous across-the-board method cannot be demanded as if it were a legal obligation.

In Pag-asa Steel Works vs. CA, et al., G.R. No. 166647, March 31, 2006, the Court observed:

The only instance when petitioner [employer] admittedly implemented a wage order despite the fact that the employees were not receiving salaries below the minimum wage was under Wage Order No. NCR-07. Petitioner, however, explains that it did so because it was agreed upon in the CBA that should a wage increase be ordered within six months from its signing, petitioner would give the increase to the employees in addition to the CBA-mandated increases. Respondent’s [sic] isolated act could hardly be classified as a “company practice” or company usage that may be considered an enforceable obligation.

Moreover, to ripen into a company practice that is demandable as a matter of right, the giving of the increase should not be by reason of a strict legal or contractual obligation, but by reason of an act of liberality on the part of the employer. Hence, even if the company continuously

---

1Insular Hotel Employees Union-NFL vs. Waterfront Insular Hotel Davao, G.R. No. 174040-41, September 22, 2010.
grants a wage increase as mandated by a wage order or pursuant to a CBA, the same would not automatically ripen into a company practice. In this case, petitioner granted the increase under Wage Order No. NCR-07 on its belief that it was obliged to do so under the CBA.

The union’s demand for salary increase even if its members’ salaries were above the minimum level mandated by the Wage Order was therefore denied. Its invocation of “company practice” has no factual or legal basis.

3.4 Benefit on Reimbursement Basis

Another exception to the non-diminution rule of Article 100 pertains to reimbursement benefits. For example, *per diem* is a daily allowance given for each day when an officer or employee is away on official travel. It is intended to cover the cost of lodging and subsistence of officers and employees on duty outside of their permanent station. Therefore, if the employee did not leave his permanent station and spent nothing for meals and lodging, then he is not entitled to *per diem* as there is nothing to reimburse.1

By the same token, the monthly ration of gasoline given to certain managerial employees is not part of the employee’s basic salary. The temporary revocation of the ration does not constitute a diminution of the employee’s fringe benefits. The adverse consequences of the suspension of the ration is negated by the Central’s undertaking to reimburse the employee for his actual consumption of fuel during the period of suspension.2

The elimination of an existing benefit in exchange for an equal or better one does not violate Article 100.3

3.5 Reclassification of Position; Promotion

Still another exception to Article 100 is reclassification of positions from rank-and-file to supervisory or managerial. Because of the reclassification, the position holders in the case given below lost their overtime pay and other benefits. This effect, says the Court, is not a violation of Article 100. Promotion produces the same effect.

But promotion and position reclassification must be done in good faith. The personnel movement should not be intended to circumvent the law to deprive employees of the benefits they used to receive.

*National Sugar Refineries Corporation vs. NLRC and NBSR Supervisory Union, (PACIWU) TUCP, G.R. No. 101761, March 24, 1993 —

**Facts:** The petitioner employer implemented a Job Evaluation (JE) Program affecting all employees, from rank-and-file to department heads. Jobs were ranked

---

1Lexal Laboratories vs. Court of Industrial Relations, *et al.*, L-24632, October 26, 1968.


ART. 100  

MINIMUM WAGE RATES  

according to effort, responsibility, training and working conditions and relative worth of the jobs. All positions were re-evaluated, and all employees including the members of respondent union were granted salary adjustments and increases in benefits commensurate to their actual duties and functions.

For about ten years prior to the JE Program, the members of respondent supervisors’ union were treated in the same manner as rank-and-file employees. They used to be paid overtime, rest day and holiday pay pursuant to Articles 87, 93 and 94 of the Labor Code. They lost these benefits because through the JE program their positions were reclassified from rank-and-file to supervisory or managerial. But it was also shown that they received upward adjustments in basic pay and allowances.

The members of the union filed a complaint to recover overtime, rest day and holiday pay.

The labor arbiter ruled that the long period during which those benefits were being paid to the supervisors has caused the payment to ripen into a contractual obligation. He also ruled that the P100.00 special allowance given by NASUREFCO fell short of what the supervisors ought to receive had the overtime pay, rest day and holiday pay not been discontinued, which arrangement, therefore, amounted to a diminution of benefits.

Ruling: We do not subscribe to the finding of the labor arbiter that the payment of the questioned benefits to the union members has ripened into a contractual obligation.

Prior to the JE Program, the union members, while being supervisors, received benefits similar to those of the rank-and-file employees such as overtime, rest day and holiday pay.

The members of respondent union were paid the questioned benefits for the reason that, at that time, they were rightfully entitled thereto. Prior to the JE Program, they could not be categorically classified as members or officers of the managerial staff considering that they were then treated merely on the same level as rank-and-file.

After the JE Program, there was an ascent in position, rank and salary. This in essence is a promotion which is defined as the advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary.

Quintessentially, with the promotion of the union members, they are no longer entitled to the benefits which attach and pertain exclusively to their former positions.

3.6 Contingent or Conditional Benefits; Bonus

Neither does the rule under Article 100 apply to a benefit whose grant depends on the existence of certain conditions, so that the benefit is not demandable if those preconditions are absent. An example of this is the giving of bonus which is not part of the employee’s regular compensation.

As a rule, a bonus is an amount granted and paid to an employee for his industry and loyalty which contributed to the success of the employer’s business
and made possible the realization of profits. It is an act of generosity. It is granted by an enlightened employer to spur the employee to greater efforts for the success of the business and realization of bigger profits. From the legal point of view, a bonus is not a demandable and enforceable obligation. But it is so when it is made a part of the wage or salary or compensation. In such a case, the latter would be a fixed amount and the former would be a contingent one dependent upon the realization of profit.

Whether or not bonus forms part of wages depends upon the circumstances and conditions for its payment. If it is an additional compensation which the employer promised and agreed to give without any conditions imposed for its payment, such as success of business or greater production or output, then it is deemed part of the wage. But if it is paid only if profits are realized or a certain amount of productivity achieved, it cannot be considered part of the wages. Where it is not payable to all but only to laborers and only when the laborer becomes more efficient or more productive, it is only an inducement for efficiency, a prize therefor, not a part of the wage.\(^1\)

In *Philippine Duplicators, Inc. vs. NLRC*, 311 Phil. 407 [1995], the court accordingly held that if the desired goal of production is not obtained, the bonus does not accrue. Only when the employer promises and agrees to give without any conditions imposed for its payment, such as success of business or greater production or output, does the bonus become part of the wage.\(^2\)

Thus, if there is no agreement that bonus forms part of the employee’s compensation, then bonus would depend on the profit to be realized. Hence, if there is no profit, there would be no bonus and if profit is reduced, bonus would also be reduced. Consequently, the Supreme Court observed that the reduced 1958 Christmas bonus in the case of Luzon Stevedoring Corporation was a necessary consequence of a reduced profit in that year and there being no clear showing that the reduction of the bonus was aimed to discriminate against union members, the trial court’s finding that such reduction constituted no anti-union activity should not be disturbed.\(^3\)

An employer cannot be forced to distribute bonuses which it can no longer afford to pay. To hold otherwise would be to penalize the employer for his past generosity.\(^4\)

---

**American Wire and Cable Daily Rated Employees Union vs. American Wire and Cable Co., Inc. and The Court of Appeals, G.R. No. 155059, April 29, 2005 —**

**Facts:** The union contends that the withdrawal of the 35% premium pay for selected days during the Holy Week and Christmas season, the holding of the Christmas Party and its incidental benefits, and the giving of benefits were customary practices that can no longer be unilaterally withdrawn.

In answer, the corporation [employer] avers that the grant of all those benefits has not ripened into practice and that the employees concerned cannot claim a demandable right over them. It explains that the grant of these benefits was conditioned upon the financial performance of the company and that the conditions/circumstances had indeed substantially changed thereby justifying the discontinuance of those grants.

**Ruling:** It is obvious that the benefits/entitlements subjects of the instant case are all bonuses which were given by the [employer] out of its generosity and munificence. The additional 35% premium pay for work done during selected days of the Holy Week and Christmas season, the holding of Christmas parties with raffle, and the cash incentives given together with the service awards are all in excess of what the law requires... Since they are above what is strictly due to the members of petitioner-union, the granting of the same was a management prerogative, which, whenever management sees necessary, may be withdrawn, unless they have been made a part of the wage or salary or compensation of the employees.

For a bonus to be enforceable, it must have been promised by the employer and expressly agreed by the parties, or it must have had a fixed amount and had been a long and regular practice on the part of the employer.

The benefits/entitlements in question were never subject of any express agreement between the parties. They were never incorporated in the Collective Bargaining Agreements (CBA).

---

**3.6a Bonus Stipulated in CBA**

*Eastern Telecommunications Phil., Inc. vs. Telecoms Employees Union, G.R. No. 185665, February 8, 2012 —*

In the case at bench, it is indubitable that ETPI and ETEU agreed on the inclusion of a provision for the grant of 14th, 15th and 16th month bonuses in the 1998-2001 CBA Side Agreement, as well as in the 2001-2004 CBA Side Agreement, which was signed on September 3, 2001. The provision, which was similarly worded, states:

The Company confirms that the 14th, 15th and 16th month bonuses (other than the 13th month pay) are granted.

A reading of the above provision reveals that the same provides for the giving of 14th, 15th and 16th month bonuses without qualification. The wording of the provision does not allow any other interpretation. There were no conditions specified in the CBA Side Agreements for the grant of the benefits contrary to the claim of ETPI that the same is justified only when there are profits earned by the company. Terse
and clear, the said provision does not state that the subject bonuses shall be made to depend on the ETPI’s financial standing or that their payment was contingent upon the realization of profits. Neither does it state that if the company derives no profits, no bonuses are to be given to the employees. In fine, the payment of these bonuses was not related to the profitability of business operations.

In the absence of any proof that ETPI’s consent was vitiated by fraud, mistake or duress, it is presumed that it entered into the Side Agreement voluntarily, that it had full knowledge of the contents thereof and that it was aware of its commitment under the contract. Verily, by virtue of its incorporation in the CBA Side Agreements, the grant of 14th, 15th and 16th month bonuses has become more than just an act of generosity on the part of ETPI but a contractual obligation it has undertaken.

From the foregoing, ETPI cannot insist on business losses as a basis for disregarding its undertaking.

3.6b Equity or Long Practice as Basis of Bonus

Even if a bonus is not demandable for not being part of the salary of the employee or not stipulated in a CBA, the bonus may nevertheless be granted on equitable consideration.

In Philippine Education Co., Inc. vs. Court of Industrial Relations, et al., 92 SCRA 381, the Court ruled:

Taking into consideration the facts and circumstances of the case — that bonuses had been given to the employees at least in three previous years; that the amount of P90,706.36 has been set aside for payment as bonus to its employees and laborers and the reason for withholding the payment thereof was the strike staged by the employees and laborers for more favorable working conditions which was declared legal by the respondent court — justice and equity demand that bonus already set aside for its employees and laborers be paid to them. The award would still be within the ambit of the respondent court’s power and function which is mainly to prevent further disputes and perhaps strikes which are so detrimental to both labor and management and to the public weal.

Furthermore, while normally discretionary, the grant of a gratuity or bonus by reason of its long and regular concession, may be regarded as part of regular compensation.1

For instance, in Heacock Co. vs. NLU, et al., 95 Phil. 553, the Court ruled:

It appears herein that for the year 1947 the Company paid a bonus of one month salary to all its employees, and for the years 1948 and 1949,

---

realizing necessary profits, it also paid a bonus to its executives and heads of departments, omitting only the low-salaried employees. The payment of the bonus in 1947 already generated in the minds of all the employees the fixed hope of receiving the same concession in subsequent years, and on the ground of equity they deserved to be paid the bonus for the years 1948 and 1949, when the Company admittedly realized enough profits.

The Company insists that its high officials were given bonus for 1948 and 1949 because they had never been granted any salary raise or paid for any overtime work. This is, however, answered by the Union which alleges that no salary increase or overtime pay was necessary for the high officials of the Company, since they have already been receiving adequate compensation.

The Company also maintains that no valid obligation to pay the bonus in question could arise, because there was no consideration therefor. It is sufficient to state that any extra concession granted by the employer to his employee or laborer is necessarily premised on the need of improving the latter’s working conditions to the highest possible level, in return only for the efficient service and loyalty expected from the employee or laborer.

The decision favorable to the Union may further be predicated upon the case of Philippine Education Company, Inc. vs. Court of Industrial Relations, et al., (48 Off. Gaz. [13] 5278; 92 Phil. 381, in which we held that, even if a bonus is not demandable for not forming part of the wage, salary or compensation of the employee, the same may nevertheless be granted on equitable considerations.

The Heacock ruling, rendered in 1954, reverberated in NWSA vs. NWSA Consolidated Labor Union, 21 SCRA 203, rendered in 1967. In that case, the employer granted Christmas bonus under a collective bargaining agreement up to its expiry in 1959. In 1960, while a labor dispute was pending, the employer again paid the bonus. For 1961, the union pressed again for continuance of the bonus, but this time the employer strongly refused. The Supreme Court ruled:

Petitioner disputes the grant of Christmas bonus for the year 1961 and points out that it is purely an act of liberality which may be withheld, considering that the collective bargaining agreement of 1956 under which the employees enjoyed such benefits had already expired. This is true enough, as a matter of law. But this Court has held that “even if a bonus is not demandable for not forming part of the wage, salary or compensation of the employee, the same may nevertheless be granted on equitable considerations” (Heacock Co. vs. National Labor Union, et al., 95 Phil. 553, 559), and the Court of Industrial Relations, “according to the law of its creation, may make an award for the purpose of settling and preventing further disputes.” Respondent Court stated the following considerations, which we believe justify the award:

There is no question that the respondent’s employees and laborers have been enjoying the benefit of Christmas bonus. It is not denied
that even during the operation of the corporation under the defunct Metropolitan Water District and since its administration and operation by the respondent Authority, the employees and laborers have been continuously given such benefit. And even while this case was pending, the NWSA granted Christmas bonus in December 1960.

In the 1995 case of *Marcos et al. vs. NLRC and Insular Life Assurance Co.,* G.R. No. 111744, September 8, 1995 [see below], the Court quoted authorities holding that if one enters into a contract of employment under an agreement that he shall be paid a certain salary by the week or some other stated period and, in addition, a bonus, in case he serves for a specified length of time, there is no reason for refusing to enforce the promise to pay the bonus, on the ground that it was a promise of a mere gratuity. The Court further said:

This is true if the contract contemplates a continuance of the employment for a definite term, and the promise of the bonus is made at the time the contract is entered into. If no time is fixed for the duration of the contract of employment, but the employee enters upon or continues in service under an offer of a bonus if he remains therein for a certain time, his service, in case he remains for the required time, constitutes an acceptance of the offer of the employer to pay the bonus and, after that acceptance, the offer cannot be withdrawn, but can be enforced by the employee.

**3.6c Services rendered as Basis of Bonus**

Employees whose employment has been terminated may still demand payment of service award under company policy and, proportionately, of the anniversary and performance bonuses, considering that they already had rendered the service required. The right is not defeated by a “release and quitclaim.”

*L. G. Marcos, et al. vs. NLRC and Insular Life Assurance Co., Ltd.,* G.R. No. 111744, September 8, 1995 —

**Facts:** Petitioners were regular employees of Insular Life Assurance Co., Ltd., until November 1, 1990 when their positions were declared redundant. A special redundancy benefit was paid to them, equivalent to three months’ salary for every year of service, and additional cash benefits, in lieu of other benefits provided by the company or required by law.

Before the termination of their services, petitioners had been employed with the respondent for more than twenty years.

Petitioners, particularly J. Lopez, wrote respondent company questioning the redundancy package. She also claimed that they should receive their respective service awards and other prorated bonuses, which they had earned at the time they were dismissed.
The company required petitioners to execute a “Release and Quitclaim,” and petitioners complied but with a written protest reiterating their previous demand that they were entitled to receive their service awards.

Meanwhile, in the same year [1990] the company, celebrating its 80th anniversary, approved the grant of an anniversary bonus equivalent to one (1) month salary to permanent and probationary employees as of November 15, 1990.

Furthermore, on March 26, 1991, the company announced the grant of performance bonus to rank-and-file employees, supervisory specialists, and managerial staff equivalent to about two months salary. The performance bonus, however, would be given only to permanent employees as of March 30, 1991.

The company refused to pay petitioners’ service awards, prompting the latter to file a consolidated complaint for payment of their service awards.

Petitioners also contended that they were entitled to the performance and anniversary bonuses because, at the time the performance bonus was announced, they were only short of two months service to be entitled to the full amount. Also, they lacked only 15 days to be entitled to the full amount of the anniversary bonus when it was announced to be given to employees as of November 15, 1990.

**Ruling:** Under prevailing jurisprudence, the fact that an employee has signed a satisfaction receipt for his claims does not necessarily result in the waiver thereof. The law does not consider as valid any agreement whereby a worker agrees to receive less compensation than what he is entitled to recover. A deed of release or quitclaim cannot bar an employee from demanding benefits to which he is legally entitled.

In the instant case, it is an undisputed fact that when petitioners signed the instrument of release and quitclaim, they made a written manifestation reserving their right to demand the payment of their service awards. The element of total voluntariness in executing that instrument is negated by the fact that they expressly stated therein their claim for the service awards, a manifestation equivalent to a protest and a disavowal of any waiver thereof.

We have pointed out in *Veloso, et al. vs. Department of Labor and Employment, et al.*, G.R. No. 87297, August 5, 1991, that:

While rights may be waived, the same must not be contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.

Article 6 of the Civil Code renders a quitclaim agreement void *ab initio* where the quitclaim obligates the workers concerned to forego their benefits while at the same time exempting the employer from any liability that it may choose to reject. This runs counter to Article 22 of the Civil Code which provides that no one shall be unjustly enriched at the expense of another.

We are likewise in accord with the findings of the labor arbiter that petitioners are indeed entitled to receive service awards and other benefits, thus:

Since each of the complainants have [sic] rendered services to [the company] in multiple(s) of five years prior to their separation from employment, [the employees] should be paid their service awards for 1990 x x x.
We cannot see any cogent reason why an anniversary bonus which respondent gives only once in every five years were given to all employees of respondent as of 15 November 1990 (pro rata even to probationary employees) and not to complainants who have rendered service to respondent for most of the five-year cycle. This is also true in the case of performance bonus which was given to permanent employees of respondent as of 30 March 1991 and not to employees who have been connected with respondent for most of 1990 but were separated prior to 30 March 1991 x x x.

The grant of service awards in favor of petitioners is more importantly underscored in the precedent case of *Insular Life Assurance Co., Ltd., et al. vs. NLRC*, et al., G.R. No. 74191, December 21, 1987, where this Court ruled that “as to the service award differentials claimed by some respondent union members, the company policy shall likewise prevail, the same being based on the employment contracts or collective bargaining agreements between the parties. As the petitioners had explained, pursuant to their policies on the matter, the service award differential is given at the end of the year to an employee who has completed years of service divisible by 5 x x x.”

However, in the case at bar, equity demands that the performance and anniversary bonuses should be prorated to the number of months that petitioners actually served respondent company in the year 1990.

3.6d  No Profit, No Bonus

*Traders Royal Bank vs. National Labor Relations Commission and Traders Royal Bank Employees Union, G.R. No. 88168, August 30, 1990 —*

**Facts:** On November 18, 1986, the Union, through its president, filed a letter-complaint against Traders Royal Bank about “diminution of benefits” because the bonus which the employees had enjoyed since “time immemorial” had been reduced from two months gross pay to two months basic pay for the mid-year bonus, and from three months gross to only two months for the year-end.

The Bank, on the other hand, insisted that the practice of giving them bonuses would depend on how profitable the operation of the bank had been.

**Ruling:** The matter of giving the employees bonuses over and above their lawful salaries and allowances is entirely dependent on the profits, if any, realized by the Bank from its operations during the past year.

From 1979-1985, the bonuses were less because the income of the Bank had decreased. In 1986, the income of the Bank was only 20.2 million pesos, but the Bank still gave out the usual two (2) months basic mid-year and two (2) months gross year-end bonuses. The petitioner pointed out, however, that the Bank weakened considerably after 1986 on account of political developments in the country. Suspected to be a Marcos-owned or -controlled bank, it was placed under sequestration by the present [Aquino] administration and is now managed by the Presidential Commission on Good Government (PCGG).

In the light of these submissions of the petitioner, the contention of the Union that the granting of bonuses to the employees had ripened into a company practice
that may not be adjusted to the prevailing financial condition of the Bank has no legal and moral bases. Its fiscal condition having declined, the bank may not be forced to distribute bonuses which it can no longer afford to pay and, in effect, be penalized for its past generosity to its employees.

Private respondent’s contention that the decrease in the mid-year and year-end bonuses constituted a diminution of the employees’ salaries, is not correct, for bonuses are not part of labor standards in the same class as salaries, cost-of-living allowances, holiday pay, and leave benefits, which are provided by the Labor Code.

A bonus is “gratuity or act of liberality of the giver which the recipient has no right to demand as a matter of right.” 1 “It is something given in addition to what is ordinarily received by or strictly due to the recipient.” The granting of bonus is basically a management prerogative which cannot be forced upon the employer “who may not be obliged to assume the onerous burden of granting bonuses or other benefits aside from the employee’s basic salaries or wages xxx.”

3.6e Reiteration in Manilabank

When the Manilabank was placed under receivership in 1984 due to financial distress, the employment of about 343 officers and top managers of the bank was terminated. They received separation and/or retirement benefits but they still filed complaints for additional benefits such as wage increases, Christmas bonuses, mid-year bonuses, profit sharing, etc.

Sitting en banc, the Supreme Court denied the claims for benefits that are in the nature of bonus. Through Justice Santiago M. Kapunan, the Court, without mentioning the Traders Royal Bank case, repeated the precedent in this fashion:

Clearly then, a bonus is an amount given ex gratia to an employee by an employer on account of success in business or realization of profits. How then can an employer be made liable to pay additional benefits in the nature of bonuses to its employees when it has been operating on considerable net losses for a given period of time?

Records bear out that petitioner Manilabank was already in dire financial straits in the mid-80’s. As early as 1984, the Central Bank found that Manilabank has been suffering financial losses. Presumably, the problems commenced even before their discovery in 1984. As earlier chronicled, the Central Bank placed petitioner bank under comptrollership in 1984 because of liquidity problems and excessive interbank borrowings. In 1987, it was placed under receivership and was ordered to close operation. In 1988, it was ordered liquidated.

---

1Aragon vs. Cebu Portland Cement Co., 61 O.G. 4597.
It is evident, therefore, that petitioner bank was operating on net losses from the years 1984, 1985 and 1986, thus, resulting to its eventual closure in 1987 and liquidation in 1988. Clearly, there was no success in business or realization of profits to speak of that would warrant the conferment of additional benefits sought by private respondents. No company should be compelled to act liberally and confer upon its employees additional benefits over and above those mandated by law when it is plagued by economic difficulties and financial losses. No act of enlightened generosity and self-interest can be exacted from near empty, if not empty, coffers. (Manila Banking Corp. vs. NLRC, G.R. Nos. 107487 & 107902, September 29, 1997)

To this majority decision Mr. Justice Hermosisima registers a strong dissenting/separate opinion. He believes that the majority opinion has oversimplified and overlooked some of the various issues posited in the consolidated cases. He sums up his dissent in this manner: “Truth to tell: (1) The Manilabank is not bankrupt; (2) Its obligations to its 343 employees are legally demandable; and (3) The money for payment in the amount of P212 million has already been set aside.” Justice Hermosisima, joined by Justice Francisco, was crossing swords with 12 others. It was a losing, though valiant, stand.

3.7 Productivity Incentives

If the more common kind of bonus comes from profit, another kind comes from productivity gain. R.A. No. 6971, enacted on November 22, 1990, aims to institute productivity at company level and the sharing of productivity gain between employer and employees. The law promotes productivity which refers, simplistically said, to improved output without increasing the amount of input. If a worker used to produce one pair of slippers in one hour but now can finish two pairs within the same amount of time, the worker is said to have improved in productivity. If this happens company-wide, productivity gain will probably result. The monetary value of the productivity improvement should be shared with the workers.

The law urges but does not mandate the formation of a labor-management committee, with equal number of representatives from rank-and-file employees and the employer. The committee will plan, supervise, and monitor a productivity incentives program as well as the sharing of gains with the employees. The employees’ share is in the nature of salary bonus proportionate to increases in current productivity over the average for the preceding three consecutive years. The “bonus,” it may be noted, is not gratuitous gift from the employer but the computed result of joint planning and effort. It is a benefit claimable only on the basis of predefined output level.

In this regard, it may be said that productivity incentives, profit share, and bonus are of the same category because they are all contingent or conditional
benefits. Their grant or demandability depends on the existence of certain preconditions. If they are not given because the preconditions are absent, the prohibition under Article 100 is not thereby violated, except perhaps if there is contractual commitment to the contrary.

**ART. 101. PAYMENT BY RESULTS**

The Secretary of Labor shall regulate the payment of wages by results, including pakyao, piecework and other nontime work, in order to ensure the payment of fair and reasonable wage rates, preferably through time and motion studies or in consultation with representatives of workers and employer’s organizations.

**COMMENTS AND CASES**

1. **WORKERS PAID BY RESULTS, IN GENERAL**

   Article 101 speaks of workers whose pay is calculated not on the basis of time spent on the job but of the quantity and quality or the kind of work they turn out. In other words, they are paid by results; they do nontime work.

   According to advisory opinions rendered by the Bureau of Working Conditions, workers paid by results may be grouped into two: 1) those whose time and performance is *supervised* by the employer and 2) those whose time and performance is *unsupervised* by the employer.

   The first embodies an element of control and supervision over the manner as to how the work is to be performed while in the second there is no such element because the control, if any, is merely over the result of the work itself.

   A piece-rate worker usually belongs to the first type especially so if he performs his work in company premises. On the other hand, workers on *pakiaw* and *takay* basis are usually unsupervised by the employer and therefore fall under the second group.

   Nonetheless, piece-work, *pakiaw* and *takay* are all similar in that in determining the pay rate the basis is the unit of work produced or the quantity thereof; a uniform amount is paid per unit accomplished. Their difference is that in piece-work, there usually is supervision since it is generally done in the company premises as is practiced in shoes, handicraft, or garment factories. Payment on *pakiaw* and *takay* basis is commonly practiced in the agricultural industry, *e.g.*, planting or harvesting per hectare of land.

   In some instances, the term *pakiaw* is used interchangeably with piece-rate depending upon the locality where it is used. *Pakiaw*, however, is more aptly used where the job or work to be performed is in bulk or volumes which are difficult to quantify. Piece-rate is common where the output may easily be counted or measured.¹

1.1 Illustrative Case

Payment by result is not determinative of employer-employee relationship. In one case, the worker paints movie billboards and murals to be displayed at three theatres. He finishes the paintings in three to four days a week and receives as payment a fixed amount of P1,475.00 per week. As piece rater, he is not an employee, contends the employer.

Quoting the two classifications of workers who are paid by result, as explained above, the Court held that the painter is an employee, a regular employee. That he worked on a fixed piece-work basis is of no moment; that is, the employment relationship may exist even in a payment-by-result arrangement.

Payment by result is a method of compensation and does not define the essence of the relation. It is a method of computing compensation, not a basis for determining the existence or absence of employer-employee relationship.¹ This matter has been taken up in comments to Article 82.

2. BASIS OF OUTPUT PAY RATE

The usual point of disagreement in payment-by-result arrangements is whether the output-to-pay ratio is fair and reasonable. In a garments shop, for instance, how many pieces of pocket or collar should be sewed so that a sewer may earn the minimum wage in an eight-hour day? Or, similarly, how many pairs of slippers should be made before the worker may earn that wage? If the required number (or “quota”) is too high, the worker may not even earn the minimum wage at the end of eight hours, and this is unfair to the worker. If the quota is too low, the earnings will be disproportionately high for the output, and this is unfair to the employer. Thus, the Implementing Rules in Book III, Rule VII-A, Section 5 prescribes the process to set up the standard:

Sec. 5. Payment by Results. — (a) On petition of any interested party, or upon its initiative, the Department of Labor shall use all available devices, including the use of time and motion studies and consultation with representatives of employers’ and workers’ organizations, to determine whether the employees in any industry or enterprise are being compensated in accordance with the minimum wage requirements of this Rule.

(b) The basis for the establishment of rates for piece, output or contract work shall be the performance of an ordinary worker of minimum skill or ability.

(c) An ordinary worker of minimum skill or ability is the average worker of the lowest producing group representing 50% of the total number

of employees engaged in similar employment in a particular establishment, excluding learners, apprentices and handicapped workers employed therein. [Comment: How can the Philippines be competitive if our standards are based on the output of the low-performing workers? How will this “Philippine standard” be viewed by foreign investors? – CAA]

(d) Where the output rates established by the employer do not conform with the standards prescribed herein, or with the rates prescribed by the Department of Labor in an appropriate order, the employees shall be entitled to the difference between the amount to which they are entitled to receive under such prescribed standards or rates and that actually paid them by the employer.

2.1 Legal Sufficiency of the Piece Rate

The standard-setting process described above serves as basis for the Bureau of Working Conditions to explain that in determining the legal sufficiency of a piece rate compensation, piece-rate workers may be categorized into two:

(1) *Those who are paid piece rates which are prescribed in Piece Rate Orders issued by DOLE.*

Wages or earnings in this category are determined by simply multiplying the number of pieces produced by the rate per piece.

These workers are not covered by the Rule on Hours of Work which provides for premium and overtime payments. Whatever they produce by the end of the day shall determine their actual earnings even if the work day exceeds eight hours. Rule I, Book III, of the Implementing Rules provides that the rule on hours of work does not apply to “Workers who are paid by results, including those who are paid on piece-work, “takay,” “pakiao,” or task basis, if their output rates are in accordance with the standards prescribed under Sec. 8, Rule VII, Book III, of these regulations, or where such rates have been fixed by the Secretary of Labor in accordance with the aforesaid Section.”

(2) *Those who are paid output rates which are prescribed by the employer and are not yet approved by the DOLE.*

Here, the number of pieces produced is multiplied by the rate per piece as determined by the employer. If the resulting amount is equivalent to or more than the applicable statutory minimum daily rate in relation to the number of hours worked, the worker will receive such amount. But if the amount is less than the applicable legal rate, it is possible that the rates per piece are not in accordance with the standards prescribed by the rules implementing the Labor Code; in that case, the employer is required by law to pay the difference between the resulting amount and the applicable legal minimum rate.

The Appendix shows an example of a Piece Rate Order.
3. ENTITLEMENT OF PIECE-RATE WORKERS TO NIGHT DIFFERENTIAL AND SERVICE INCENTIVE LEAVE

The Rules implementing the Labor Code on night differential and service incentive leave do not apply to employees whose time and performance is *unsupervised* by the employers, including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof. ¹

We can clearly infer that workers paid by results whose time and performance are *supervised* by the employer are covered by said Rules, *i.e.*, entitled to the benefits.

To illustrate: If the work is given to a homeworker on piece-rate wherein there is no supervision since they perform their work in their homes, they are not covered by said Rules. However, if the same work is given to workers who perform their work in the company premises, they are covered by the Rules and therefore entitled to night differential and service incentive leave. This is so, because of the presence in the latter case of the element of supervision over the manner by which the work is to be performed.²

As regards the yearly commutation or cash conversion of the service incentive leave of piece-rate workers, the Bureau of Working Conditions is of the view that the conversion should be based on their average daily earnings during the particular year of service which can be derived by dividing the amount earned during the year by the actual number of working days or the statutory minimum rate, whichever is higher.

In the absence of any agreement which provides otherwise, the amount earned during the year may exclude COLA, overtime pay, and premium pay, holiday pay, night shift differential pay and company fringe benefits.³

How to compute the SIL of a piece-rate worker is illustrated in the following advisory letter from the Bureau of Working Conditions.

We gather from your letter that your laborers are paid on piece-rate basis and earning the basic salary of at least the minimum wage or more. They work an average of eleven (11) to twelve (12) days a month depending on the availability of the materials, receiving a basic salary of P439.20 a month.

In the computation of incentive leave pay, the formula used by the company is the total wages earned for one year divided by 12 to get the average monthly earning. The resulting figure is divided by 30 to get the daily earnings multiplied by five (5) days to arrive at the five-day incentive

---

¹Implementing Rules of Book III, Rules II and V.
³BWC Letter to the Director-NCR of the National Food Authority, June 11, 1991.
pay. Opinion is sought on whether the computation you are presently adopting is correct.

We beg to disagree with the computation of service incentive leave pay adverted in your letter. Since the employees are paid on piece-rate basis and their work is being paid on the results of their performance, you have to obtain their five-day incentive pay by getting the actual total wage earned for one year, divided by twelve (12) to get the average monthly earnings which in this case is P439.20, then divided by 12, the \textit{average number of actual worked days in a month}, the result is P36.60 multiplied by 5 equals P183.00. In case, however, that the average daily rate is less than P36.00 the basis for the computation of the incentive leave pay is P36.00, the minimum rate outside Metro Manila. (BWC Letter to Mr. A.B. Tan Sanchez, July 8, 1987; emphasis supplied)

4. \textbf{ENTITLEMENT TO HOLIDAY PAY}

A piece-rate employee is entitled to holiday pay. Section 8 of Rule IV on “Holiday Pay of Certain Employees” reads as follows:

“Holiday pay of certain employees. — x x x (b) Where a covered employee is paid by results or output, such as payment on piece work, his holiday pay shall not be less than his average daily earnings for the last seven (7) actual working days immediately preceding the regular holiday; \textit{Provided, however}, That in no case shall the holiday pay be less than the applicable statutory minimum wage rate.”

5. \textbf{ENTITLEMENT TO 13TH-MONTH PAY}

P.D. No. 851 exempts from the payment of 13th-month pay employers of those who are paid a fixed amount for performing specific work, irrespective of the time consumed in the performance thereof, \textit{except} where the workers are paid on piece-rate basis in which case the employer shall grant the 13th-month pay to such workers. As used in the said law, workers paid on piece-rate basis shall refer to those who are paid a standard amount for every piece or unit of work produced that is more or less regularly replicated, without regard to the time spent in producing the same.

In order to be entitled to the 13th-month pay, the piece-rate worker should have rendered at least one (1) month work or service during the calendar year.\textsuperscript{1}

6. \textbf{VARIANT JURISPRUDENCE ON PIECE-RATE WORKERS’ ENTITLEMENT TO STATUTORY BENEFITS: THE MAKATI HABERDASHERY CASE (1989)}

To integrate the discussion about piece-rate workers’ entitlement to statutory benefits, we need to review two Supreme Court decisions: one rendered in 1989, the other in 1998.

\textsuperscript{1}BWC advisory opinion dated, September 20, 1989.
CONDITIONS OF EMPLOYMENT

Makati Haberdashery, Inc. vs. NLRC, et al., G.R. Nos. 83380-81, November 15, 1989 —

Facts: The individual complainants have been working for Makati Haberdashery, Inc. as tailors, seamstresses, sewers, basters (manlililip) and plantsadoras. They were paid on a piece-rate basis except the two who were paid on a monthly basis. In addition to their piece-rate, they were given a daily allowance.

On July 20, 1984, the Sandigan ng Manggagawang Pilipino, a labor organization of the respondent workers, filed a complaint for underpayment of the basic wage, nonpayment of overtime work, holiday pay, service incentive pay, 13th-month pay, and benefits under Wage Orders.

The Labor Arbiter dismissed the claims for underpayment of the minimum wage but ruled that the haberdashery violated the decrees on the cost-of-living allowances, service incentive leave pay and the 13th-month pay.

The employer appealed to the NLRC. Losing there again, it went to the High Court alleging the following errors:

(1) that an employer-employee relationship exists between petitioner haberdashery and respondent workers.

(2) that respondent workers are entitled to monetary claims despite the finding that they are not entitled to minimum wage.

Ruling: [The High Court ruled that the workers are regular employees, although paid on piece-rate basis. See discussion under Article 82.]

Coming now to the second issue, there is no dispute that private respondents are entitled to the Minimum Wage as mandated by Section 2(g) of Letter of Instructions No. 829, Rules Implementing P.D. No. 1614 and reiterated in Section 3(f), Rules Implementing P.D. No. 1713 which explicitly states that, “All employees paid by the result shall receive not less than the applicable new minimum wage rates for eight (8) hours work a day, except where a payment by result rate has been established by the Secretary of Labor x x x.” No such rate has been established in this case.

As a consequence of their status as regular employees of the petitioner, they can claim cost-of-living allowance. This is apparent from the provision defining the employees entitled to said allowance, thus: “... All workers in the private sector, regardless of their position, designation or status, and irrespective of the method by which their wages are paid.”

Private respondents are also entitled to claim their 13th-month pay under Section 3(e) of the Rules and Regulations Implementing P.D. No. 851.

On the other hand, while private respondents are entitled to Minimum Wage, COLA and 13th-month pay, they are not entitled to service incentive leave pay because as piece-rate workers being paid at a fixed amount for performing work irrespective of time consumed in the performance thereof, they fall under one of the exceptions stated in Section 1 (d), Rule V, Implementing Regulations, Book III, Labor Code.
the same reason, private respondents cannot also claim holiday pay (Sec. 1[e], Rule IV, Implementing Regulations, Book III, Labor Code.)

1 Critique of the Makati Haberdashery ruling written in this volume in 1991:

“It is submitted, with due respect to the Court, that the employees in the Makati Haberdashery case should not have been denied entitlement to holiday pay and service incentive leave. The Court found them as “piece-rate employees” of the haberdashery and are entitled to the minimum wage, COLA, and 13th-month pay; yet, as regards the holiday pay and service incentive leave, the Court in effect debunked their being piece-rate employees because the Court did not apply Sec. 8(b) of Rule IV that entitles piece-rate workers to holiday pay. Instead, the Court disfranchised them by putting them under Sec. 1(e) of said Rule. This section refers to “those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.”

By putting the piece-rate workers in Sec. 1(e) and by not applying Sec. 8(b), the Court failed to distinguish between the pakiau or task-basis employees and the piece-rate workers. The former are usually unsupervised, the latter usually supervised, like the employees in this Makati Haberdashery case. The law and the rules exclude the task workers from entitlement but not the employed piece-raters.

“The persons who are not entitled to holiday pay (Rule IV) or to service incentive leave (Rule V), or to night shift differential (Rule II) are repeatedly and identically mentioned in these three Rules. They are (among others) “field personnel and other employees whose time and performance is unsupervised by the employer, including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof” (italics supplied).

“This group of excluded employees does not include the piece-rate workers because they are, in fact, entitled expressly to holiday pay. Section 8, Rule IV (Holiday pay of certain employees) states: “... (b) where a covered employee is paid by results or output, such as payment on piece work, his holiday pay shall not be less than his average daily earnings for the last seven (7) actual working days preceding the regular holiday, Provided, however, That in no case shall the holiday pay be less than the applicable statutory minimum wage rate.”

“Average earnings for the past seven days – that is the basis for the piece-rater’s holiday day. Unfortunately, the court ruled in Makati Haberdashery vs. NLRC that the complaining piece-rate employees are not entitled to service incentive leave and holiday pay.

“It is submitted that the court should reexamine its ruling that piece-rate employees are not entitled to holiday pay, service incentive leave, and night shift differential.”
6.1 A Second Look: The Labor Congress Case

The Makati Haberdashery ruling has a postscript. On May 21, 1998, the Supreme Court promulgated its decision in Labor Congress of the Philippines, et al. vs. NLRC and Empire Food Products. This time the Court is convinced that indeed Sec. 8(b) should be applied. The decision, arduously penned by Justice (later Chief Justice) Hilario G. Davide, Jr., therefore holds that piece-rate employees are entitled to night shift differential, holiday pay, service incentive leave, premium pay, and 13th-month pay. They are, furthermore, entitled to overtime pay if their output pay rate is not shown to be in accordance with the standards prescribed under the Implementing Rules1 or by the Secretary of Labor.

Labor Congress of the Philippines (LCP) vs. NLRC, Empire Food Products, et al., G.R. No. 123938, May 21, 1998 —

Facts: The 99 petitioners in this case were rank-and-file employees of Empire Food Products. They filed complaints for money claims and violations of labor standards laws and another petition seeking certification of their union as their bargaining representative. The employer and the petitioners executed a memorandum of agreement where the employer agreed to bargain with the union over the employees’ demands. But no bargaining ever took place. Instead, the employees were dismissed allegedly for abandoning their jobs. The employees, courageously assisted by LCP President Benigno Navarro (a non-lawyer), complained of illegal dismissal, asked for reinstatement with backwages, and pursued their claims for statutory benefits and damages.

There was never a question that the petitioners were employees of Empire Food Products although the issue was raised whether they were regular employees or not. Finding the observations of the Office of the Solicitor General “most persuasive,” the Supreme Court ruled that the petitioners were indeed regular employees. Finding likewise that their dismissal was unjustified, the Court declared them entitled to reinstatement, but, nevertheless, awarded separation pay in lieu of reinstatement in view of strained relationship between the parties. Backwages were also awarded but the computation would have to be done by NLRC since the petitioners’ earnings were variable because they were paid on piece-rate basis. Working as repackers, they were paid a certain amount for every thousand pieces of cheese curls and other products repacked.

The Court, after ruling on the regular status of the petitioners and their entitlement to backwages, next delved on their claim for statutory benefits. This pertinent portion of the decision is reproduced below.

Ruling: As to the other benefits, namely, holiday pay, premium pay, 13th-month pay and service incentive leave which the labor arbiter failed to rule on but which petitioners prayed for in their complaint, we hold that petitioners are so entitled to these benefits. x x x

---

1Book III, Rule VII, Sec. 8 [now Rule VII-A, Sec. 5].
The Rules Implementing the Labor Code exclude certain employees from receiving benefits such as nighttime pay, holiday pay, service incentive leave and 13th-month pay, *inter alia*, “field personnel and other employees whose time and performance is unsupervised by the employer, including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.” Plainly, *petitioners as piece-rate workers do not fall within this group*. As mentioned earlier, not only did petitioners labor under the control of private respondents as their employer, likewise did petitioners toil throughout the year with the fulfillment of their quota as supposed basis for compensation. Further, in *Section 8(b), Rule IV, Book III* which we quote hereunder, *piece workers are specifically mentioned as being entitled to holiday pay*.

Sec. 8. Holiday pay of certain employees.

(b) Where a covered employee is paid by results or output, such as payment on piece work, his holiday pay shall not be less than his average daily earnings for the last seven (7) actual working days preceding the regular holiday: *Provided, however, That in no case shall the holiday pay be less than the applicable statutory minimum wage rate.*

In addition, the Revised Guidelines on the Implementing of the 13th-Month Pay Law, in view of the modifications to P.D. No. 851 by Memorandum Order No. 28, clearly exclude the employer of piece-rate workers from those exempted from paying 13th-month pay, *to wit*:

2. Exempted Employers

The following employers are still not covered by P.D. No. 851:

   d. Employers of those who are paid on purely commission, boundary or task basis, and those who are paid a fixed amount for performing specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall grant the required 13th-month pay to such workers. (Italics supplied.)

The Revised Guidelines as well as the Rules and Regulations identify those workers who fall under the piece-rate category as those who are paid a standard amount for every piece or unit of work produced that is more or less regularly replicated, without regard to the time spent in producing the same.

As to overtime pay, the rules, however, are different. According to Sec. 2(e), Rule I, Book III of the Implementing Rules, workers who are paid by results including those who are paid on piece-work, *takay, pakiao,* or task basis, if their output rates are in accordance with the standards prescribed under Sec. 8, Rule VII, Book III, of those regulations, or where such rates have been fixed by the Secretary of Labor in accordance with the aforesaid section, are *not entitled to receive overtime pay*. Here, *private respondents did not allege adherence to the standards set forth in Sec. 8 nor with the rates prescribed by the Secretary of Labor. As such, petitioners are beyond the ambit of exempted persons and are therefore entitled to*
CONDITIONS OF EMPLOYMENT

**ART. 101**

*overtime pay.* Once more, the National Labor Relations Commission would be in a better position to determine the exact amounts owed petitioners, if any.

6.2 **Summation: Benefits Payable to Piece-Rate Workers**

On the basis, therefore, of existing labor regulations and more recent jurisprudence, piece-rate workers are entitled to the benefits, as follows:

1. the applicable statutory minimum daily rate
2. yearly service incentive leave of five (5) days with pay
3. night shift differential pay
4. holiday pay
5. meal and rest periods
6. overtime pay (conditional)
7. premium pay (conditional)
8. 13th-month pay
9. other benefits granted by law, by individual or collective agreement or company policy or practice.¹

If, however, an appropriate Order prescribing their output rates has been issued by the DOLE or their output rates conform with the standards prescribed by the Labor Code, the employer is not, by law, required to grant the piece-rate workers the benefits under the Rule on Hours of Work (*i.e.*, overtime and premium payments) nor to pay the wage differentials if their daily earnings do not amount to the applicable statutory minimum daily wage.²

We may summarize the preceding BWC guidelines as follows:

The rate-per-piece to be paid to a worker should be submitted to DOLE for approval. Guided by the Implementing Rules, DOLE decides whether the output-and-pay proposal of the employer fairly and reasonably meets the legal minimum wage, based on the output of average workers doing same products under comparable conditions.

If DOLE approves the proposal it becomes the standard (or quota). Because the DOLE-approved standard is presumed fair and reasonable, a piece-rater who does not reach the quota will earn *less than the legal minimum wage* even if he has worked for eight hours. Arguably, the fault is with him and not with the pay formula. In such case the employer need not make up the difference between the legal minimum wage and the wage actually earned.

¹BWC Letter to the Director-NCR of the National Food Authority, June 11, 1991.
²Ibid.
On the other hand, if the output-and-pay scheme has not been approved by DOLE, or does not conform with DOLE-issued orders, then the employer may be required to pay the shortfall between the actual earning and the prescribed minimum wage.

The piece-rate pay formula needs DOLE’s approval so as to protect the worker’s right to be paid or to earn at least the minimum wage, and at the same time, to help the employer obtain the corresponding work output. A fair two-way deal.

7. FAILURE TO REACH QUOTA

Failure to reach the validly determined quota does not only mean less earnings for the paid-by-result worker. Persistent failures may even mean demotion or loss of job. We take this up in Article 296.

North-South Seesaw

Multinational corporations have been a primary vehicle of growing global interdependence that benefits some workers at the relative expense of others’ wages. This forecast about the success of the rich and powerful that makes workers the losers, and that makes “the following of the middle class a feature of income distribution in many countries” (Rodrik 1997), has been fulfilled in the global economy; “wage inequality between skilled and unskilled labor is a global trend.” Part of the reason is because MNCs easily move manufacturing sites and technical know-how to developing countries, where labor is cheap. Of the 8 million jobs created by MNCs between 1985 and 1992, 5 million were in the Global South. In countries as diverse as Argentina, Barbados, Botswana, Indonesia, Malaysia, Mauritius, Mexico, the Philippines, Singapore, and Sri Lanka, multinationals account for one-fifth of the manufacturing sector employment (World Development Report 1995, 1995, 62). These workers have benefited from the new job opportunities created. In a world of highly mobile capital, however, this also makes unskilled laborers with low wages, and the countries where they are employed, vulnerable. “Many developing countries fear that increased competition for funds by other developing countries will lead to a rise in footloose investments, prone to leave at the slightest shock.... This problem is especially acute in low-skill industries such as garments and footwear, where firm-specific knowledge is slight andexit costs are low.”

Such fears, born of experience, are all too real in the Global North. Workers there also fear losing their jobs due to cheap imports made possible by lower-cost production in the Global South or because the companies they work for will relocate abroad. The irony is that economy growth has been rekindled since the recession of the early 1990s. For many, however, this has been a time of “jobless growth.” And even if they keep their jobs, employees often blame cheap foreign labor for their own lack of pay hikes and resultant stagnating living standards.

CHARLES W. KEGLEY, JR. and EUGENE R. WITTKOPF
World Politics: Trend and Transformation (1999), p. 271
Chapter III
PAYMENT OF WAGES

Overview/Key Questions:
1. Is it lawful to pay the wages only once a month? May the wages be paid in form of goods such as phone cards?
2. What is independent contracting in contrast to labor-only contracting? What does the latter consist of and why does the law prohibit it?
3. Other than labor-only contracting, what forms or acts of labor contracting are disallowed?
4. May an indirect employer be held answerable for an illegal dismissal done by the direct employer?

ART. 102. FORMS OF PAYMENT
No employer shall pay the wages of an employee by means of promissory notes, vouchers, coupons, tokens, tickets, chits or any object other than legal tender, even when expressly requested by the employee.

Payment of wages by check or money order shall be allowed when such manner of payment is customary on the date of effectivity of this Code, or is necessary because of special circumstances as specified in appropriate regulations to be issued by the Secretary of Labor or as stipulated in a collective bargaining agreement.

COMMENTS
PROOF OF WAGE PAYMENT
Where the employee alleges non-payment of wages and/or commission, the employer has the burden to prove payment.

In Jimenez, et al. vs. NLRC and Juanatas, G.R. No. 116960, April 2, 1996, the Supreme Court explains:

In the instant case, the right of respondent Juanatas [employee] to be paid a commission equivalent to 17%, later increased to 20%, of the gross income is not disputed by petitioners [employer]. Although the respondent admits receipt of partial payment, petitioners still have to present proof of full payment. Where the defendant [who is] sued for a debt admits that the debt was originally owed, and pleads payment in whole or in part, it is
incumbent upon him to prove such payment. That a plaintiff admits that some payments have been made does not change the burden of proof. The defendant [employer] still has the burden of establishing payments beyond those admitted by plaintiff.

Regarding the vales or advance payments taken by the employee, the Court did not recognize as evidence of payment the notebook which the employer presented. The Court said: “Although petitioners submitted a notebook showing the alleged vales of private respondents for the year 1990, the same is inadmissible and cannot be given probative value considering that it is not properly accomplished, is undated and unsigned, and is thus uncertain as to its origin and authenticity.”

The Implementing Rules require every employer to keep a payroll. Among other things, it must show the length of time to be paid, the pay rate, the amount actually paid, and so on. The employee should sign the payroll.1

ART. 103. TIME OF PAYMENT

Wages shall be paid at least once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days. If on account of force majeure or circumstances beyond the employers control, payment of wages on or within the time herein provided cannot be made, the employer shall pay the wages immediately after such force majeure or circumstances have ceased. No employer shall make payment with less frequency than once a month.

The payment of wages of employees engaged to perform a task which cannot be completed in two (2) weeks shall be subject to the following conditions, in the absence of a collective bargaining agreement or arbitration award:

1. That payments are made at intervals not exceeding sixteen (16) days, in proportion to the amount of work completed;
2. That final settlement is made upon completion of the work.

ART. 104. PLACE OF PAYMENT

Payment of wages shall be made at or near the place of undertaking, except as otherwise provided by such regulations as the Secretary of Labor may prescribe under conditions to ensure greater protection of wages.

COMMENTS

1. PLACE OF PAYMENT

Place of payment. — (a) As a general rule, the place of payment shall be at or near the place of undertaking. Payment in a place other than the workplace shall be permissible only under the following circumstances:

1. When payment cannot be effected at or near the place of work by reason of the deterioration of peace and order conditions, or by reason of actual

1Sec. 6, Rule X, Book III.
or impending emergencies caused by fire, flood, epidemic or other calamity rendering payment thereat impossible;

(2) When the employer provides free transportation to the employees back and forth; and

(3) Under any other analogous circumstances; provided that the time spent by the employees in collecting their wages shall be considered as compensable hours worked.

(b) No employer shall pay his employees in any bar, night or day club, drinking establishment, massage clinic, dance hall, or other similar places or in places where games are played with stakes of money or things representing money except in the case of persons employed in said places.  

2. PAYMENT THROUGH BANKS

Upon written permission of the majority of the employees or workers concerned, all private establishments, companies, businesses, and other entities with twenty-five (25) or more employees and located within one (1) kilometer radius to a commercial, savings or rural bank shall pay the wages and other benefits of their employees through any of said banks and within the period of payment of wages fixed by the Labor Code.  

Whenever applicable and upon request of a concerned worker or union, the bank shall issue a certification of the record of payment of wages of a particular worker or workers for a particular payroll period.

Payment of wages through automated teller machines (ATM) is allowed under a labor advisory dated November 25, 1996.

ART. 105. DIRECT PAYMENT OF WAGES

Wages shall be paid directly to the workers to whom they are due, except:

(a) In cases of force majeure rendering such payment impossible or under other special circumstances to be determined by the Secretary of Labor in appropriate regulations, in which case the worker may be paid through another person under written authority given by the worker for the purpose; or

(b) Where the worker has died, in which case the employer may pay the wages of the deceased worker to the heirs of the latter without the necessity of intestate proceedings. The claimants, if they are all of age, shall execute an affidavit attesting to their relationship to the deceased and the fact that they are his heirs, to the exclusion of all other persons. If any of the heirs is a minor, the affidavit shall be executed on his behalf by his natural guardian or next of kin. The affidavit shall be presented to the employer who shall make payment

---

1Implementing Rules, Book III, Rule VIII, Sec. 4.
3Sec. 8, Ibid.
through the Secretary of Labor or his representatives. The representative of the Secretary of Labor shall act as referee in dividing the amount paid among the heirs. The payment of wages under this Article shall absolve the employer of any further liability with respect to the amount paid.

ART. 106. CONTRACTOR OR SUBCONTRACTOR

Whenever an employer enters into a contract with another person for the performance of the former’s work, the employees of the contractor and of the latter’s subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is “labor-only” contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

ART. 107. INDIRECT EMPLOYER

The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

ART. 108. POSTING OF BOND

An employer or indirect employer may require the contractor or subcontractor to furnish a bond equal to the cost of labor under contract, on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fail to pay the same.
ART. 109. SOLIDARY LIABILITY

The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

COMMENTS AND CASES

1. CONTRACTING AND SUBCONTRACTING IN GENERAL

Numerous are the business transactions done through contracting and subcontracting. If Company “A,” engaged in restaurant business, needs to put up a building, it concludes a contract with a construction company (“B”) which, in turn, hires the services of another contractor (“C”) to handle certain aspects or phases of the construction project. “B” and “C” will need to hire people, and they will all work to accomplish “A’s” objective to have a new building. But “A,” the project owner, does not necessarily become their “employer” and they, its “employees,” as those terms are understood in labor law context.

The employer-employee relationship (explained under Article 82) exists between “B” and the workers he hires, and between “C” and his workers, but “A” is not an employer to “B” nor to “C” nor to their respective groups of workers. The arrangements among “A” “B” and “C,” and the respective workers are not at all unlawful, if “B” and “C” are fully qualified contractors. If they are, they are the employers of their workers, hence, answerable for the obligations of an employer, e.g., SSS registration, payment of wages and employment benefits, duty to bargain, and so forth. In relation to their respective employees, “B” and “C” are the direct employers, and “A” is indirect employer.

The same kind of nonemployment relationship ordinarily arises when a businessman hires the services of a lawyer to represent him in court, or of an engineer to install a computer system, a consultant to conduct a seminar, and when he makes myriad other business contracts or projects to have jobs done. Indeed, businesses can hardly move if such contractual arrangements would be prohibited. Articles 106 to 109 do allow them but lay down certain policy to protect the workers. Such codal provisions cannot be changed or disregarded by administrative regulations.

1.1 D.O. No. 18-A Replaces D.O. No. 18-02


But D.O. No. 10 was revoked by D.O. No. 3 dated May 8, 2001 which itself indicated the forthcoming issuance of revised rules. The new rules came out

1.2 Guiding Principles and Definition
The guiding principles state:

“Contracting and subcontracting arrangements are expressly allowed by law and are subject to regulation for the promotion of employment and the observance of the rights of workers to just and humane conditions of work, security of tenure, self-organization, and collective bargaining. Labor-only contracting as defined herein shall be prohibited.” (Sec. 1, D.O. No. 18-A)

“Contracting” or “subcontracting” is defined as an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor 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. (Sec. 3[c], D.O. No. 18-A)

This definition indicates four features of legitimate contracting:

1. **Parties** — a principal (contractee) enters into a contract with a contractor, or if the principal is himself a contractor, he enters into contract with a sub-contractor. A contracted job may be subcontracted, partly or wholly, unless prohibited in the contract; thus a business project produces a chain of contracts and subcontracts: “A” contracts with “B,” “B” with “C,” “C” with “D” and so on. In the chain of contracting and subcontracting, the distinction between these two vanishes because between a contractor and a contractee what matters is the contract (the link) between them, not the chain of contracts.

2. **Specific job** — The contract calls for the performance or completion of a specific job, work or service;

3. **Period** — Such job, work or service is to be performed or completed within a definite or predetermined period; and

4. **Location** — The contracted job, work, or service may be performed or completed inside or outside the premises of the principal.

1.3 Trilateral Relationship
In legitimate contracting, as defined above, there exists a trilateral relationship under which there is a contract for specific job, work or service between the principal and the contractor/subcontractor, and a contract of employment between the contractor/subcontractor and its workers. Hence,

---

1DOLE has announced that the D.O. was published in the Philippine Star on 19 November 2011 and took effect on 5 December 2011.
there are three parties involved in these arrangements: (1) the principal which decides to farm out a job or service to a contractor or subcontractor; (2) the contractor/subcontractor which has the capacity to independently undertake the performance of the job, work or service; and (3) the workers engaged by the contractor/subcontractor to accomplish the job, work or service.

"Principal" refers to any employer, whether a person or entity, including government agencies and government-owned and controlled corporations, who/which puts out or farms out a job, service or work to a contractor.¹

"Contractor" refers to any person or entity, including a cooperative, engaged in a legitimate contracting or subcontracting arrangement providing either services, skilled workers, temporary workers or a combination of services to a principal under a Service Agreement.

"Contractor’s employee" includes one employed by a contractor to perform or complete a job, work or service pursuant to a Service Agreement with a principal.²

Between the principal and the contractor the major laws applicable to their work relationship are the Civil Code and pertinent commercial laws. Between the contractor and his employees the major laws pertinent to their work relationship are the Labor Code and special labor laws. Between the principal and the contractor’s employees, no employer-employee relationship exists, because the contractor, being himself a businessman, is the employer.

But employer-employee relationship will exist between the principal and the workers where the contracting arrangement is not legitimate. The contracting is not lawful, not legitimate, if it is (1) labor-only contracting (LOC) under Sec. 6 or (2) if the arrangement is otherwise considered unlawful for being against public policy under Sec. 7. In any of these situations the so-called contracting arrangement will have to be disregarded for the purpose of establishing an employer-employee relationship; the person for whom the workers work will have to be declared as the employer. In fact, in labor-only contracting, there is really no contracting and no contractor. There is only a representative to gather and supply people to the principal. Because the arrangement does not fit the definitions of contracting and contractor, labor-only “contracting” therefore, to our mind, is a misnomer, a self-contradiction. The name “labor-only contractor” is like calling “teacher” someone who does not teach or “painter” someone who does not paint. The more descriptive terms are simply false contracting and false contractor.

2. FIRST SET OF PROHIBITION: LABOR-ONLY CONTRACTING (SECTION 6 OF D.O. NO. 18-A)

Contracting, as defined above, refers to the completion or performance of a job, work, or service within a given period. Labor-only contracting, on the other hand, is not really contracting because the arrangement is merely to recruit or

---

¹Sec. 3, D.O. No. 18-A.
²Sec. 3, D.O. No. 18-A.
place people to be employed, supervised, and paid by another, who, therefore, is the employer. In LOC, the commitment of the so-called “contractor” is not to do and deliver a job, work or service but merely to find and supply people. The “contractor” is a pseudo-contractor; in fact, he himself might even be an employee of the employer. Thus, it bears stressing that “labor-only contracting” is self-contradictory term because there is no contractor and no contracting in LOC.

Labor-only contracting is legally wrong and prohibited because it is an attempt to evade the obligations of an employer. The employer is using a front, a person who poses as employer although he is not. The scheme evades the employer’s obligations to respect the employees’ right to unionize, the right to employment standards, including SSS-EC membership, and the right to security of tenure. Detesting such scheme, the law refuses to recognize the so-called contractor as employer and instead declares the workers as employees of the person for whom they have been supplied. The labor-only contractor is relegated to what he really is: merely an agent of the employer-principal.

But how does the law identify a labor-only contractor? He is not a full-fledged businessman, he has no discrete, adequately capitalized, duly registered business, and even if he has, the people he gathers are not under his control or supervision. The identification in Article 106, fourth paragraph, states:

“There is labor-only contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited, or placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner or extent as if the latter were directly employed by him.”


D.O. No. 18-02 states: Labor-only contracting is hereby declared prohibited. For this purpose labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work a service, and any of the following elements are present:

i) The contractor or subcontractor does not have substantial capital 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

ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.
Noticeably, D.O. No. 18-A of 2011 (replacing D.O. No. 18-02) omits the opening clause “merely recruits, supplies or places workers to perform a job, work or service.” Dropping that clause, D.O. No. 18-A reads as follows:

“Labor-only contracting is hereby declared prohibited. For this purpose labor-only contracting shall refer to an arrangement where:

(a) the contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal 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; or

(b) the contractor does not exercise the right to control over the performance of the work of the employee.”

The definition above by D.O. No. 18-A starts by saying labor-only contracting is “an arrangement where the contractor does not have …” Arrangement for what? It’s incomplete and unclear. The Code itself and the previous department order indicate that LOC is an arrangement for supplying of people. But D.O. No. 18-A omits this, an omission that an implementing rule cannot do because the phrase is in the codal definition itself. The way we see it, the omission creates cause for error and confusion. (Or perhaps the department order assumes that the supplying of workers is necessarily understood in the term labor-only contracting.) The supplying of workers by a person to an employer (as the Code states) is the indispensable starting point, the initiating act of a labor-only contracting. Without this act, the codal prohibition does not apply. In other words, if the contract does not call for merely supplying of people but an obligation to do and deliver a job, work, or service requiring the use of the contractor’s capital, expertise, and supervision of the work performance, then the arrangement may constitute legitimate job-contracting, not labor-only contracting. The essential element of merely supplying workers should be there. For clarity in distinguishing legitimate job contracting from the prohibited labor-only contracting, we think that D.O. No. 18-A should have stated in the definition the act of recruiting or supplying workers by an alleged contractor to a client/principal. To conform with the Labor Code, in the way the previous D.O. did, we think that the new D.O. No. 18-A should have stated that labor-only contracting is an arrangement where the alleged contractor recruits and supplies workers to a client/principal where (a) the contractor does not have substantial capital ... etc.

To have LOC, the essential element of supplying workers to another is not enough. To it must be added either one of two confirming elements, i.e., facts that bolster or confirm the existence of labor-supplying scheme. The confirming elements are either:
one: lack of substantial capital or investment and performance of activities directly related or usually necessary or desirable to the principal’s main business;

or, two: the contractor does not exercise control over the performance of the employees.

Stated in another way, LOC equals essential element plus confirming element one, or confirming element two; hence, “LOC = EE + CE1 or CE2.”

If the essential element is absent, there can be no LOC. And even if the essential element is present, but confirming element one or two is absent, there is still no LOC.

And we may note, further, that CE No. 1 is itself a combination of two flaws: The alleged contractor has no adequate capital AND the work the workers are doing is directly related or necessary or desirable to the principal’s main business. Contracting out a job related to the principal’s business is not unlawful. Court decisions acknowledge that it is the employer that decides what jobs are to be done by its own employees and which ones to be contracted out or outsourced. Hence, even if the job is related to the principal’s main business but the contractor is substantially capitalized, confirming element No. 1 is absent, and there is no LOC. Confirming element No. 1 therefore mentions two concurrent flaws; one without the other does not confirm a labor-only contracting.

On the other hand, even if the contractor is substantially capitalized, there may still be LOC if CE No. 2 is true, referring to the lack of supervision of the work. This element means that if the alleged contractor were a true contractor or employer, he should be supervising or controlling the work performance of the persons hired. The absence of the power of supervision negates the posture that he is the employer; thus, he is most probably merely a recruiter or supplier of labor.

Not to be overlooked, finally, is the labor-only contractor by presumption of law. A full-fledged legitimate labor contractor has to be registered with DOLE; otherwise, he is presumed an LOC.¹ We further discuss Registration in topic 8.

2.1 What is Substantial Capital?

Substantial capital refers to paid-up capital stocks/shares of at least three million pesos (P3,000,000) in the case of a corporation, partnerships and cooperatives, or, in the case of a single proprietorship, a net worth of at least three million pesos (P3,000,000).²

In addition, the contractor must show financial capacity to do the contracted job by proving his “Net Financial Contracting Capacity (NFCC)” which should at least equal the contract cost. The Service Agreement between

---

¹Sec. 11, D.O. No. 18-02.
²Sec. 3[1], D.O. No. 18-A.
the contractor and the principal should stipulate “a standard administrative cost of not less than ten percent of the total contract cost.” By fixing a minimum administrative fee, the department order intends to discourage cut-throat competition among bidding contractors because cut-throat competition often sacrifices workers’ pay and benefits.

Substantial capital need not be coupled with investment in tools or equipment. One is not a labor-only contractor if one has substantial capital although without investment in tools, equipment, etc.1

2.2 What is “Control”?

Control over the manner or method of doing the work characterizes employment. In contrast, control only of the desired result of the work often indicates a contracting arrangement.

The difficulty lies in correctly assessing if certain factors or elements properly indicate the presence of control or what kind of control. For instance, regarding the issue of exclusivity in the case of Insular Life Insurance Co. vs. NLRC, G.R. No. 84484, November 15, 1989, the fact that the complainant worker was required to solicit business exclusively for the alleged employer could hardly be considered as control in labor jurisprudence. Under Memo Circulars No. 2-81 and 2-85, dated December 17, 1981 and August 7, 1985, respectively, issued by the Insurance Commissioner, insurance agents are barred from serving more than one insurance company, in order to protect the public and to enable insurance companies to exercise exclusive supervision over their agents in their solicitation work. Thus, the exclusivity restriction clearly springs from a regulation issued by the Insurance Commission, and not from an intention by the alleged employer to establish control over the method and manner by which the worker shall accomplish his work. This feature is not meant to change the nature of the relationship between the parties, nor does it necessarily imbue such relationship with the quality of control envisioned by the law.2 In other words, “exclusive servicing” does not necessarily mean being under the control, or employment, of the entity being served; thus, the relationship may still be classified as independent contractorship because the element of control is absent.

So too, the fact that the complainant worker was bound by company policies, memo/circulars, rules and regulations issued from time to time is also not indicative of control. In its Reply to Complainant’s Position Paper, petitioner [the alleged employer] alleges that the policies, memo/circulars, and rules and

---

regulations referred to in the Sales Agent’s Agreement are only those pertaining to payment of agents’ accountabilities, availment by sales agents of cash advances for sorties, circulars on incentives and awards to be given based on production, and other matters concerning the selling of insurance, in accordance with the rules promulgated by the Insurance Commission. According to the petitioner, insurance solicitors are never affected or covered by the rules and regulations concerning employee conduct and penalties for violations thereof, work standards, performance appraisals, merit increases, promotions, absenteeism/attendance, leaves of absence, management-union matters, employee benefits and the like. Since the complainant failed to rebut these allegations, the same are deemed admitted, or at least proven. Hence, it is erroneous to conclude that the foregoing elements signified an employment relationship between the parties.

2.3 **Control over Former Employees**

Employees may resign from their jobs to become contractors to their former employer. To validate the arrangement the latter should cease controlling the means and method of doing the work allegedly contracted, otherwise the result is labor-only contracting, as ruled in *Manila Water*.


**Facts:** When MWSS contracted with Manila Water Co. to manage the water distribution system in Metro Manila East Zone, the MWC absorbed some MWSS employees. But 121 contractual collectors of MWSS were not absorbed but retained on contractual basis only. A few months later these collectors formed the Association Collectors Group, Inc., (ACGI) which MWC contracted to collect water charges. When the contract was terminated after fourteen months, the collectors filed a complaint of illegal dismissal against MWC which, for its part, argued that the employer was ACGI, not MWC.

Is ACGI a legitimate contractor?

**Rulings:** No, it is not a job contractor. It is a labor-only contractor and the collectors have remained employees of MWC because the latter has not relinquished control over them. The court noted that, first, ACGI had no substantial capital in investment in tools, equipment, etc. to qualify as an independent contractor; secondly, the work was directly related to the principal business or operation of MWC; lastly, ACGI did not carry on an independent business or undertake the performance of its service contract according to its own manner and method, free from MWC’s control and supervision. MWC continued to issue memoranda on billing methods and distribution of books to the collectors; it required the workers to report daily and MWC monitored strictly their attendance. Although ACGI would ultimately discipline the erring workers, MWC would dictate what penalty to impose. Considering the facts, the court concluded that ACGI was not an independent contractor.

---

1AFP Mutual Benefit Association, Inc. vs. NLRC, G.R. No. 102199, January 28, 1997.
2.4 A Cooperative as a Labor Contractor

2.4a When is a Cooperative a Labor-only Contractor?

San Miguel Corp. vs. Aballa, et al., G.R. No. 149011, June 28, 2005 —

Facts: San Miguel Corp. entered into a “Contract of Services” with Sunflower Multi-Purpose Cooperative, to be effective for one year, starting January 1, 1993, subject to renewal. The services, to be rendered to SMC’s Shrimp Processing Plant at Bacolod, would consist of (1) messengerial-janitorial work, (2) shrimp harvesting and receiving, and (3) sanitation, washing, and cold storage. The contract stipulated that: (1) the cooperative shall employ the necessary personnel and provide adequate equipment, materials, and tools, over which the coop shall have entire control and supervision; (2) no employer-employee relationship shall exist between SMC, and the coop and any if its members; the cooperative is an association of self-employed members, an independent contractor; it is subject to the control and direction of San Miguel Corp. only as to the result of the work or service; (3) the coop shall have exclusive direction in the selection, engagement and discharge of its member-workers; and (4) the coop undertakes to pay the wages, premium pay and benefits of its member-workers as well as the taxes.

In July 1995, 97 workers-members filed a complaint before the NLRC demanding their regularization as SMC employees with appertaining benefits and privileges. On September 15, 1995, SMC closed its Bacolod Shrimp Processing Plant and reported the closure to the DOLE. The workers charged SMC with illegal dismissal.

Denying employer-employee relationship, SMC pointed to Sunflower as the employer.

The labor arbiter and subsequently the NLRC dismissed the complaint. They held that the charge that the coop was a mere labor-only contractor had not been substantiated.

But the Court of Appeals reversed the ruling, a reversal that the Supreme Court substantially sustained. Citing the definitions of legitimate contracting and labor-only contracting in D.O. No. 18-02, the court concluded that the cooperative in this case did not qualify as an independent contractor. It was a labor-only contractor; hence, it was a mere agent of SMC, who therefore, was the employer of the complaining workers.

Ruling: The Contract of Service between SMC and Sunflower shows that the parties clearly disavowed the existence of an employer-employee relationship between SMC and [the workers]. The language of a contract is not, however, determinative of the parties’ relationship; rather it is the totality of the facts and surrounding circumstances of the case.

While indeed Sunflower was issued Certificate of Registration No. ILO-875 on February 10, 1992 by the Cooperative Development Authority, this merely shows that it had at least P2,000.00 in paid-up share capital, which amount cannot be considered substantial capitalization.
PAYMENT OF WAGES

ART. 109

What appears is that Sunflower does not have substantial capitalization or investment in the form of tools, equipment, machineries, work premises and other materials to qualify it as an independent contractor.

On other hand, it is gathered that the lot, building, machineries and all other working tools utilized by private respondents [the complainant workers] in carrying out their tasks were owned and provided by SMC.

The alleged office of [Sunflower] is found within the confines of a small “carinderia” or “refreshment” (sic) owned by the mother of the Cooperative Chairman Roy Asong.

xxx In said . . . office, the only equipment used and owned by [Sunflower] was a typewriter.

Furthermore, Sunflower did not carry on an independent business or undertake the performance of its service contract according to its own manner and method, free from the control and supervision of its principal, SMC, its apparent role having been merely to recruit persons to work for SMC.

Thus, it is gathered from the evidence adduced by [the complaining workers] before the labor arbiter that their daily time records were signed by SMC supervisors... which fact shows that SMC exercised the power of control and supervision over its employees. And control of the premises in which [the workers] worked was by SMC. These tend to disprove the independence of the contractor.

Sunflower had no clients other than SMC. When SMC’s Bacolod Shrimp Processing plant closed, Sunflower likewise closed.

_____________

In the similar case of Dole Phil. Inc. vs. Esteva, et al., G.R. No. 16155, November 30, 2006, the Court again declared the cooperative as a labor-only contractor.

The Court further upheld the authority of the regional director of the Department of Labor to declare whether or not the cooperative was a legitimate contractor. Such declaration, the Court further said, was binding on the NLRC. In agreeing that the cooperative was a labor-only contractor, the Court noted that CAMPCO did not carry out an independent business because it was precisely established to render services to DOLE Phil. to augment its workforce during peak seasons, as, in fact, DOLE Phil. was CAMPCO’s only client.

The Court also noted that DOLE Phil. exercised control over the CAMPCO members. DOLE Phil. attempted to refute control by alleging the presence of a CAMPCO supervisor in the work premises. Yet, the mere presence within the premises of a supervisor from the cooperative did not necessarily mean that CAMPCO had control over its members. As alleged by the complainant employees, and unrebutted by DOLE Phil., CAMPCO members, before working for DOLE Phil., had to undergo instructions and pass the training provided by DOLE Phil. personnel. It was DOLE Phil. who determined and prepared the work assignments of the CAMPCO members. CAMPCO members worked within
DOLE Phil.’s plantation and processing plants alongside regular employees performing identical jobs, a circumstance recognized as an *indicium* of a labor-only contractorship.

### 2.4b When is a Cooperative a Contractor-Employer?

While in the preceding *San Miguel* and *DOLE Phil.* cases the cooperatives were found to be labor-only contractors, in the next case of SSS against Asiapro Cooperative the cooperative was found to be a job contractor. As such, it is an employer and must therefore register itself and its employees with the SSS.

*Republic of the Phil. et al. vs. Asiapro Cooperative, G.R. No. 172101, November 23, 2007 —*

**Facts:** Asiapro is a multi-purpose cooperative duly registered with the Cooperative Development Authority. It has several service contracts with Stanfilco. The SSS office in Mindanao required Asiapro to register itself as an employer and the people it supplied to Stanfilco as employees of the cooperative, but Asiapro did not comply. The cooperative alleged that its owner-members own the cooperative, thus, no employer-employee relationship could arise between the cooperative and the members; that the persons of the employer and the employees were merged in the owner-members themselves; that in fact, the owner-members requested the cooperative to register them with SSS as self-employed individuals; thus, Asiapro insisted that in the absence of employer-employee relationship, registration with the SSS could not be compulsory and that both the SSS and Social Security Commission (SSC) had no jurisdiction over the case.

**Rulings:**

1. Since compulsory coverage with the SSS is predicated on the existence of employer-employee relationship, the SSC has jurisdiction to determine whether there is really employer-employee relationship between the cooperative and its owners-members. The NLRC does not have exclusive jurisdiction over a question of existence of employer-employee relationship; in fact, such question, for purposes of coverage by the SSS, is explicitly excluded from the NLRC’s jurisdiction. The SSC may inquire into the presence or absence of an employer-employee relationship as an incident to the issue of compulsory SSS coverage.

2. Applying the four-fold test, the Court finds employer-employee relationship between the cooperative and the owner-members. The workers supplied by the cooperative are not self-employed.

   **First.** It is expressly provided in the Service Contracts that it is the cooperative which has the exclusive discretion in the selection and engagement of the owners-members as well as its team leaders who will be assigned at Stanfilco.

   **Second.** Wages are paid by the cooperative to the workers.

   The weekly stipends or the so-called shares in the service surplus given by the cooperative to its owner-members were in reality wages, as the same were equivalent to an amount not lower than that prescribed by existing labor laws, rules and regulations, including the wage order applicable to the area and industry; or the same shall not be lower than the prevailing rates of wages. It cannot be doubted then that those...
stipends or shares in the service surplus are indeed wages, because these are given to the owner-members as compensation in rendering services to the cooperative’s client, Stanfilco.

Third. It is also stated in the above-mentioned Service Contracts that it is the cooperative which has the power to investigate, discipline and remove the owner-members and its team leaders who were rendering services at Stanfilco.

Fourth. As earlier opined, of the four elements of the employer-employee relationship, the “control test” is the most important. In the case at bar, it is the cooperative which has the sole control over the manner and means of performing services under the Service Contracts with Stanfilco as well as the means and methods of work. Also, the cooperative is solely and entirely responsible for its owner-members, team leaders and other representatives at Stanfilco. All these clearly proved that, indeed, there is an employer-employee relationship between the cooperative and its owner-members.

2.4c Summing Up

These three rulings show that a cooperative may adopt two capacities at the same time: one, as a cooperative governed by the Cooperative Code and two, as a labor contractor covered by the Labor Code and other labor laws. It can be a legitimate contractor if the requirements for lawful job contracting are met. D.O. No. 18-02 and D.O. No. 18-A both recognize that a labor contractor may be a partnership, corporation, union, or a cooperative. Reiterating this recognition, the Department of Labor issued Department Circular No. 1, Series of 2007 (dated 15 May 2007) to require cooperatives which are engaged in labor contracting to register with the DOLE as labor contractor. Failure to register will give rise to a presumption that it is a labor-only contractor.

2.4d Emergent Questions

The ruling in Asiapro that a cooperative can be a contractor-employer immediately raises questions. Does it overturn the earlier ruling that employees of a cooperative cannot unionize to collectively bargain with the cooperative because as part-owners of the cooperative “they cannot bargain with themselves”? Are we now in a strange situation where, for purposes of the SSS coverage, the workers-members of the cooperative are employees, but for purposes of self-organization and bargaining, they are not?

The question becomes more complicated with the recent passage of R.A. No. 9520 (approved on February 17, 2009) that amended the Cooperative Code of the Philippines (R.A. No. 6938). One of the new provisions of R.A. No. 9520 is Article 23(t) which recognizes “Workers Cooperative” and defines it as

---

“one organized by workers including the self-employed who are at the same time the members and owners of the enterprise. Its principal purpose is to provide employment and business opportunities to its members and manage it in accordance with cooperative principles.” What is the legal effect of this new statutory recognition of “workers cooperative” that provides employment and business opportunities to its members? Does this validate or does it overturn the *Asiapro* ruling that the cooperative is an SSS-covered contractor-employer?

2.4e **Workers Cooperative Cannot Engage in Job Contracting**

Pertinent to the foregoing questions is Memorandum Circular No. 2012-12 (dated July 18, 2012) of the Cooperatives Development Authority titled “Revised Guidelines in the Registration of Labor Service and Workers Cooperative.” The Circular defines a “labor service cooperative” as one engaged in providing service to a principal employer, and a “worker’s cooperative” as a cooperative organized by workers, including self-employed who are owners and members of the enterprise. Together with these definitions are the definitions of “contracting/subcontracting” which are the same as those given in DOLE’s D.O. No. 18-A. And then the CDA Circular proceeds to state:

**Section 6. Distinction and Authorized Activities**

a. Labor Service Cooperative — the cooperative is engaged exclusively in job contracting and subcontracting services to third party.

b. Workers Cooperative — this principally consists of providing employment and business opportunities to its members and manages it in accordance with the cooperative principles. *It cannot engage in contracting or subcontracting activity.* (Emphasis supplied — CAA)

The prohibition against “Labor-only Contracting and the “Other Prohibitions” in Secs. 6 and 7 of D.O. No. 18-A are likewise embodied in CDA Circular No. 2012-12.

Finally, this circular announces this directive:

Labor service and workers cooperatives are required to comply with the requirement of labor laws and its implementing rules and regulations.

2.5 **Consequence of LOC: Worker Supplied by Agency Becomes Employee of Client Company**


**Facts:** Philippine Bank of Communications and the Corporate Executive Search, Inc. (CESI) entered into an agreement under which CESI would provide “Temporary Services” to PBCom consisting of eleven (11) messengers, one of whom was Orpiada who had been assigned to the bank since June 1975.
He rendered messengerial services to the bank, within its premises, together with others doing similar job. In or about October 1976, the bank requested CESI to withdraw Orpiada’s assignment because Orpiada’s services “were no longer needed.” Orpiada filed a complaint against the bank for illegal dismissal and failure to pay the 13th-month pay.

During the compulsory arbitration proceedings, the Bank impleaded CESI as an additional respondent. Both the bank and CESI maintained that CESI (and not the bank) was Orpiada’s employer.

**Issue:** Whether or not an employer-employee relationship existed between the bank and Orpiada.

The bank maintained that Orpiada was an employee of CESI. The bank documents its position by pointing to the following provisions of its letter agreement with CESI: xxx

2. **Such individuals will nevertheless remain your [CESI’s] employees and you will, therefore, retain all liabilities arising from the new Labor Code as amended, Social Security Act and other applicable governmental decrees, rules and regulations, x x x**

**Ruling:** There is, of course, nothing illegal about hiring persons to carry out “a specific project or undertaking the completion or termination of which (was) determined at the time of the engagement of (the) employee, or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.” The letter agreement itself, however, merely required CESI to furnish the bank with eleven (11) messengers for “a contract period from January 19, 1976—.” The eleven (11) messengers were thus supposed to render “temporary” services for an indefinite or unstated period of time. Ricardo Orpiada himself was assigned to the bank’s offices from June 25, 1975 and rendered services to the bank until sometime in October 1976, or a period of about sixteen months. Under the Labor Code, however, any employee who has rendered at least one year of service, whether such service is continuous or not, shall be considered a regular employee (Article 281, second paragraph). Assuming, therefore, that Orpiada could properly be regarded as a casual (as distinguished from a regular) employee of the bank, he becomes entitled to be regarded as a regular employee of the bank as soon as he had completed one year of service to the bank. Employers may not terminate the service of a regular employee except for a just cause or when authorized under the Labor Code (Article 280[1] [now 279], Labor Code). It is not difficult to see that to uphold the contractual arrangement between the bank and CESI would in effect be to permit employers to avoid the necessity of hiring regular or permanent employees and to enable them to keep their employees indefinitely on a temporary or casual status, thus to deny them security of tenure in their jobs. Article 106 of the Labor Code is precisely designed to prevent such a result.

---

1Article 281 [referring to former Article 280; now 295, renumbered pursuant to RA No. 10151], Labor Code.

2Ibid.

3Ibid.
We hold that, in the circumstances of this case, CESI was engaged in “labor-only” contracting vis-a-vis the petitioner bank and in respect of Ricardo Orpiada, and that consequently, the petitioner bank is liable to Orpiada as if Orpiada had been directly employed not only by CESI but also by the bank. It may well be that the bank may in turn proceed against CESI to obtain reimbursement of, or some contribution to, the amounts which the bank will have to pay to Orpiada; but this is not necessary to determine here.

2.6 Consequence of LOC: Agency-Hired Employee Becomes Entitled to Benefits under the CBA of the Client Company


Facts: The petitioner employees were employees of Livi Manpower Services, Inc. (Livi), which assigned them to work as “promotional merchandisers” of California Manufacturing under a manpower supply agreement. The agreement provided that California has no control or supervision whatsoever over (Livi’s) workers with respect to how they accomplish their work, that Livi is an independent contractor and that “it is hereby agreed that it is the sole responsibility of [Livi] to comply with all existing as well as future laws, rules and regulations pertinent to employment of labor.”

It was further expressly stipulated that the assignment of workers to California shall be on a “seasonal and contractual basis.”

The petitioner employees were made to sign employment contracts with duration of six months, upon the expiration of which they signed new agreements with the same period, and so on. Unlike regular California employees, who received not less than P2,823.00 a month in addition to a host of fringe benefits and bonuses, they received P38.56 plus P15.00 in allowance daily.

The petitioners now allege that they had become regular California employees and demand, as a consequence whereof, similar benefits. They likewise claim that they were notified by California that they would not be rehired, hence, they filed an amended complaint charging California with illegal dismissal.

Issue: The labor arbiter's decision, affirmed by NLRC on appeal that no employer-employee relation exists between the petitioners and California.

Ruling: We reverse.

The existence of an employer-employee relation is a question of law and being such, it cannot be made the subject of agreement. Hence, the fact that the manpower supply agreement between Livi and California had specifically designated the former as the petitioner’s employer and had absolved the latter from any liability as an employer, will not erase either party’s obligations as an employer, if an employer-employee relation otherwise exists between the workers and either firm. At any rate, since the agreement was between Livi and California, they alone are bound by it, and the petitioners cannot be made to suffer from its adverse consequences.

This Court has consistently ruled that the determination of whether or not there is an employer-employee relation depends upon four standards: (1) the manner
PAYMENT OF WAGES

ART. 109

of selection and engagement of the putative employee; (2) the mode of payment of wages; (3) the presence or absence of a power of dismissal; and (4) the presence or absence of a power to control the putative employee’s conduct. Of the four, the right-of-control test has been held to be the decisive factor.

On the other hand, we have likewise held, based on Article 106 of the Labor Code, that notwithstanding the absence of a direct employer-employee relationship between the employer in whose favor work had been contracted out by a “labor-only” contractor, and the employees, the former has the responsibility, together with the “labor-only” contractor for any valid labor claims, by operation of law. The reason, so we held, is that the “labor-only” contractor is considered “merely an agent of the employer,” and liability must be shouldered by either one or shared by both.

There is no doubt that in the case at bar, Livi performs “manpower services,” meaning to say, it contracts out labor in favor of clients. We hold that it is one notwithstanding its vehement claims to the contrary, and notwithstanding the provision of the contract that it is “an independent contractor.” The nature of one’s business is not determined by self-serving appellations one attaches thereto but by the tests provided by statute and prevailing case law. The bare fact that Livi maintains a separate line of business does not extinguish the equal fact that it has provided California with workers to pursue the latter’s own business. In this connection, we do not agree that the petitioners had been made to perform activities “which are not directly related to the general business of manufacturing,” California’s purported “principal operation activity.” The petitioners had been charged with “merchandizing [sic] promotion or sale of the products of [California] in the different sales outlets in Metro Manila including task and occasional [sic] price tagging,” an activity that is, doubtless, an integral part of the manufacturing business. It is not, then, as if Livi had served as its (California’s) promotions or sales arm or agents, or otherwise, rendered a piece of work it (California) could not have itself done; Livi as a placement agency, had simply supplied it with the manpower necessary to carry out its (California) merchandising activities, using its (California’s) premises and equipment.

The fact that the petitioners have been hired on a “temporary or seasonal” basis merely is no argument either. As we held in Philippine Bank of Communications vs. NLRC [see above], a temporary or casual employee, under Article 281 of the Labor Code, becomes regular after service of one year, unless he has been contracted for a specific project. And we cannot say that merchandising is a specific project for the obvious reason that it is an activity related to the day-to-day operations of California.

It would have been different, we believe, had Livi been discretely a promotions firm, and that California had hired it to perform the latter’s merchandising activities. For then, Livi would have been truly the employer of its employees, and California, its client. The client, in that case, would have been a mere patron, and not an employer. The employees would not in that event be unlike waiters, who, although at the service of customers, are not the latter’s employees, but of the restaurant.

WHEREFORE, the petition is GRANTED. Judgment is hereby RENDERED: 2) ORDERING the respondent, the California Manufacturing Company, to REINSTATE
the petitioners with \textit{full status and rights of regular employees}; x x x all such other and further benefits as may be provided by \textit{existing collective bargaining agreement(s)} or other relations, or by law x x x.

3. \textbf{SECOND SET OF PROHIBITIONS: ARRANGEMENTS THAT VIOLATE PUBLIC POLICY (SECTION 7 OF D.O. NO. 18-A)}

There are forms of contracting that are \textit{not} labor-only contracting but nonetheless are prohibited because they contravene public policy. These are the contracting arrangements prohibited by Sec. 7 of D.O. No. 18-A which reads:

\textit{Section 7. Prohibitions.} Notwithstanding Section 6 of these Rules, the following are hereby declared prohibited for being contrary to law or public policy.

(A) Contracting out of a job, work or service when not done in good faith and not justified by the exigencies of the business such as the following:

(1) Contracting out of jobs, works or services when the same results in the termination or reduction of regular employees and reduction of work hours or reduction or splitting of the bargaining unit;

(2) Contracting out of work with a “cabo.”

(3) Taking undue advantage of the economic situation or lack of bargaining strength of the contractor’s employees, or undermining their security of tenure or basic rights, or circumventing the provisions of regular employment, in any of the following instances:

(i) Requiring them to perform functions which are currently being performed by the regular employees of the principal; and

(ii) Requiring them to sign, as a precondition to employment or continued employment, an antedated resignation letter; a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal, contractor or subcontractor from any liability as to payment of future claims.

(4) Contracting out of a job, work or service through an in-house agency.

(5) Contracting out of a job, work or service that is necessary or desirable or directly related to the business or operation of the principal by reason of a strike or lockout whether actual or imminent.
(6) Contracting out of a job, work or service being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization as provided in Article 248(c) [now 258] of the Labor Code, as amended.

(7) Repeated hiring of employees under an employment contract of short duration or under a Service Agreement of short duration with the same or different contractors, which circumvents the Labor Code provisions on security of tenure.

(8) Requiring employees under a 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 substantial different skills are required and this is made known to the employee at the time of engagement.

(9) Refusal to provide a copy of the Service Agreement and the employment contracts between the contractor and employees deployed to work in the bargaining unit of the principal’s bargaining agent to the sole and exclusive bargaining agent (SEBA).

(10) Engaging or maintaining by the principal of subcontracted employees in excess of those provided for in the applicable Collective Bargaining Agreement (CBA) or as set by the Industry Tripartite Council.

(B) Contracting out of jobs, works, or services, analogous to the above when not done in good faith and not justified by the exigencies of the business.

3.1 Good Faith

Good faith is an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of facts which would render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs.¹

Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another. Good faith is an opposite of fraud and of bad faith and its non-existence must be established by competent proof.²

²Tuazon and Co., Inc. vs. CA, 94 SCRA 413 [1979].
4. EXTENT OF EMPLOYER’S LIABILITY IN INVALID CONTRACTING AND VIOLATION OF OTHER PROHIBITIONS

Since labor-only contracting is not legitimate contracting, its effect is the creation of employer-employee relationship between the principal and the workers hired by the alleged contractor. There is transference or absorption of employment relationship from the alleged contractor to his client/principal. The latter, therefore, shoulders all the obligations of an employer, not just the payment of wages.

Where the contracting is found to be labor-only contracting or any of the forms prohibited for being contrary to public policy, the liability is immediately and directly imposed upon the principal. In such prohibited arrangements, the statute makes the employer directly responsible to the employees of the “labor-only” contractor as if such employees had been directly hired by the employer. In other words, the law itself implies or establishes an employer-employee relationship between the employer and the employees of the “labor-only” contractor, this time for a comprehensive purpose: preventing any violation or circumvention of any provision of this Code.1

The principal’s liability becomes direct and total as that of a directly-hiring employer.

Such total liability of the principal in case of LOC is established by Section 5, third paragraph of D.O. No. 18-A which states that “the principal shall be deemed the direct employer of the contractor’s employees in cases where there is a finding by a competent authority of labor-only contracting; or commission of prohibited activities as provided in Section 7, or a violation of either Section 8 or 9 hereof.”

This statement of the principal’s liability is repeated in Sec. 27 of said D.O. No. 18-A.

Whether one is a labor-only contractor and whether any of the prohibitions under Sec. 7 of D.O. No. 18-A has been committed are questions that are not always easy to resolve. Thus, Sec. 5, above, requires a finding by a “competent authority.” This writer believes that this refers to the office vested with jurisdiction over the labor issue at hand which calls for determination of employer-employee relationship. It may be the DOLE regional office under Article 128 or 129, or the med-arbiter in a petition for certification election where employment relationship is raised as an issue, or the Labor Arbiter in a complaint for money claim (exceeding P5,000.00) or in a complaint for regular employee status, or for an alleged illegal dismissal, or alleged ULP of the employer; or, finally, the “competent authority” may be a voluntary arbitrator, or the Secretary of Labor.

---

The existence of employer-employee relationship is a precondition to entitlement to labor standards and labor relations rights. Where labor standards compliance is complained of or where labor relations violations are raised, resolving them should not be stymied by an allegation of lack of employer-employee relationship. Such allegation should be considered as a preliminary incidental question, the resolution of which is encompassed in the authority to enforce or dispose of the main dispute at hand; otherwise, the authority of the office, properly lodged by law, will be decapitated like decapitating labor’s right to speedy justice.

This expedient determination of existence of employment relationship is what the court already did in favor of the Social Security Commission in the case Republic of the Phil. vs. Asiapro, and also in Dole Phil. vs. Estera, already discussed.

5. **LEGITIMATE CONTRACTING: INDEPENDENT CONTRACTOR/JOB CONTRACTING**

Section 4 of D.O. No. 18-A states that contracting or subcontracting shall be legitimate if all the following circumstances concur:

- (a) the contractor must be registered in accordance with these Rules and carries a distinct and independent business and undertakes to perform the job, work, or service on its own responsibility, according to its own manner and method, and free from control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
- (b) the contractor has substantial capital and/or investments; and
- (c) the Service Agreement ensures compliance with all the rights and benefits under Labor Laws.

The definition of “substantial capital” given under the topic Labor-only Contracting equally applies to legitimate contracting.

In legitimate or valid contracting, the subject of the contract is the performance of a job, and the contractor is an independent businessman who is capable of doing the job by his own means and methods. This definition was set forth in the early case of Andoyo vs. Manila Railroad Company, G.R. No. 34722, March 28, 1932, and repeated in many subsequent cases, one of which is Mafinco Trading vs. Ople.

In Mafinco Trading, the Court explains that an independent contractor is one who exercises independent employment and contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to the result of the work. “Among the factors to be considered are whether the contractor is carrying on an independent business; whether the work is part of the employer’s general business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign
the performance of the work to another; the power to terminate the relationship; the existence of a contract for the performance of a specified piece of work; the control and supervision of the work; the employer’s power and duties with respect to the hiring, firing, and payment of the contractor’s servants; the control of the premises; the duty to supply the premises, tools, appliances, material and labor, and the mode, manner, and terms of payment.”

To restate, the significant factor in determining the relationship of the parties is the presence or absence of supervisory authority to control the method and the details of performance of the service being rendered, and the degree to which the principal may intervene to exercise such control. The presence of such power of control is indicative of an employment relationship, while absence thereof is indicative of independent contractorship. In other words, the test to determine the existence of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer except only as to the result of the work.

Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees. For instance, complainant Sonza is an independent contractor by the fact (among other things) that he received a monthly talent fee of P317,000.00, a huge amount for an ordinary employment relationship. Furthermore, ABS-CBN could not retrench Sonza even if it should suffer severe losses; in fact ABS-CBN continued to pay Sonza’s talent fees during the remaining period of their Agreement although ABS-CBN had ceased broadcasting Sonza’s programs.

5.1 Judicial Notice of Job Contracting

In Neri vs. NLRC, Far East Bank & Trust Co., and Building Care Corp., G.R. Nos. 97008-09, July 23, 1993, the Court, after recognizing that BCC is a job contractor, said:

The Court has already taken judicial notice of the general practice adopted in several government and private institutions and industries of hiring independent contractors to perform special services. These services range from janitorial, security and even technical or other specific services such as those performed by petitioners Neri and Cabelin. While these services may be considered directly related to the principal business of the employer, nevertheless, they are not necessary in the conduct of the principal business of the employer.

1Mafinco Trading Corp. vs. Ople, 70 SCRA 139, March 25, 1976.
6. A MANPOWER COMPANY MAY BE A LABOR-ONLY CONTRACTOR IN ONE CASE BUT AN INDEPENDENT CONTRACTOR IN ANOTHER

In the case of Coca-Cola Bottlers, Phil. vs. Hingpit, et al., G.R. No. 127238, August 25, 1998, the Labor Arbiter had ruled that LIPERCON (the manning Company) was an independent contractor. On appeal, the NLRC reversed the arbiter and declared that Lipercon was a mere “labor-only” contractor. On this basis, it held that complainants were not employees of LIPERCON, but of COCA-COLA.

The Commission grounded its decision solely on an earlier case, Guarin, et al. vs. Lipercon, G.R. No. 86010, October 3, 1989, in which the Court held LIPERCON to be a “labor-only” contractor because it failed to prove that “it has substantial capital, investment, tools, etc.”

Not so in the present [Coca-Cola Bottler’s] case. Here, there is substantial evidence, detailed by the Labor Arbiter, to establish LIPERCON’s character as an independent contractor in the real sense of the word. The Labor Arbiter’s ruling is therefore more acceptable than that of the Commission because its decision was founded solely on an inapplicable precedent.

“**Lipercon proved to be an independent contractor. Aside from hiring its own employees and paying the workers their salaries, it also exercised supervision and control over them which is the most important aspect in determining employer-employee relations (Mafinco Trading Corp. vs. Ople, 70 SCRA 139; Rosario Brothers, Inc. vs. Ople, 131 SCRA 72). That it indeed has substantial capital is proven by the fact that it did not depend upon its billing on respondent regarding payment of workers’ salaries. And when complainants were separated from Lipercon, they signed quit-claim and release documents.**”

Escario, et al. vs. NLRC, et al., G.R. No. 124055, June 8, 2000 —

**Facts:** Petitioners alleged that they were employed by CMC as merchandisers. Among the tasks assigned to them were the withdrawing of stocks from the warehouse, the fixing of prices, price-tagging, displaying of merchandise, and the inventory of stocks. According to petitioners, the hiring, control and supervision of the workers and the payment of salaries, were all coursed by CMC through its agent D.L. Admark in order for CMC to avoid its liability as employer under the law.

Petitioners filed a case against CMC, demanding that they be declared CMC regular employees. During the pendency of the case, D.L. Admark terminated the petitioners’ employment.

CMC denied the existence of an employer-employee relationship and pointed to D.L. Admark as the employer of the petitioners. CMC argued that it was engaged in the manufacturing of food products and their distribution to wholesalers and retailers; that it was not allowed by law to engage in retail or direct sales to end-consumers; and that it hired independent job contractors such as D.L. Admark to provide the necessary promotional activities.
For its part, D.L. Admark admitted that it was the employer of the petitioners and that its primary business was advertising, promotion and publicity, including the sale and merchandising of goods and services. It further pointed out that as an independent contractor it served several clients which included Purefoods, Corona Supply, and herein respondent California Marketing.

On 29 July 1994, the Labor Arbiter rendered a decision finding that petitioners were the employees of CMC as they were engaged in activities that are necessary and desirable in the usual business or trade of CMC. In justifying its ruling, the Labor Arbiter cited the case of *Tabas vs. CMC* where the Court ruled that therein petitioner merchandisers were employees of CMC.

**Issue:** Whether petitioners are employees of CMC or of D.L. Admark.

**Held:** It is necessary to determine whether D.L. Admark is a labor-only contractor or an independent contractor. Petitioners are of the position that D.L. Admark is a labor-only contractor and cites the ruling in the case of *Tabas* for the following reasons: (1) The petitioners are merchandisers and the petitioners in the *Tabas* case are also merchandisers who have the same nature of work; (2) the respondent in this case is California Manufacturing, Co., Inc. while respondent in the *Tabas* case is the same California Manufacturing Co., Inc.; (3) the agency in the *Tabas* case is Livi Manpower Services. In this case, there are at least, three agencies namely: the same Livi Manpower Services; the Rank Manpower Services, and D.L. Admark whose participation is to give and pay the salaries of the petitioners and that the money came from the respondent CMC as in the *Tabas* case.

Petitioners’ reliance on the Tabas case is misplaced. In said case, the Supreme Court ruled that therein contractor Livi Manpower Services was a mere placement agency and had simply supplied herein petitioner with the manpower necessary to carry out the company’s merchandising activity. The Court further stated that:

> It would have been different, we believe, had Livi been discreetly a promotions firm, and that California had hired it to perform the latter’s merchandising activities. For then, Livi would have been truly the employer of its employees and California its client.

In other words, CMC can validly farm out its merchandising activities to a legitimate independent contractor.

In the recent case of *Alexander Vinoya vs. NLRC, et al.*, [the Supreme Court] ruled that in order to be considered an independent contractor it is not enough to show substantial capitalization or investment in the form of tools, equipment, machinery and work premises. In addition, the following factors need be considered: (a) whether the contractor is carrying on an independent business; (b) the nature and extent of the work; (c) the skill required; (d) the term and duration of the relationship; (e) the right to assign the performance of specified pieces of work; (f) the control and supervision of the workers; (g) the power of the employer with respect to the hiring, firing and payment of workers of the contractor; (h) the control of the premises;

---

1See *Tabas vs. CMC* in the topic Consequence of L.O.C.
PAYMENT OF WAGES

ART. 109

(i) the duty to supply premises, tools, appliances, materials, and labor; and (j) the mode, manner and terms of payment.

Moreover, by applying the four-fold test used in determining employer-employee relationship, the status of D.L. Admark as the true employer of petitioners is further established.

7. EXTENT OF PRINCIPAL’S LIABILITY IN LEGITIMATE CONTRACTING

We may recall that Article 109 holds an indirect employer “responsible with his contractor or subcontractor for any violation of any provision of the Labor Code.” Implementing this Article, D.O. No. 18-02 (2002) in Sec. 7 states:

“The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation.”

But the same Section continues with this statement: “The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provisions of the Labor Code, including the failure to pay wages.”

The statement of the principal’s solidary liability has remained unchanged in the Implementing Rules (D.O. No. 18-A) of 2011. This is because Article 109 itself of the Labor Code, which the Rules are implementing, has not changed at all since 1974.

Under the Code and the Rules, therefore, the liability of the principal in legitimate contracting is not only for unpaid wages but, broadly, for any violations of the Labor Code. This encompassing liability of the principal, however, has been the subject of disputes, and court rulings have interjected some limits or qualifications. This we explain in the next sub-topics. We differentiate between (1) liability for unpaid wages and (2) liability for “other violations.”

7.1 For Wages and Money Claims

In relation only to wages, Article 107 (second paragraph) states:

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

This provision says that [the principal/indirect employer] is “jointly and severally” liable, while the implementing rule through D.O. No. 18-A says “solidarily” liable. In civil law “joint and several” is the same as “solidarily,” i.e. if A and B are debtors to C for one thousand pesos, this entire amount is collectible.
from either A or B. But if the obligation is “joint” only, only part of the one thousand is collectible from A or B.1

The indirect employer cannot escape this liability even if he has paid the workers’ wage rates in accordance with the stipulations in the contract with the contractor or agency. The employees are not privy to the contract. Labor standard legislations, such as Articles 106, 107, and 109, are enacted to alleviate the plight of workers whose wages barely meet the spiraling costs of their basic needs. They are considered written in every contract, and stipulations in violation thereof are considered not written.2

Similarly, legislated wage increases are deemed amendments to the contract. Thus, employers cannot hide behind their contracts in order to evade their or their contractors’ or subcontractors’ liability for noncompliance with the statutory minimum wage.3

This is not unduly burdensome to the employer. Should the indirect employer be constrained to pay the workers, it can recover whatever amount it paid, in accordance with the terms of the service contract between itself and the contractor.4

But fairness dictates that the indirect employer should not be held liable for wage differentials incurred while the complainants were assigned to other companies.

Such responsibility should be understood to be limited to the extent of the work performed under the contract, in the same manner and extent that he is liable to the employees directly employed by him. So long as the work, task, job or project has been performed for petitioner’s benefit or on its behalf, the liability accrues for such period even if, later on, the employees are eventually transferred or reassigned elsewhere.5

7.1a Reimbursement

The joint and several liability of the contractor and the principal under Articles 106, 107, and 109 of the Labor Code is mandated to assure compliance of the provisions including the statutory minimum wage. The contractor is made liable by virtue of his status as the direct employer. On the other hand, the principal is made the indirect employer of the contractor’s employees for purposes of paying the employees their wages should the contractor be unable to pay them.

---

1Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. IV, 206.
3Ibid.
4Ibid.
5Ibid.
In the event the contractor pays his obligation to the employees pursuant to a decision of the labor arbiter, the contractor has the right of reimbursement from the principal under Article 1217 of the Civil Code which provides in part:

Article 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

The question that arises is whether the contractor may claim reimbursement from the principal through a cross-claim filed with the labor court. The Court says no in the case *Jaguar Security and Investigation Agency vs. Sales, et al.*, G.R. No. 162420, April 22, 2008. The Court continues:

This question has already been decisively resolved in *Lapanday Agricultural Development Corporation vs. Court of Appeals, to wit*:

We resolve first the issue of jurisdiction. We agree with the respondent that the RTC has jurisdiction over the subject matter of the present case. It is well-settled in law and jurisprudence that where no employer-employee relationship exists between the parties and no issue is involved which may be resolved by reference to the Labor Code, other labor statutes or any collective bargaining agreement, it is the Regional Trial Court that has jurisdiction. In its complaint, private respondent is not seeking any relief under the Labor Code but seeks payment of a sum of money and damages on account of petitioner’s alleged breach of its obligation under their Guard Service Contract. **The action is within the realm of civil law, hence jurisdiction over the case belongs to the regular courts.**

7.1b Payment before Reimbursement

The contractor may seek reimbursement only after it has paid its employees. In the same *Jaguar* case, above, the Court reiterates:

Moreover, the liability of Delta Milling [the principal] to reimburse petitioner [job contractor] will only arise if and when petitioner actually pays its employees the adjudged liabilities. Payment, which means not only the delivery of money but also the performance, in any other manner, of the obligation, is the operative fact which will entitle either of the solidary debtors to seek reimbursement for the share which corresponds to each of the debtors. In this case, it appears that petitioner has yet to pay the guard employees. As stated in *Lapanday:*
However, it is not disputed that the private respondent has not actually paid the security guards the wage increases granted under the Wage Orders in question. Neither is it alleged that there is an extant claim for such wage adjustments from the security guards concerned, whose services have already been terminated by the contractor. Accordingly, private respondent had no cause of action against petitioner to recover the wage increases. Needles to stress, the increases in wages are intended for the benefit of the laborers and the contractor may not assert a claim against the principal for salary wage adjustments that it has not actually paid. Otherwise, as correctly put by the respondent, the contractor would be unduly enriching itself by recovering wage increases, for its own benefit.

7.1c In Construction or Service Contracting, Principal’s Liability Limited to the Wage Increase Only

In Construction or Service Contracting, Principal’s Liability Limited to the Wage Increase Only

**National Food Authority et al. vs. Masada Security Agency, Inc., G.R. No. 163448, March 8, 2005 —**

Facts: On September 17, 1996, respondent MASADA Security Agency, Inc., entered into a one-year contract to provide security services to NFA. When the contract expired, the parties extended its effectivity on a monthly basis. Meanwhile, the Regional Tripartite Wages and Productivity Board issued several wage orders mandating increases in the daily wage rate. Masada requested NFA for upward adjustment in the monthly contract rate consisting of the increase in the daily minimum wage of the security guards as well as the corresponding raise in their overtime pay, holiday pay, 13th month pay, holiday and rest day pay. It also claimed increases in Social Security System (SSS) and Pag-ibig premiums as well as the administrative cost and margin.

NFA granted the request only with respect to the increase in the daily wage by multiplying the amount of the mandated increase by 30 days. NFA refused to pay the adjustment in the other benefits and remunerations.

The issue for resolution is whether the liability of principals in service contracts under R.A. No. 6727 and the wage orders is limited only to the increment in the minimum wage.

Ruling: Payment of the increases in the wage rate of workers is ordinarily shouldered by the employer. Section 6 of R.A. No. 6727, however, expressly lodges said obligation to the principals or indirect employers in construction projects and establishments providing security, janitorial and similar service. Substantially the same provision is incorporated in the wage orders issued by the RTWPB. Section 6 of R.A. No. 6727, provides:

SEC. 6. In the case of contracts for construction projects and for security, janitorial and similar service, the prescribed increases in the wage rates of the workers shall be borne by the principals or clients of the construction/service contractors and the contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client. (Emphasis supplied)
PAYMENT OF WAGES

NFA claims that its additional liability under the aforecited provision is limited only to payment of the increment in the statutory minimum wage rate, i.e., the rate for a regular eight (8) hour work day.

The contention is meritorious.

The term “wage” as used in Section 6 of R.A. No. 6727 pertains to no other than the “statutory minimum wage” which is defined under the Rules Implementing R.A. No. 6727 as the lowest wage rate fixed by law that an employer can pay his worker. The basis thereof under Section 7 of the same Rules is the normal working hours, which shall not exceed eight hours a day. Hence, the prescribed increases or the additional liability to be borne by the principal under Section 6 of R.A. No. 6727 is the increment or amount added to the remuneration of an employee for an 8-hour work.

It is not within the province of this Court to inquire into the wisdom of the law for, indeed, we are bound by the words of the statute. The law is applied as it is.

7.2 For Other Violations

Having discussed the principal’s liability for wages and money claims of the contractor’s employees, we now focus on the liability for other violations of the Labor Code. For this kind of violations, the extent of the principal’s liability under Sec. 5 (second paragraph) of D.O. No. 18-A reflects the provisions of Article 109. They both speak of the indirect employer’s “solidary liability.” Is it a blanket, all-inclusive, liability?

We should ask: If the contractor busts his employees’ union, or dismisses an employee illegally, should those violations be treated as violations by the principal? If the answer be a blanket yes, it would be most unfair and perhaps absurd. A legitimate contractor is a legitimate employer. Why should his decisions be the responsibility of another employer? When an employer-principal contracts with an employer-contractor, he does not guarantee that the latter will be law-abiding.

Indeed, the Court has interpreted the liability of the principal under Article 109 (and now also under D.O. No. 18-A) as a qualified or limited liability. This means that if the liability is for failure to pay the minimum wage, or the service incentive leave or other benefits derived from or provided for by law, the principal is equally liable with the contractor as if the principal were the direct employer. But if the liability is invested with punitive character, such as an award for backwages and separation pay because of an illegal dismissal of the contractor’s employee, the liability should be solely that of the contractor in the absence of proof that the principal conspired with the contractor in the commission of the illegal dismissal.

Rosewood Processing, Inc. vs. NLRC, G.R. Nos. 116476-84, May 21, 1998 —

Articles 106, 107, and 109 hold an employer jointly and severally liable with its contractor or subcontractor, as if it were the direct employer. The liability under
these articles, however, does not extend to the payment of backwages and separation pay of employees who were constructively or illegally dismissed by the contractor, e.g., a security agency, where it is not shown that the principal/indirect employer had conspired with the contractor in effecting the illegal dismissal.

The solidary liability for payment of backwages and separation pay is limited under Article 106 “to the extent of the work performed under the contract”; under Article 107, to “the performance of any work, task job or project,” and under Article 109 “to the extent of their civil liability under this Chapter (on payment of wages).”

These provisions cannot apply to petitioner [indirect employer], considering that the complainants were no longer working for or assigned to it when they were illegally dismissed. Furthermore, an order to pay backwages and separation pay is invested with a punitive character, such that an indirect employer should not be made liable without a finding that it had committed or conspired in the illegal dismissal.

The liability arising from an illegal dismissal is unlike an order to pay the statutory minimum wage, because the worker’s right to such wage is derived from law. The proposition that payment of backwages and separation pay should be covered by Article 109, which holds an indirect employer solidarily responsible with his contractor or subcontractor for “any violation of any provision of this Code,” would have been tenable if there were proof — there was none in this case — that the principal/employer had conspired with the contractor in the acts giving rise to the illegal dismissal.

The nonliability of the principal for separation pay of the contractor’s employees is reiterated in GSIS vs. NLRC, et al. (G.R. No. 180045, November 17, 2010) and Meralco Industrial Engineering Services Corp. vs. NLRC, et al. (G.R. No. 145402, March 14, 2008). The Court also ruled that the contractor’s liability for underpaid wages and unpaid overtime work could be enforced against the surety bond posted by the contractor as required by the principal. The law’s aim in imposing indirect liability upon the principal is to assure payment of monetary obligations to the workers. This aim is accomplished through the principal’s requiring the posting of a bond. After satisfying from the bond the unpaid wages and overtime pay, the contractor cannot recover from the principal if the principal has already handed over to the contractor the amount covering the wages or the pay increase mandated by a wage order.

In a situation where the contractor has the right to claim reimbursement from the principal, his claim cannot be pursued as a cross-claim in the proceedings initiated by the employees’ complaint against their employer-contractor. Instead, the contractor’s claim against the principal must be pursued in a separate civil suit in the regular court, not in the NLRC.¹

8. RIGHTS OF CONTRACTOR’S EMPLOYEES

The employees of a legitimate contractor (misleadingly called “contractual employees” in D.O. No. 18-02) are entitled to the same legal rights as the employees of a principal or of any other contractor/subcontractor. A great improvement of both D.O. No. 18-02 and D.O. No. 18-A (2011) over the previous department order is the prominence given to the enumeration of rights of contractor’s employees. Section 8 of D.O. No. 18-A states:

All contractor’s employees, whether deployed or assigned as reliever, seasonal, weekender, temporary or promo jobbers, shall be entitled to all the rights and privileges as provided for in the Labor Code, as amended, to include the following:

(a) Safe and healthful working conditions;
(b) Labor standards such as but not limited to service incentive leave, rest days, overtime pay, holiday pay, 13th month pay and separation pay as may be provided in the Service Agreement or under the Labor Code;
(c) Retirement benefits under the SSS or retirement plans of the contractor, if there is any;
(d) Social security and welfare benefits;
(e) Self-organizations, collective bargaining and peaceful concerted activities; and
(f) Security of tenure.

An important item in the annual report of a contractor is a sworn undertaking that the benefits from the Social Security System (SSS), the Home Development Mutual Fund (HDMF), PhilHealth, Employees Compensation Commission (ECC), and remittances to the Bureau of Internal Revenue (BIR) due its contractual employees have been made during the subject reporting period.

To strengthen the labor rights of contractor’s employees, Section 9 of D.O. No. 18-A requires certain conditions to be expressly stipulated in the employment contract. It reads:

SECTION 9. Required contracts under these Rules.

(a) Employment contract between the contractor and its employee. Notwithstanding any oral or written stipulations to the contrary, the contract between the contractor and its employee shall be governed by the provisions of Articles 279 and 280 [now 293 and 294 – CAA] of the Labor Code, as amended. It shall include the following terms and conditions:

i. The specific description of the job, work or service to be performed by the employee;
ii. The place of work and terms and conditions of employment, including a statement of the wage rate applicable to the individual employee; and
iii. The term or duration of employment that must be co-extensive with the Service Agreement or with the specific phase of work for which the employee is engaged.

The contractor shall inform the employee of the foregoing terms and conditions of employment in writing on or before the first day of his/her employment.

(b) Service Agreement between the principal and the contractor. The Service Agreement shall include the following:

i. The specific description of the job, work or service being subcontracted.

ii. The place of work and terms and conditions governing the contracting arrangement, to include the agreed amount of the services to be rendered, the standard administrative fee of not less than ten percent (10%) of the total contract cost.

iii. Provisions ensuring compliance with all the rights and benefits of the employees under the Labor Code and these Rules on: provision for safe and healthful working conditions; labor standards such as, service incentive leave, rest days, overtime pay, 13th month pay and separation pay; retirement benefits; contributions and remittance of SSS, Philhealth, Pag-Ibig Fund, and other welfare benefits; the right to self-organization, collective bargaining and peaceful concerted action; and the right to security of tenure.

iv. A provision on the Net Financial Contracting Capacity of the contractor, which must be equal to the total contract cost.

v. A provision on the issuance of the bond/s as defined in Section 3(m) renewable every year.

vi. The contractor or subcontractor shall directly remit monthly the employers’ share and employees’ contribution to the SSS, ECC, Philhealth and Pag-Ibig.

vii. The term or duration of engagement.

The Service Agreement must conform to the DOLE Standard Computation and Standard Service Agreement, which form part of the Rules as its Annexes “A” and “B.”

8.1 Security of Tenure

Specifically as regards security of tenure, D.O. No. 18-A reiterates codal provisions on the matter. Section 11 states:

It is understood that all contractor’s employees enjoy security of tenure regardless of whether the contract of employment is co-terminus with the service agreement, or for a specific job, work or service, or phase thereof.
To strengthen the security of tenure, D.O. No. 18-A goes to the extent of detailing the process to be observed in terminating the employment of contractor’s employees. We need not take it up here because the process is an established standard in employment termination, a subject properly covered in Book VI of the Code in volume two of this work.

8.2 Duties of the Principal

But here must be noted a significant innovative statement in D.O. No. 18-A: the observance of the law and rules on labor contracting is a responsibility not only of contractors but also of the principals, the clients of contractors. Section 10, titled “Duties of the Principal,” states:

Pursuant to the authority of the Secretary of Labor to restrict or prohibit the contracting of labor to protect the rights of the workers and to ensure compliance with the provisions of the Labor Code, as amended, the principal, as the indirect employer or the user of the services of the contractor, is hereby required to observe the provisions of these Rules.

For instance, as the Rules require contractors to register with DOLE, a principal ought not to deal with an unregistered contractor. This we take up below.

8.3 Effect of Termination of Employment

In case the termination of employment is caused by the pre-termination of the Service Agreement not due to authorized causes under Article 297, the right of the contractor’s employee to unpaid wages and other unpaid benefits including unremitted legal mandatory contributions, e.g., SSS, Philhealth, Pag-Ibig, ECC, shall be borne by the party at fault without prejudice to the solidary liabilities of the parties to the Service Agreement.1

Where the termination results from the expiration of the service agreement, or from the completion of the phase of the job, work or service for which the employee is engaged, the latter may opt for payment of separation benefits as may be provided by law or the Service Agreement without prejudice to his/her entitlement to the completion bonuses or other emoluments, including retirement benefits whenever applicable.2

9. REGISTRATION OF CONTRACTORS

Aside from the mandatory stipulations in the employment contract, another device to secure the employees’ labor rights is the registration of contractors with the DOLE regional office where the applicant contractor principally operates. D.O. No. 18-A details the registration requirements, the submission of semi-annual reports, and the grounds for delisting a contractor.

---

1Sec. 13, DO No. 18-A.
2Ibid.
The applicant for registration should present proof of substantial capital, copy of registration certificates from government regulatory agencies, e.g., SEC, DTI, etc., and among other documents its audited financial statements.

The rules unequivocally state: “Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.” Conversely, does registration presume that the registrant is a legitimate contractor? D.O. No. 18-A itself makes no statement to this effect. But the “Q & A on Contracting/Sub-contracting” issued by DOLE states that the Certificate of Registration “stands as DOLE guarantee to the ‘user enterprise’ and to the workers that the registrant is a legitimate contractor and substantially capitalized.”

Is the DOLE guarantee valid? Does it have legal basis? Apart from the manner the so-called DOLE guarantee is done, the validity or correctness of the guarantee is highly questionable. Four elements make labor contracting legal and legitimate, namely: (1) being registered properly with DOLE; (2) adequate capital; (3) independent business of the contractor or performance of the contracted job free from the control of the principal except as to the result or desired end; and (4) control or supervision of the workers by the contractor, not by the principal, over the manner and method of executing the job by the contractor’s workers. The first two requisites can be satisfied or proved by the fact of registration with DOLE. But the other two cannot be proved or fulfilled by the mere fact of registration. They arise from and are proved only by actual facts, observable and verifiable mainly from the relationship and conduct of the parties. The factual relationship and conduct of the parties cannot be proved by a mere act of registering with DOLE. Only verifiable actual facts can prove them. Thus, despite the registration certificate, actual facts may prove that the labor contracting partakes of the nature of labor-only contracting. We believe, in short, that in the same way that employer-employee relationship is not determined by the name of the contract or by its stipulations, so also legitimate labor contracting is not proved by the mere fact of registration with the DOLE under D.O. No. 18-A.

9.1 Effect of Registration or Nonregistration

The court in fact held in 2008 that a legitimate contractor qualifies as such despite nonregistration with DOLE. If the contractor directly supervises the workers and imposes disciplinary action, this act strengthens the fact that the contractor is the employer of the workers it hires.

xxx It is the BMA [contractor] which actually conducts the hauling, storage, handling, transporting, and delivery operations of SMC’s products pursuant to their warehousing and Delivery Agreement. BMA itself hires and supervises its own workers to carry out the aforesaid business activities. Apart from the fact that it was BMA which paid for the wages and benefits, as well as SSS contributions of petitioners, it was also the management of BMA which directly supervised and imposed disciplinary actions on the basis of established rules and regulations of the company. The documentary evidence consisting
of numerous memos throughout the period of petitioners’ employment leaves no doubt in the mind of this Court that petitioners [workers] are only too aware of who is their true employer. Petitioners received daily instructions on their tasks from BMA management, particularly, private respondent, and whenever they committed lapses or offenses in connection with their work, it was to said officer that they submitted compliance, such as written explanation, and brought matters connected with their specific responsibilities.

The employer-employee relationship between BMA and petitioners is not tarnished by the absence of registration with DOLE as an independent job contractor on the part of BMA. The absence of registration only gives rise to the presumption that the contractor is engaged in labor-only contracting, a presumption that respondent BMA ably refuted. (Aklan, et al. vs. San Miguel Corp., BMA Philasia, Inc., et al., G.R. No. 168537, December 11, 2008)

The preceding ruling was made in 2008. In 2010, the Court took a further step in declaring that registration is not proof of being an independent contractor.

The Certificate of Registration as an Independent Contractor issued by a DOLE Regional Office is not a conclusive evidence of being an independent contractor. The fact of registration simply prevents the legal presumption of being a mere labor-only contractor from arising. In distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered.

In view of these rulings, we summarize: Labor contractors are mandatorily required to register with DOLE. Failure to register presumes that the non-registrant is an LOC. This, however, is a disputable presumption. Although unregistered the contractor may prove that it is a legitimate contractor. On the other hand, the fact of being registered is not conclusive proof of being a legitimate contractor. Neither does the registration presume the registrant to be a legitimate contractor. Actual conduct of the relationship, not mere registration, proves independent contractorship. Facts must show that the contractor has independent business and that he performs the contracted job free from control and supervision of the principal except as regards the pre-agreed result.

ART. 110. WORKER PREFERENCE IN CASE OF BANKRUPTCY

In the event of bankruptcy or liquidation of an employer’s business, his workers shall enjoy first preference as regards their wages and other monetary claims, any provisions of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before claims of the government and other creditors may be paid.

---

1San Miguel vs. Semillan, G.R. No. 164257, July 5, 2010.
2As amended by Sec. 1, R.A. No. 6715, March 21, 1989.
ART. 110  CONDITIONS OF EMPLOYMENT

COMMENTS

1. PREFERENCE OF WORKERS’ MONEY CLAIM

The Revised Rules and Regulations Implementing the Labor Code, as amended, provides: “Unpaid wages earned by the employees before the declaration of bankruptcy or judicial liquidation of the employer’s business shall be given first preference and shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.”

Article 110, as amended by R.A. No. 6715, expands worker preference to cover not only unpaid wages but also other monetary claims to which even claims of the Government must be deemed subordinate. Section 10, Rule III, Book III of the Omnibus Rules Implementing the Labor Code has also been accordingly amended. Notably, the terms “declaration” of bankruptcy or “judicial” liquidation have been eliminated. And yet the Supreme Court ruled that a declaration of bankruptcy or a judicial liquidation must be present before the worker’s preference may be enforced. Thus, Article 110 of the Labor Code and its implementing rule cannot be invoked without a formal declaration of bankruptcy or a liquidation order.

To hold that Article 110 is also applicable in extrajudicial proceedings would be putting the worker in a better position than the State which could only assert its own prior preference in case of a judicial proceeding. Article 110 must not be viewed in isolation and must always be reckoned with the provisions of the Civil Code.

What Article 110 of the Labor Code establishes is not a lien, but a preference of credit in favor of employees. This simply means that during bankruptcy, insolvency or liquidation proceedings involving the existing properties of the employer, the employees have the advantage of having their unpaid wages satisfied ahead of certain claims which may be proved therein.

Article 110 of the Labor Code did not sweep away the overriding preference accorded under the scheme of the Civil Code to tax claims of the government or any subdivision thereof which constitutes a lien upon properties of the insolvent.

It is grave abuse of discretion on the part of the labor arbiter in ruling that the employees may enforce their first preference in the satisfaction of their claims over those of the mortgagor in the absence of a declaration of bankruptcy or judicial liquidation of the employer. There is of course nothing that prevents

---

1Sec. 10, Rule VIII, Book III.
3Development Bank of the Philippines vs. Secretary of Labor, G.R. No. 79351, November 28, 1989.
4Ibid.
the employees from instituting involuntary insolvency or any other appropriate proceeding against their employer where the employees’ claims can be asserted with respect to their employer’s assets.\footnote{Development Bank of the Philippines vs. Secretary of Labor, G.R. No. 79351, November 28, 1989.}

In fine, the right to preference given to workers under Article 110 of the Labor Code cannot exist in any effective way prior to the time of its presentation in distribution proceedings. It will find application when, in proceedings such as insolvency, such unpaid wages shall be paid in full before the “claims of the Government and other creditors” may be paid. But, for an orderly settlement of a debtor’s assets, all creditors must be convened, their claims ascertained and inventoried, and thereafter the preferences determined in the course of judicial proceedings which have for their object the subjection of the property of the debtor to the payment of his debt or other lawful obligations. Thereby, an orderly determination of preference of creditors’ claims is assured\footnote{Philippine Savings Bank vs. Lantin, No. L-33929, September 2, 1983, 124 SCRA 176.} the adjudication made will be binding on all parties-in-interest, since those proceedings are \textit{in rem}; and the legal scheme of classification, concurrence and preference of credits in the Civil Code, the Insolvency Law, and the Labor Code is preserved in harmony.\footnote{Development Bank of the Philippines vs. NLRC, G.R. No. 82763, March 19, 1990.}

The above ruling is reiterated in \textit{Bolinao vs. Padolina}, G.R. No. 81415, decided on June 6, 1990.

\textbf{1.1 Dissent}

It should be noted, nonetheless, that Mr. Justice Padilla, citing several reasons, dissented from the majority view in \textit{DBP vs. NLRC}, G.R. Nos. 82763-64. He said in part:

With the amendment of Article 110 of the Labor Code by Republic Act 6715, a three-tier order of preference is established wherein unpaid wages and other monetary claims of workers enjoy absolute preference over all other claims, including those of the Government, in cases where a debtor-employer is unable to pay in full all his obligations. The absolute preference given to monetary claims of workers, to which claims of the government, \textit{i.e.}, taxes, are now subordinated, manifests the clear and deliberate intent of the lawmaker to put flesh and blood into the express Constitutional policy of protecting the rights of workers and promoting their welfare.

I thus take exception to the proposition that prior formal declaration of insolvency or bankruptcy or a judicial liquidation of the employer’s
business is a condition *sine qua non* to the operation of the preference accorded to workers under Article 110 of the Labor Code.

2. **COVERAGE OF THE PREFERENCE**

For purposes of application of Article 110, termination pay is reasonably regarded as forming part of the remuneration or other money benefits accruing to the employees or workers by reason of their having previously rendered services. Hence, separation pay must be considered as part of remuneration for services rendered or to be rendered.\(^1\)

As already mentioned, the preference under Article 110 covers not only unpaid wages but also all other monetary claims.

**ART. 111. ATTORNEY’S FEES**

(a) In cases of unlawful withholding of wages the culpable party may be assessed attorney’s fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney’s fees, which exceed ten percent of the amount of wages recovered.

**COMMENTS AND CASES**

1. **TWO CONCEPTS OF ATTORNEY’S FEE**

   There are two commonly accepted concepts of attorney’s fees, the so-called ordinary and extraordinary. In its **ordinary concept**, an attorney’s fee is the reasonable compensation paid to a lawyer by his client for the legal services the former has rendered to the latter. The basis of this compensation is the fact of the attorney’s employment by and his agreement with the client. In its **extraordinary concept**, attorney’s fees are deemed indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances in which these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically paragraph 7 thereof, which pertains to actions for recovery of wages, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. Article 111 of the Labor Code, as amended, contemplates the extraordinary concept of attorney’s fees.\(^2\)

2. **AWARDED ATTORNEY’S FEE MAY NOT EXCEED TEN PERCENT, BUT BETWEEN LAWYER AND CLIENT QUANTUM MERUIT MAY APPLY**

   The fees mentioned in Article 111 are attorney’s fees awarded as indemnity to the prevailing party. It is imposed upon the losing party by the adjudicator, who


\(^2\)Ortiz vs. San Miguel Corp., G.R. Nos. 151983-84, July 31, 2008; PCL Shipping Phil. vs. NLRC, G.R. No. 153031, December 14, 2006.
may be the labor arbiter, the regional director, and other authorized adjudicators. Such awarded attorney’s fee cannot exceed ten percent. But outside of that, as between the lawyer and the client, the attorney’s fee may exceed ten percent on the basis of *quantum meruit*.

*Traders Royal Bank Employees Union-Independent vs. NLRC and Emmanuel E. Cruz*, G.R. No. 120592, March 14, 1997 —

The ten percent (10%) attorney’s fees provided for in Article 111 of the Labor Code and Section 11, Rule VIII, Book III of the Implementing Rules is the maximum of the award that may thus be granted. Article 111 thus fixes only the limit on the amount of attorney’s fees the victorious party may recover in any judicial or administrative proceedings and it does not even prevent the NLRC from fixing an amount lower than the ten percent (10%) ceiling prescribed by the article when circumstances warrant it.

The measure of compensation for private respondent’s services as against his client should properly be addressed by the rule of *quantum meruit* long adopted in this jurisdiction. *Quantum meruit*, meaning “as much as he deserves,” is used as the basis for determining the lawyer’s professional fees in the absence of a contract, but recoverable by him from his client.

Where a lawyer is employed without a price for his services being agreed upon, the courts shall fix the amount on *quantum meruit* basis. In such a case, he would be entitled to receive what he merits for his services.

It is essential for the proper operation of the principle that there is an acceptance of the benefits by one sought to be charged for the services rendered under circumstances as reasonably to notify him that the lawyer performing the task was expecting to be paid compensation therefore. The doctrine of *quantum meruit* is a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.

Over the years and through numerous decisions, this Court has laid down guidelines in ascertaining the real worth of a lawyer’s services. These factors are now codified in Rule 20.01, Canon 20 of the Code of Professional Responsibility and should be considered in fixing a reasonable compensation for services rendered by a lawyer on the basis of *quantum meruit*. These are: (a) the time spent and the extent of services rendered or required; (b) the novelty and difficulty of the questions involved; (c) the importance of the subject matter; (d) the skill demanded; (e) the probability of losing other employment as a result of acceptance of the proffered case; (f) the customary charges for similar services and the schedule of fees of the IBP chapter to which the lawyer belongs; (g) the amount involved in the controversy and the benefits resulting to the client from the services; (h) the contingency or certainty of compensation; (i) the character of the employment, whether occasional or established; and (j) the professional standing of the lawyer.

---

1Cited in Kaisahan at Kapatiran ng mga Manggagawa, etc. vs. Manila Water Co., Inc., G.R. No. 174179, November 16, 2011.
As already stated, Article 111 of the Labor Code regulates the amount recoverable as attorney’s fees in the nature of damages sustained by and awarded to the prevailing party. It may not be used therefore, as the lone standard in fixing the exact amount payable to the lawyer by his client for the legal services he rendered. Also, while it limits the maximum allowable amount of attorney’s fees, it does not direct the instantaneous and automatic award of attorney’s fees in such maximum limit.

In Taganas vs. NLRC, Escultura, et al., G.R. No. 118746, September 7, 1995, the Court ruled that, despite agreement of the client, a lawyer cannot demand 50% (of the benefits won by an employee) as a contingent fee for handling the case. Such arrangement, said the court, is contrary to law as it is prohibitively high.

3. AWARD OF ATTORNEY’S FEE NOT LIMITED TO CASES OF WAGE RECOVERY

In what labor cases may attorney’s fees be awarded?

In Reahs Corporation, the Court cites only two kinds of cases where attorney’s fees may be assessed: (1) cases arising from unlawful withholding of wages and (2) cases arising from collective bargaining negotiations. The Court said:

The last issue raised by petitioners is whether there is legal basis for the payment of 10% attorney’s fees out of the total amount awarded to private respondents Red and Tulabing. The Court finds this portion of the assailed decision to have been rendered with grave abuse of discretion as both the labor arbiter and the NLRC failed to make an express finding of fact and cite the applicable law to justify the grant of such award. Under Article 111 of the Labor Code, 10% attorney’s fees may be assessed only in cases where there is an unlawful withholding of wages, or under Article 222 — those arising from collective bargaining negotiations that may be charged against union funds in an amount to be agreed upon by the parties. None of these situations exists in the case at bar. (Reahs Corporation vs. National Labor Relations Commission, G.R. No. 117473, April 15, 1997)

Before 1997 ended, however, the Court rendered a different interpretation of Article 111. In Heirs of Aniban, which involves claims for death benefits of a deceased seaman, the Court sustains the award of attorney’s fees. These are the words of the Court:

“On the award of attorney’s fees which NLRC deleted on the ground that there was no unlawful withholding of wages, suffice it to say that Article 111 of the Labor Code does not limit the award of attorney’s fees to cases of unlawful withholding of wages only. What it explicitly prohibits is the award of attorney’s fees which exceed 10% of the amount of wages recovered.” (Heirs of the Late R/O Reynaldo Aniban represented by Brigida P. Aniban vs. National Labor Relations Commission, Philippine Transmarine Carriers, Inc., Norwegian Ship Management, Inc. A/S and Pioneer Insurance and Surety Corporation, G.R. No. 116354, December 4, 1997)
4. **NON-LAWYERS NOT ENTITLED TO ATTORNEY’S FEES**

Although the law allows, under certain circumstances, non-lawyers to appear before the National Labor Relations Commission or any Labor Arbiter, this, however, does not mean that they are entitled to attorney’s fees. Their act of representing, appearing or defending a party litigant in a labor case does not, by itself, confer upon them legal right to claim for attorney’s fees. Entitlement to attorney’s fees presupposes the existence of attorney-client relationship. This relationship cannot exist unless the client’s representative is a lawyer.1

Moreover, it is an immoral act for a lawyer to enter into an agreement whereby the union president will share in his attorney’s fees. Canon 34 of Legal Ethics proscribes and condemns this arrangement. It provides that no division of fees for legal services is proper except with another lawyer based upon a division of service or responsibility. Since the union president is not the lawyer for the workers, he cannot be allowed to share in the attorney’s fees.2

5. **PAO LAWYERS**

Disqualified from being awarded attorney’s fees are the lawyers from the Public Attorney’s Office (PAO) of the Department of Justice. In one case, the Supreme Court affirmed the labor arbiter’s decision but disallowed the award of attorney’s fees, “it appearing that petitioners were represented by the Public Attorney’s Office.”3 The Court did not elaborate.

---

2Amalgamated Laborers Association vs. CIR, *et al.*, 22 SCRA 1266.
3Lambo vs. NLRC, G.R. No. 111042, October 26, 1999.
Chapter IV
PROHIBITIONS REGARDING WAGES

Overview/Key Questions:
1. What wage deductions are legally allowed?
2. May an employer deduct from the employee’s salary the cost of company property lost or damaged by the employee?
3. May labor standards violations justify a strike?

ART. 112. NON-INTERFERENCE IN DISPOSAL OF WAGES
No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages. He shall not in any manner force, compel or oblige his employees to purchase merchandise, commodities or other properties from the employer or from any other person, or otherwise make use of any store or service of such employer or any other person.

COMMENTS
1. CIVIL CODE PROVISIONS
In addition to the Labor Code provisions on prohibitions regarding wages, the following articles of the Civil Code similarly protect earned wages:

   Article 1705. The laborer’s wages shall be paid in legal currency.
   Article 1706. Withholding of the wages, except for a debt due, shall not be made by the employer.
   Article 1707. The laborer’s wages shall be a lien on the goods manufactured or the work done.
   Article 1708. The laborer’s wages shall not be subject to execution or attachment, except for debts incurred for food, shelter, clothing and medical attendance.
   Article 1709. The employer shall neither seize nor retain any tool or other articles belonging to the laborer.

2. PENALTY FOR VIOLATION OF ARTICLE 112
Any violation of Article 112 subjects the offender to the general penalty clause in Article 288 of the Labor Code which imposes a fine of not less than one thousand pesos (P1,000.00) nor more than ten thousand pesos (P10,000.00) or
imprisonment for not less than three months nor more than three (3) years, or both such fine and imprisonment at the discretion of the court.

The Revised Penal Code imposes the penalty of arresto mayor or a fine ranging from 200 to 500 pesos, or both, upon any person, agent or officer of any association or corporation who shall force or compel, directly or indirectly, or shall knowingly permit any laborer or employee employed by him or by such firm or corporation, to be forced or compelled, to purchase merchandise or commodities of any kind.¹

ART. 113. WAGE DEDUCTION

No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

(a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

(c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor.

COMMENTS

1. DEDUCTIONS AUTHORIZED BY LAW

The following deductions are authorized by existing laws:

(1) Deduction for value of meals and other facilities.

(2) In cases where the employee is insured with his consent by the employer, deductions for the amount paid by said employer, as premiums on the insurance.

(3) In cases where the right of the employees or his union to check-off has been recognized by the employer or authorized in writing by the individual employee concerned.

(4) In cases where the employee is indebted to the employer, where such indebtedness has become due and demandable.²

(5) In court awards, wages may be the subject of execution or attachment, but only for debts incurred for food, shelter, clothing and medical attendance.³

(6) Withholding tax.

¹Art. 288, Revised Penal Code.
²Civil Code, Art. 1706.
³Civil Code, Art. 1708.
(7) Salary deductions of a member of a legally established cooperative.
(8) SSS, medicare and Pag-Ibig contributions.

1.1 Payment to Third Person

Under the rules implementing the Labor Code, an employee’s payment of obligation to a third person is deductible from the employee’s wages if the deduction is authorized in writing by the employee. The employer may agree to make the deduction but is not obliged to do so. He must not receive any pecuniary benefit, directly or indirectly, from the transaction.¹

2. PROHIBITIONS REGARDING WAGES; WAGE DEDUCTIONS

The Labor Code, in requiring an individual written authorization as a prerequisite to wage deductions, seeks to protect the employee against unwarranted practices that would diminish his compensation without his knowledge and consent.

Nonetheless, service fee collected by the Union does not run counter to the express mandate of the law since the same are not unwarranted. Also, the deductions for the union service fee are authorized by law and do not require individual check-off authorizations.² See related discussion under Article 241 (n) and (o).

In one case, the question is whether the nonpayment of stock subscriptions can be offset against a money claim of an employee against the employer.

The corporation admitted that there was due to the employee the amount of P17,060.07, but this was applied to the unpaid balance of his subscription in the amount of P95,439.93. The employee questioned the set-off, alleging that there was no call or notice for the payment of the unpaid subscription and that, accordingly, the alleged obligation was not enforceable.

The court ruled that the set-off was without lawful basis, if not premature. As there was no notice or call for the payment of unpaid subscriptions, the same is not yet due and payable. Assuming that there was a call for payment of the unpaid subscription, the NLRC cannot validly set it off against the wages and other benefits due the petitioner. Article 113 of the Labor Code allows such a deduction from the wages of the employees by the employer, only in three instances x x x³

3. DEDUCTIONS FOR ABSENCES

Deductions for unpaid absences are allowed. If the employee is monthly-paid, the equivalent daily rate should be determined first before making the

¹Book III, Rule VIII, Sec. 13.
²Radio Communications of the Philippines, Inc. vs. Secretary of Labor, G.R. No. 77959, January 9, 1989.
deduction. The formula is: the monthly rate times 12 divided by the number of days considered paid in a year. The appropriate “divisor” is explained in comments to Article 94.

4. **REDUCED PAY BECAUSE OF REDUCED WORK DAYS**

In an Explanatory Bulletin dated July 23, 1985, the Director of the Bureau of Working Conditions opines as follows:

**Right to Reduce Workdays.** In situations where the reduction in the number of regular working days is resorted to by the employer to prevent serious losses due to causes beyond his control, such as when there is substantial slump in the demand for his goods or services or when there is lack of raw materials, it is the view of this Bureau that such reduction is valid. Such management action appears to be more humane and in keeping with sound business operations than the outright termination of the services of the employees or the total closure of the enterprise. In this jurisdiction, it is generally recognized that an employer has the prerogative to devise and adopt necessary remedial measures to save his business from serious losses that may eventually result in its total collapse. This prerogative of an employer flows from the right of ownership of property which includes the right of an employer to manage, control and protect his property in a manner that is not contrary to law, morals and public policy...

**Reduction of Wage/Allowances.** In situations described above, this Bureau is also of the view that the employer may deduct the wages and living allowances corresponding to the days taken off from the workweek, in the absence of an agreement specifically providing that a reduction in the number of workdays will not adversely affect the remuneration of the employees. Generally, the absence of such agreement gives rise to a disputable presumption that the initial understanding of the parties at the time of engagement of the employees is that the latter would be paid only for the number of days actually worked, which number will depend on the availability of work in a week or within a payroll period. This view is consistent with the principle of ‘no-work-no-pay.’ Furthermore, considering that the reduction of workdays is resorted to by an employer precisely to save on operating costs to prevent losses, it would be unfair to require him to pay the wages and living allowances even on unworked days that were taken off from the regular workweek.

4.1 **Reduction of Workdays: Effect on Wages**

In situations where the employer has to reduce the number of regular work days to prevent serious losses, such as when there is a substantial slump in the demand for his/her goods or services or when there is lack of raw materials, the
employer may deduct the wages corresponding to the days taken off from the work week, consistent with the principle of “no work, no pay.” This is without prejudice to an agreement or company policy which provides otherwise.1

4.2 Unjustified Work Reduction: Constructive Dismissal

Reduction of work days that also reduces the employee’s income cannot be regarded as a standard or routine employer’s recourse. It is an extreme measure, approximating loss of the worker’s source of livelihood, that needs solid justification, namely the occurrence of severe financial losses. The losses must be shown by evidence.

In *Philippine Graphic Arts, Inc. vs. NLRC*, G.R. No. L-80737, September 29, 1988, the Court upheld the validity of the reduction of working hours, taking into consideration the following: the arrangement was temporary, it was a more humane solution instead of a retrenchment of personnel, there was notice and consultations with the workers and supervisors, a consensus was reached on how to deal with deteriorating economic conditions and it was sufficiently proven that the company was suffering from losses.

One main consideration in determining the validity of reduction of working hours (or of working days) is that the company is suffering from losses. While no definite guidelines have yet been set to determine what losses sufficiently justify reduction of work hours, certain standards must be approximated similar to those applicable to cases of retrenchment (Article 283) [now 297] or suspension of work (Article 286) [now 300].2

Where the business reverses were not proved and, instead, it was shown that the work reduction/rotation was implemented soon after the affected employees filed complaints for labor standards violations by the employer, the court invalidated the work reduction and construed it as constructive dismissal.3

4.2a Unjustified Work Reduction: Constructive Dismissal and ULP

Reducing the workdays should be done in good faith, not as a means to retaliate against employees who unionized. In a company that reduced the workdays to only three in a week, the affected employees observed that the reduction was applied only to them who were union officers. They complained of anti-unionism or unfair labor practice (Article 258) and constructive dismissal. The court upheld their cause with this ruling:

While we concede that management would best know its operational needs, the exercise of management prerogative cannot be utilized as an implement to circumvent our laws and oppress employees. The prerogative

---

1Handbook on Workers’ Statutory Monetary Benefits issued by BWC, DOLE, 2010 ed., p. 16.
accorded management cannot defeat the very purpose for which our labor laws exist: to balance the conflicting interests of labor and management, not to tilt the scale in favor of one over the other, but to guaranty that labor and management stand on equal footing when bargaining in good faith with each other.

In the case at bar, the manner by which petitioners exercised their management prerogative appears to be an underhanded circumvention of the law. Petitioners were keen on summarily implementing the rotation plan, obviously singling out respondents who were all union officers.¹

ART. 114. DEPOSITS FOR LOSS OR DAMAGE

No employer shall require his worker to make deposits from which deductions shall be made for the reimbursement of loss of or damage to tools, materials or equipment supplied by the employer, except when the employer is engaged in such trades, occupations or business where the practice of making deductions or requiring deposits is a recognized one, or is necessary or desirable as determined by the Secretary of Labor in appropriate rules and regulations.

ART. 115. LIMITATIONS

No deduction from the deposits of an employee for the actual amount of the loss or damage shall be made unless the employee has been heard thereon, and his responsibility has been clearly shown.

COMMENTS

1. ILLEGAL DEPOSIT

Article 114 provides the rule on deposits for loss or damage to tools, materials or equipment supplied by the employer. It does not permit, for instance, the P15.00 daily deposits which taxi drivers are required to make to defray any shortage in their “boundary.” Moreover, there is no showing that the Secretary of Labor has recognized the making of the deposit as a “practice” in the taxi industry. Consequently, the employer’s act of requiring the drivers to make the deposits is illegal.²

The deposits should be refunded to the drivers but not the P20.00 payment for washing the taxi. Car washing after a tour of duty is a practice in the taxi industry and is, in fact, dictated by fair play. If the drivers want to save their P20.00 there is nothing to prevent them from cleaning the taxi units themselves.³

³Ibid.
Similarly, an employer engaged in the manufacture and sale of dental equipment who requires its employees (welders, upholsterers and painters) to post a cash bond at the start of their employment violates Article 114 of the Labor Code, there being no proof that it is authorized to require its employees to post such cash bond.¹

A *kasambahay* or domestic worker may not be required to make deposits from which deductions shall be made for the reimbursement of loss or damage to tools, materials, furniture or equipment in the household.²

2. **DEDUCTION FOR LOSS OR DAMAGE**

According to the implementing rules, payments for lost or damaged equipment is deductible from the employee’s salary if four conditions are met, namely:

(1) the employee is clearly shown to be responsible for the loss or damage;

(2) the employee is given ample opportunity to show cause why deduction should not be made;

(3) the amount of the deduction is fair and reasonable and shall not exceed the actual loss or damage; and

(4) the deduction from the employee’s wage does not exceed 20 percent of the employee’s wages in a week.

**ART. 116. WITHHOLDING OF WAGES AND KICKBACKS PROHIBITED**

It shall be unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker or induce him to give up any part of his wages by force, stealth, intimidation, threat or by any other means whatsoever without the worker’s consent.

**COMMENTS**

The above provision is clear and needs no further elucidation. Indeed, what an employee has worked for, his employer must pay. Thus, an employer cannot simply refuse to pay the wages or benefits of its employee because he has either defaulted in paying a loan guaranteed by his employer; or violated their memorandum of agreement; or failed to render an accounting of his employer’s property.

The preceding comments are adopted in *Special Steel Products, Inc. vs. Villareal*, G.R. No. 143304, July 8, 2004.

In another case, two German nationals set up a business in the Philippines, hiring a Filipino as business development manager at ₱100,000.00 a month. During the manager’s probationary period he did not make much sales, and

¹Dentech Manufacturing v. NLRC, 172 SCRA 588 [1989].

²Sec. 14, Domestic Workers’ Act or R.A. No. 10361, approved on January 18, 2013.
failed to come to conferences called by the German employers, who therefore were disappointed with his performance. They concluded that he was not doing his job, so they withheld his pay for one payroll period in the fifth month of the manager’s probation. The manager protested, resigned, then filed a complaint. Presenting notarized statements from clients, he proved wrong the impression that he was not doing his job, hence, he claimed that there was no reason to withhold his pay and that its nonpayment amounted to unjust dismissal.

The Court opined that although it could not be determined with certainty that the complainant worked during the entire payroll period in question, the doubt should be resolved in his favor. He is presumed to have worked, the employer having failed to satisfy their burden of proof of just dismissal. The withholding of pay even for only one payroll period, the Court ruled, violated Articles 113 and 116 of the Labor Code and amounted to constructive dismissal, despite the alleged resignation letter.¹

ART. 117. DEDUCTION TO ENSURE EMPLOYMENT

It shall be unlawful to make any deduction from the wages of any employee for the benefit of the employer or his representative or intermediary as consideration of a promise of employment or retention in employment.

COMMENTS

The practice of a security agency of deducting 25% from the salary of its security guards as the agency’s share in procuring job placement for the guards is a violation of this provision. Even though the guards agreed to the arrangement, it cannot be given any effect because it is contrary to law and public policy.²

ART. 118. RETALIATORY MEASURES

It shall be unlawful for an employer to refuse to pay or reduce the wages and benefits, discharge or in any manner discriminate against any employee who has filed any complaint or instituted any proceeding under this Title or has testified or is about to testify in such proceedings.

COMMENTS

1. DISMISSAL AS RETALIATION

The dismissal of an employee is illegal where it was shown to be a consequence of his having filed a complaint against his employer who pays a subminimum wage.³

²Commando Security v. NLRC, 211 SCRA 645; Mercury Drug v. Dayao, 117 SCRA 99 [1982].
³Morabe vs. Brown, 95 Phil. 181 [1954].
2. **IS VIOLATION OF ARTICLE 118 STRIKEABLE?**

This Article is similar to Article 258(f) which classifies as unfair labor practice (ULP) an employer’s prejudicial act against an employee who gave or is about to give a testimony under the Code. Both Articles 118 and 258 prohibit retaliation or reprisal against such employee. But they differ on the subject of testimony. Under Article 118, the subject of testimony is wages (or Title II of Book III of the Code), while under Article 258(f) the subject of testimony is anything under the Code. Under Article 118, the employer’s retaliatory act is unlawful but does not constitute ULP; under Article 258(f), it is ULP, hence, a reason for work stoppage or strike by the employees (Article 277).

The broadness of the subject of testimony under Article 258 can encompass a testimony under Article 118. Because of this broad coverage, it can happen that a testimony by an employee about violations of the law on wages can lead to a ULP case if the employer retaliates against the testifying employee. Such retaliation will activate not only the law on unfair labor practice but, also, the law on strike. Whenever and wherever there is ULP, there is reason for a strike.

In fine, a wage violation is unlawful and may be pursued in a money claim, not through a strike. But a strikeable situation may arise when the employer retaliates against the complaining employee, and the retaliation is of the kind considered as ULP under Article 258(f).

Violation of labor standards, therefore, may ultimately cause or justify a strike if Article 258(f) or Article 273 (gross violation of CBA) is applicable.

3. **REPRISAL FOR SILENT TESTIMONY**

Article 118 prohibits retaliation against an employee who filed a complaint or gave a testimony. Will the Article apply if the employee allegedly being discriminated against has not filed a complaint or has not testified? Although Article 118, as worded, presupposes explicit testimony, it is believed that it equally applies to implicit or unspoken testimony by an employee. For instance, suppose that an employer asks an employee to testify to a labor inspector that the employer is complying with the minimum wage law, but the employee refuses to make such a false statement, and because of such refusal the employer retaliates by withholding certain employment benefits. Does the employer’s retaliation violate Article 118?

A fair interpretation will require an affirmative answer. A violation of Article 118 consists in the employer’s retaliatory or discriminatory act against an employee who testified or refused to testify. The violation does not arise from what the employee did or did not do but from what the employer did to the employee.
ART. 119. FALSE REPORTING

It shall be unlawful for any person to make any statement, report, or record filed or kept pursuant to the provisions of this Code knowing such statement, report or record to be false in any material respect.

COMMENTS

RECORDS AN EMPLOYER MUST KEEP

Every employer shall keep a payroll wherein the following information and data shall be individually shown:

1. Length of time to be paid;
2. Rate of pay per month, week, day or hours, piece, etc.;
3. Amount due for regular work;
4. Amount due for overtime work;
5. Deductions made from the wages; and
6. Amount actually paid.

The self-explanatory details about payroll and time records are given in Rule X, Book III of the Implementing Rules.

IT’S PEOPLE THAT BUILD A BUSINESS

We use a lot of words to describe how important people are to organizations. The terms human resources, human capital, intellectual assets, and talent management imply that it is people who drive the performance of their organizations (along with other resources such as money, materials and information). To work with people effectively, we have to understand human behavior, and we have to be knowledgeable about the various systems and practices available to help us build a skilled and motivated workforce. At the same time, we have to be aware of economic, technological, social, legal, and global issues that either facilitate or constrain our efforts to achieve organizational goals. Because employee skills, knowledge and abilities are among the most distinctive and renewable resources on which a company can draw, their strategic management is more important than ever. As Thomas J. Watson, the founder of IBM, said, “You can get capital and erect buildings, but it takes people to build a business.”

SCOTT SNELL AND GEORGE BOHLANDER
Principles of Human Resource Management
(South-Western, 2010), p. 3
Chapter V
WAGE STUDIES, WAGE AGREEMENTS AND WAGE DETERMINATION

Box 15
Overview/Key Questions:
1. What is the NWPC? the RTWPB? What are their respective authorities as regards wage determination?
2. What factors or criteria are considered in determining a region’s minimum wage standard?
3. What obligations, if any, does an employer have when salaries are distorted by compliance with a wage order?

ART. 120. CREATION OF NATIONAL WAGES AND PRODUCTIVITY COMMISSION

There is hereby created a National Wages and Productivity Commission, hereinafter referred to as the Commission, which shall be attached to the Department of Labor and Employment (DOLE) for policy and program coordination.

COMMENTS

THE NWPC

The National Wages and Productivity Commission was created by R.A. No. 6727, known as the Wage Rationalization Act, which was approved on June 9, 1989. The NWPC replaced the National Wages Council created by E.O. No. 614 and the National Productivity Commission formed under E.O. No. 615.

ART. 121. POWERS AND FUNCTIONS OF THE COMMISSION

The Commission shall have the following powers and functions:
(a) To act as the national consultative and advisory body to the President of the Philippines and Congress on matters relating to wages, incomes and productivity;
(b) To formulate policies and guidelines on wages, incomes and productivity improvement at the enterprise, industry and national levels;

1Articles 120, 121, 122, 123, 124, 126 and 127 are as amended by R.A. No. 6727.
(c) To prescribe rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial or industry levels;

(d) To review regional wage levels set by the Regional Tripartite Wages and Productivity Boards to determine if these are in accordance with prescribed guidelines and national development plans;

(e) To undertake studies, researches and surveys necessary for the attainment of its functions and objectives, and to collect and compile data and periodically disseminate information on wages and productivity and other related information, including, but not limited to, employment, cost-of-living, labor costs, investments and returns;

(f) To review plans and programs of the Regional Tripartite Wages and Productivity Boards to determine whether these are consistent with national development plans;

(g) To exercise technical and administrative supervision over the Regional Tripartite Wages and Productivity Boards;

(h) To call, from time to time, a national tripartite conference of representatives of government, workers and employers for the consideration of measures to promote wage rationalization and productivity; and

(i) To exercise such powers and functions as may be necessary to implement this Act.

The Commission shall be composed of the Secretary of Labor and Employment as ex-officio chairman, the Director-General of the National Economic and Development Authority (NEDA) as ex-officio vice-chairman, and two (2) members each from workers and employers sectors who shall be appointed by the President of the Philippines upon recommendation of the Secretary of Labor and Employment to be made on the basis of the list of nominees submitted by the workers and employers sectors, respectively, and who shall serve for a term of five (5) years. The Executive Director of the Commission shall also be a member of the Commission.

The Commission shall be assisted by a Secretariat to be headed by an Executive Director and two (2) Deputy Directors, who shall be appointed by the President of the Philippines, upon the recommendation of the Secretary of Labor and Employment.

The Executive Director shall have the same rank, salary, benefits and other emoluments as that of the Department Assistant Secretary, while the Deputy Directors shall have the same rank, salary, benefits and other emoluments as that of a Bureau Director. The members of the Commission representing labor and management shall have the same rank, emoluments, allowances and other benefits as those prescribed by law for labor and management representatives in the Employees’ Compensation Commission.
ART. 122. CREATION OF REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARDS

There are hereby created Regional Tripartite Wages and Productivity Boards, hereinafter referred to as Regional Boards, in all regions, including autonomous regions as may be established by law. The Commission shall determine the offices/headquarters of the respective Regional Boards.

The Regional Boards shall have the following powers and functions in their respective territorial jurisdiction:

(a) To develop plans, programs and projects relative to wages, income and productivity improvement for their respective regions;

(b) To determine and fix minimum wage rates applicable in their region, provinces or industries therein and to issue the corresponding wage orders, subject to guidelines issued by the Commission;

(c) To undertake studies, researches, and surveys necessary for the attainment of their functions, objectives and programs, and to collect and compile data on wages, incomes, productivity and other related information and periodically disseminate the same;

(d) To coordinate with the other Regional Boards as may be necessary to attain the policy and intention of this Code;

(e) To receive, process and act on applications for exemption from prescribed wage rates as may be provided by law or any Wage Order; and

(f) To exercise such other powers and functions as may be necessary to carry out their mandate under this Code.

Implementation of the plans, programs and projects of the Regional Boards referred to in the second paragraph, letter (a) of this Article, shall be through the respective regional offices of the Department of Labor and Employment within their territorial jurisdiction; Provided, however, That the Regional Board shall have technical supervision over the regional office of the Department of Labor and Employment with respect to the implementation of said plans, programs and projects.

Each Regional Board shall be composed of the Regional Director of the Department of Labor and Employment as chairman, the Regional Directors of the National Economic and Development Authority and the Department of Trade and Industry as vice-chairmen and two (2) members each from workers and employers sectors who shall be appointed by the President of the Philippines, upon the recommendation of the Secretary of Labor and Employment, to be made on the basis of the list of nominees submitted by the workers and employers sectors, respectively, and who shall serve for a term of five (5) years.

Each Regional Board to be headed by its chairman shall be assisted by a Secretariat.
PURPOSE OF CREATING THE RTWPB

Republic Act No. 6727 that took effect on July 1, 1989 created the regional wage boards. The intention was to rationalize wages, first, by providing for full-time boards to police wages round-the-clock, and second, by giving the boards enough powers to achieve this objective. The Court is of the opinion that Congress meant the boards to be creative in resolving the annual question of wages without labor and management knocking on the legislature’s door at every turn. The Court’s opinion is that if R.A. No. 6727 intended the boards alone to set floor wages, the Act would have no need for a board but an accountant to keep track of the latest consumer price index, or better, would have Congress done it as the need arises, as the legislature, prior to the Act, has done so for years. The fact of the matter is that the Act sought a “thinking” group of men and women bound by statutory standards.\(^1\)

ART. 123. WAGE ORDER

Whenever conditions in the region so warrant, the Regional Board shall investigate and study all pertinent facts and, based on the standards and criteria herein prescribed, shall proceed to determine whether a Wage Order should be issued. Any such Wage Order shall take effect after fifteen (15) days from its complete publication in at least one (1) newspaper of general circulation in the region.

In the performance of its wage-determining functions, the Regional Board shall conduct public hearings/consultations, giving notices to employees’ and employers’ groups, provincial, city, and municipal officials and other interested parties.

Any party aggrieved by the Wage Order issued by the Regional Board may appeal such order to the Commission within ten (10) calendar days from the publication of such order. It shall be mandatory for the Commission to decide such appeal within sixty (60) calendar days from the filing thereof.

The filing of the appeal does not stay the order unless the person appealing such order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for the payment to the employees affected by the order of the corresponding increase, in the event such order is affirmed.

COMMENTS AND CASES

1. WAGE FIXING PROCEDURE

Pursuant to Article 121 (c) of the Labor Code, as amended by Section 3 of Republic Act No. 6727, the National Wages and Productivity Commission adopted

\(^1\)Now found in Article 124 of the Code. See Employers Confederation of the Philippines vs. NWPC, RTWPB-NCR, and TUCP, G.R. No. 96169, September 24, 1991.

The Rules govern proceedings in the National Wages and Productivity Commission (NWPC) and the Regional Tripartite Wages and Productivity Boards in the fixing of minimum wage rates.

Issuance of Wage Order. — Within thirty (30) days after conclusion of the last hearing, the Board shall decide on the merits of the petition, and where appropriate, issue a wage order establishing the regional minimum wage rates to be paid by employers, which shall in no case be lower than the applicable statutory minimum wage rates. The Wage Order may include wages by industry, province or locality as may be deemed necessary by the said Board: Provided, however, That such wage rates shall not be lower than the regional minimum wage rates unless expressly specified in the Wage Order. The Board shall furnish the National Wages and Productivity Commission a copy of the decision on the petition or the Wage Order.

Contents of Wage Order. — A Wage Order shall specify the region, province or industry to which the minimum wage rates prescribed under the Order shall apply and provide exemptions, if any, subject to guidelines issued by the Commission.

Frequency of Wage Order. — Any Wage Order issued by the Board may not be disturbed for a period of twelve (12) months from its effectivity, and no petition for wage increase shall be entertained within the said period. In the event, however, that supervening conditions, such as extraordinary increases in prices of petroleum products and basic goods/services, demand a review of the minimum wage rates as determined by the Board and confirmed by the Commission, the Board shall proceed to exercise its wage fixing function even before the expiration of the said period.

Effectivity of Wage Order. — A Wage Order shall take effect fifteen (15) days after its publication in at least one (1) newspaper of general circulation in the region.

Implementing Rules/Regulations of the Wage Order. — The Board shall prepare, for approval of the Secretary of Labor and Employment, upon recommendation of the Commission, the necessary Implementing Rules and Regulations, not later than ten (10) days from the issuance of a Wage Order.

The Secretary of Labor and Employment shall act on the Implementing Rules within a period of twenty (20) days from receipt of the said Implementing Rules by the Commission. Once approved, the Board shall cause the publication of the Implementing Rules and Regulations in at least one (1) newspaper of general circulation in the region.\(^1\)

Review of Wage Order. — The Commission may review the Wage Order issued by the Board *motu proprio* or upon appeal.

An appeal may be filed on the following grounds:

1. Non-conformity with prescribed guidelines and/or procedure;
2. Questions of law
3. Grave abuse of discretion.\(^1\)

The appeal does not stay the order unless the appellant files adequate surety.

2. **RTWPB, NOT NWPC, APPROVES A WAGE ORDER**

The NWPC prescribes rules and guidelines for determination of appropriate minimum wage and productivity measures at the regional, provincial or industry levels. Further, the NWPC may review the wage levels set by the RTWPBs. But a wage-fixing order by the RTWPB does not need prior approval by the NWPC. This power is not one of those granted to the NWPC under Article 121; neither does Article 122 require a regional wage board to submit a wage order to NWPC for its approval. The RTWPBs are empowered “to determine and fix minimum wage rates applicable in their regions”... and “to issue the corresponding wage orders.” These RTWPB issuances, however, should accord with “guidelines” issued by the NWPC. But the Labor Code does not require NWPC’s approval of a wage order. What it requires is for the wage board to conduct a public hearing over a petition for a wage order, to decide such petition within thirty (30) days after the last hearing, and to “furnish the Commission a copy of the decision on the petition or the wage order.” Furnishing the NWPC a copy of the Wage Order does not mean seeking the Commission’s approval.

What needs prior approval is not the wage order but its implementing rules and regulations which the board has to prepare within ten (10) days from issuance of the wage order. The secretary of labor, upon recommendation of the commission, may approve the implementing rules.\(^2\)

3. **APPEAL**

The NWPC guidelines allow any party aggrieved by a Wage Order to appeal it to the Commission within ten (10) days after the publication of the order. What action may the Commission take on the appealed wage order? The guidelines give no hint at all.

The case where Metrobank challenged the validity of a wage order issued in Region II could have been the opportunity to test NWPC’s extent of power over a wage order issued by a regional wage board. Unfortunately, as observed by the Supreme Court, the bank failed to invoke the power of the NWPC to review regional wage levels’ set by the RTWPB to determine if these are in accordance

---

\(^1\)Rule V, Revised Rules of Procedure on Minimum Wage Fixing.

\(^2\)See the full NWPC Guidelines in the *Labor Law Sourcebook*. 

359
with prescribed guidelines. The court, in analyzing the situation, does emphasize that the NWPC has the power to review regional wage levels, to review plans and programs of the RTWPB, and to exercise technical and administrative supervision over the RTWPBs, considering Article 121 of the Labor Code.¹

4. GUIDELINES FROM RTWPB

The Labor Code, as amended by R.A. No. 6727 (the Wage Rationalization Act), grants the National Wages and Productivity Commission (NWPC) the power to prescribe rules and guidelines for the determination of appropriate wages in the country. Hence, “guidelines” issued by the Regional Tripartite Wages and Productivity Boards (RTWPB) without the approval of or, worse, contrary to those promulgated by the NWPC are ineffectual, void and cannot be the source of rights and privileges.²

Thus, when the RTWPB of Region X approved the applications for exemption of two companies, which approval was based on Guidelines No. 3 passed by said Board, but it was shown that the “guidelines” had not been approved by the NWPC, the Supreme Court ruled that the NWPC was correct and the regional board was in error. Speaking through Justice Panganiban, the Court explained that Article 121(c) and (d) and Article 122(b) clearly grant the NWPC, not the RTWPB, the power to “prescribe the rules and guidelines” for the determination of minimum wage and productivity measures. While the RTWPB has the power to issue wage orders under Article 122(b) of the Labor Code, such orders are subject to the guidelines prescribed by the NWPC.³

Significantly, the NWPC authorized the RTWPB to issue exemptions from wage orders, but subject to its review and approval. Since the NWPC never assented to Guideline No. 3 of the RTWPB, the said guideline is inoperative and cannot be used by the latter in deciding or acting on petitioners’ application for exemption.⁴

5. PUBLIC HEARINGS AND PUBLICATION, MANDATORY

_Cagayan Sugar Milling Co. vs. Secretary of Labor, et al., G.R. No. 128399, January 15, 1998 —_

_Facts:_ Wage Order No. R02-02, passed on November 16, 1993, provided for an increase in the statutory minimum wage rates for Region II. More than a year later, or on January 6, 1995, the Regional Board passed Wage Order R02-02-A amending the earlier wage order and providing instead for an across-the-board increase in wages of employees in Region II, retroactive to the date of effectivity of Wage Order R02-02.

¹See Metropolitan Bank and Trust Co., Inc. vs. NWPC and RTWPB-Region II, G.R. No. 144322, February 6, 2007.
²Nasipit Lumber Co. and Philippine Wallboard Corp. vs. NWPC, _et al._, G.R. No. 113097, April 27, 1998.
³_Ibid._
⁴_Ibid._
Petitioner assailed the validity of Wage Order R02-02-A on the ground that it was passed without the required public consultation and newspaper publication.

Ruling: The Court, through Justice Puno, upheld the petitioner’s objection.

The record shows that there was no prior public consultation or hearings and newspaper publication insofar as Wage Order No. R02-02-A is concerned. In fact, these allegations were not denied by public respondents in their Comment. Public respondents’ position is that there was no need to comply with the legal requirements of consultation and newspaper publication as Wage Order No. R02-02-A merely clarified the ambiguous provision of the original wage order.

The Court was not persuaded.

To begin with, there was no ambiguity in the provision of Wage Order R02-02 as it provided in clear and categorical terms for an increase in statutory minimum wage of workers in the region. Hence, the subsequent passage of R02-02-A providing instead for an across-the-board increase in wages did not clarify the earlier order but amended the same. In truth, it changed the essence of the original order.

Hence, R02-02-A was struck down as a violation of Article 123 of the Labor Code.

ART. 124. STANDARDS/CRITERIA FOR MINIMUM WAGE FIXING

The regional minimum wages to be established by the Regional Board shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the employees within the framework of the national economic and social development program. In the determination of such regional minimum wages, the Regional Board shall, among other relevant factors, consider the following:

(a) The demand for living wages;
(b) Wage adjustment vis-a-vis the consumer price index;
(c) The cost of living and changes or increases therein;
(d) The needs of workers and their families;
(e) The need to induce industries to invest in the countryside;
(f) Improvements in standards of living;
(g) The prevailing wage levels;
(h) Fair return of the capital invested and capacity to pay of employers;
(i) Effects on employment generation and family income; and
(j) The equitable distribution of income and wealth along the imperatives of economic and social development.
The wages prescribed in accordance with the provisions of this Title shall be the standard prevailing minimum wages in every region. These wages shall include wages varying within industries, provinces or localities if in the judgment of the Regional Board conditions make such local differentiation proper and necessary to effectuate the purpose of this Title.

Any person, company, corporation, partnership or any other entity engaged in business shall file and register annually with the appropriate Regional Board, Commission and the National Statistics Office an itemized listing of their labor component, specifying the names of their workers and employees below the managerial level, including learners, apprentices and disabled/handicapped workers who were hired under the terms prescribed in the employment contracts, and their corresponding salaries and wages.

Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any increase in prescribed wage rates pursuant to the provisions of law or Wage Order.

As used herein, a wage distortion shall mean a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.
All workers paid by result, including those who are on piece-work, takay, pakyaw or task basis, shall receive not less than the prescribed wage rates per eight (8) hours work a day, or a proportion thereof for working less than eight (8) hours.

All recognized learnership and apprenticeship agreements shall be considered automatically modified insofar as their wage clauses are concerned to reflect the prescribed wage rates.

COMMENTS AND CASES

1. TWO METHODS OF MINIMUM WAGE ADJUSTMENT

Historically, legislation involving the adjustment of the minimum wage made use of two methods. The first method involves the fixing of determinate amount that would be added to the prevailing statutory minimum wage. The other involves “the salary-ceiling method” whereby the wage adjustment is applied to employees receiving a certain denominated salary ceiling. The first method was adopted in the earlier wage orders, while the latter method was used in R.A. Nos. 6640 and 6727. Prior to this, the salary-ceiling method was also used in no less than eleven issuances mandating the grant of cost-of-living allowances.¹

The shift from the first method to the second method was brought about by labor disputes arising from wage distortions, a consequence of the implementation of the said wage orders. Apparently, the wage order provisions that wage distortions shall be resolved through the grievance procedure was perceived by legislators as ineffective in checking industrial unrest resulting from wage order implementations. With the establishment of the second method as a practice in minimum wage fixing, wage distortion disputes were minimized.²

1.1 “Floor Wage” Wage Order Does not Require Across-the-Board Pay Increase

Where the wage order, such as Wage Order No. RDVIII-06, prescribes a minimum or “floor wage” to upgrade the wages of employees receiving less than the minimum wage set by the Order, the employer cannot be compelled to grant an across-the-board increase to its employees who, at the time of the promulgation of the Wage Order, were already being paid more than the existing minimum wage.³

²Ibid.
Metaphorically, if the floor is raised, workers below the new elevation should also be raised so that they would step on the elevated floor. And those already placed higher than the new floor level need not be moved further upward, unless necessary to remedy a distortion contemplated in Article 124.

The rule that a wage order covers only minimum wage earners is reiterated by the court in these words:

The beneficent, operative provision of WO RXIII-02 is specific enough to cover only minimum wage earners. Necessarily excluded are those receiving rates above the prescribed minimum wage. The only situation when employees receiving a wage rate higher than that prescribed by the WO RXIII-02 may still benefit from the order is, as indicated in Sec. I(c) of the IRRs, through the correction of wage distortions. (Nasipit Integrated Arrastre and Stevedoring Services, Inc. vs. Nasipit Employees Labor Union, G.R. No. 162411, June 27, 2008. See also: Metropolitan Bank Trust Co. vs. NWPC and RTWPB-Region II, G.R. No. 144322, February 6, 2007)

2. REASONS FOR HAVING A MINIMUM WAGE

“Minimum wages” underlie the effort of the State, as R.A. No. 6727 expresses it, “to promote productivity-improvement and gain-sharing measures to ensure a decent standard of living for the workers and their families; to guarantee the rights of labor to its just share in the fruits of production; to enhance employment generation in the countryside through industry dispersal and to allow business and industry reasonable returns on investment, expansion and growth,” and as the Constitution expresses it, to affirm “labor as a primary social economic force.” The statute would have no need for a wage board if the question were simply “how much.” The State is concerned, in addition, that wages are not distributed unevenly, and more importantly, that social justice is subserved.¹

3. WAGE DISTORTION

3.1 When is there a distortion?

Wage distortion, in the long noun-laden definition in the seventh paragraph of Article 124, means “a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.” In short, wage distortion is the effect of increasing the pay of an employee to such an amount that equals, almost equals, or overtakes another employee’s pay which has not been similarly increased.

¹ECOP vs. NWPC, etc., G.R. No. 96169, September 24, 1991.
Many companies construct “wage structure” or compensation plan. The process requires classifying jobs through an analytical process called job evaluation (JE), usually using a point rating system. The jobs (or groups of positions) are given quantitative ratings based on such “factors” as skills or education, degree of responsibility, physical effort, work conditions, and complexity of duties. Each factor is assigned a weight or value and each key job is given “points” within the range of the weight. The job ratings are clustered into groups or “job grades” which in turn correspond to “salary grades.” Each salary grade progresses by “steps” from hiring rate to maximum. The salaries pertaining to positions are therefore results of studied distinctions and relative values of jobs. The higher the job grade, the higher the pay. The differences among job-pay grades are, in the words of Article 124, “intentional quantitative differences.” They should be maintained, in fairness to the job holders, despite mandated pay increases through wage orders. If the gaps or “distances” between salary grades are not maintained, then there is wage distortion.

Salary distortion results from the disappearance or virtual disappearance of pay differentials (between lower and higher positions or between senior and junior employees) because of compliance with a wage order. For instance, if the daily wage of “A” was P200.00 higher than that of “B,” who was holding a lower position, but this pay difference became only P100.00 because “B” was given a P100.00 increase in compliance with a wage order, “A” may complain of wage distortion because his pay is now only P100.00 higher than that of “B.” The employer must somehow restore the P200.00 pay advantage of “A” over “B.”

For a distortion to exist, the law does not require an elimination or total abrogation of quantitative wage or salary differences; a severe contraction thereof is enough. In one case, the pay differentials contracted or went down by about eighty-three percent (83%). This is “severe” contraction and the court ruled that there was indeed a salary distortion.1

In this case the “intentional quantitative differences” in wages among employees of the bank has been set by the CBA to about P900 per month as of 01 January 1989. It is intentional as it has been arrived at through the collective bargaining process.2

There may not be an obliteration nor elimination of said quantitative distinction/difference but clearly there is a contraction. Would such contraction be so severe as to warrant the necessary correction sanctioned by the law in point, R.A. No. 6727? The quantitative intended distinction in pay between the two groups of workers in respondent company was contracted by more than fifty percent (50%) or, in particular, by more or less eighty-three (83%) percent;

2Ibid.
hence, there is no doubt that there is an evident severe contraction resulting in the wage distortion.1

3.2 Salary Restructuring; What is Not Distortion

The distortion mentioned in Article 124 refers to one arising from compliance with a wage order. It does not refer, and the Article does not apply, to a distortion arising from a revision of salary scale initiated by the employer.

The formulation or revision of a wage structure through the classification of employees is a matter of management judgment and discretion.

[Whether or not a new additional scheme of classification of employees for compensation purpose should be established by the Company (and the legitimacy or viability of the bases of distinction there embodied) is properly a matter of management judgment and discretion, and ultimately, perhaps, a subject matter for bargaining negotiations between employer and employees. It is assuredly something that falls outside the concept of "wage distortion."2

If the compulsory mandate under Article 124 to correct "wage distortion" is applied to voluntary and unilateral increases by the employer in fixing hiring rates which is inherently a business judgment prerogative, then the hands of the employer would be completely tied even in cases where an increase in wage of a particular group is justified due to a re-evaluation of the high productivity of a particular group, or as in the present case, the need to increase the competitiveness of Bankard’s hiring rate. An employer would be discouraged from adjusting the salary rates of a particular group of employees for fear that it would result to a demand by all employees for a similar increase, especially if the financial conditions of the business cannot address an across-the-board increase.3

In fine, absent any indication that the voluntary increase of salary rates by an employer was done arbitrarily and illegally for the purpose of circumventing the laws or was devoid of any legitimate purpose other than to discriminate against the regular employees, this Court will not step in to interfere with this management prerogative. Employees are of course not precluded from negotiating with its employer and lobby for wage increase through appropriate channels, such as through a CBA.4

---

4Ibid.
3.2a Jobs in Same Region

Neither is there “salary distortion” under Article 124 if the affected employees are employed in the same company but in different regions.

There is no distortion if the employees, whose wages are being compared, are located in different regions. This is because wage-fixing has been regionalized by R.A. No. 6727, the Wage Rationalization Act. Each region has a regional wage board which, in fixing the wage level, considers criteria or standards existing in the region. Since those criteria vary from one region to another, the pay levels of comparable jobs also tend to vary among regions. But pay disputes of same or comparable jobs in different regions cannot be considered wage distortion. Wage distortion, in other words, involves comparison of jobs located in the same region. Examination of alleged salary distortion is limited to jobs or positions in the same employer in the same region; that is, the comparison of salaries has to be intra-region, not inter-region.1

In Manila Mandarin Employees Union vs. NLRC, G.R. No. 108556, November 19, 1996, the Court agreed with the NLRC’s conclusion that no distortion existed where the disparity was due simply to the fact that the employees mentioned had been hired on different dates and were thus receiving different salaries; or that an employee was hired initially at a position level carrying a hiring rate higher than the rates for the others; or that an employee failed to meet the cut-off date in the grant of yearly CBA increase; or that a subject employee had been promoted while the others were not. These did not represent cases of wage distortion contemplated in Article 124.

3.3 Union to Prove Distortion

In the same Manila Mandarin case mentioned above, the Court ruled that it was incumbent on the complainant union to prove by substantial evidence its assertion of the existence of a wage distortion. This it failed to do. It presented no such evidence to establish, as required by the law, what, if any, were the designed quantitative differences in wage or salary rates between employee groups, and if there were any severe contractions or elimination of these quantitative differences.

3.4 Ways to Correct Distortion

The Court has pointed out that through Article 124 the law recognizes the validity of negotiated wage increases to correct wage distortions. The legislative intent is to encourage the parties to seek solution to the problem of wage distortions through voluntary negotiation or arbitration, rather than strikes, lockouts, or other concerted activities of the employees or management. Recognition and

validation of wage increases given by employers either unilaterally or as a result of collective bargaining negotiations for the purpose of correcting wage distortions are in keeping with the public policy of encouraging employers to grant wage and allowance increases to their employees which are higher than the minimum rates of increases prescribed by statute or administrative regulation.¹

Thus in Cardona vs. NLRC, March 11, 1991, it was held that there was no wage distortion where the employer made salary adjustments in terms of restricting of benefits and allowances and there was an increase pursuant to the CBA.²

Similarly, in a case involving Metro Transit, the Court ruled that the CBA-stipulated increase of P800.00 a month was intended as the countervailing increase for supervisory employees, the rank-and-file employees having already received their own increase approximately eight (8) months earlier. In other words, the wage distortion in the present (Metro Transit) case arose not because of a government-decreed increase in minimum wages or because Metro simply refused to treat its supervisory employees differently from its rank-and-file workers, but rather because of a failure to synchronize the CBA-stipulated increases for rank-and-file and for supervisory employees.³

By the grant of the award of P550.00 to supervisory employees and by the operation of the Metro-SEAM CBA, the wage distortion which occurred on 17 April 1989 had been corrected. By 1 December 1991, a substantial gap or differential had been reestablished between the salaries of the rank-and-file and supervisory employees of petitioner Metro.⁴

In short, a salary increase granted through a CBA is a valid method of correcting a salary distortion.

### 3.5 Distortion Adjustment Formula

In a case involving the Metropolitan Bank, the Court adopted the distortion adjustment formula suggested by then NLRC Commissioner Bonto-Perez. The Court accepted the formula as the appropriate measure to balance the respective contentions of the parties since the formula, according to the Court, is just and equitable.

---


²Ibid.

³Metro Transit Organization, Inc. vs. NLRC, the Supervisory Employees Association of Metro (SEAM), G.R. No. 116008, July 11, 1995.

⁴Ibid.
The formula is:

\[
\frac{\text{Existing Minimum Wage}}{\text{Actual Salary of Employee}} = \% \times \text{Prescribed Wage Increase} = \text{Distortion Adjustment amount}
\]

Example:
Existing minimum wage is P300 per day
Employee’s daily wage is P350.
Mandated wage increase is P25 per day

\[
\frac{P300.00}{P350.00} \times P25.00 = P0.857 \times P25.00
\]

\[
P350.00 + P21.43 = P371.43 \text{ new daily rate of the subject employee}
\]

Neither the Labor Code nor the Wage Rationalization Act (R.A. No. 6727) prescribes a particular formula to estimate the amount that will rectify or minimize the salary distortion. The employer and the union or the employees’ representative may devise an equitable formula differing from the one adopted in the Metropolitan Bank case. A “Handbook on Wage Distortion” issued by the National Wage and Productivity Commission illustrates seven formulas to adjust salary distortions.

Rectification of salary distortion is one of the situations where inter-party negotiation is most preferred and greatly encouraged, as indicated in Article 124, pursuing the basic policy under Article 218(a).

3.6 Rectification Need Not be Across-the-Board

In the same Metropolitan Bank case mentioned above, the Court said also that the Court must approximate an acceptable quantitative difference between job or position levels, but an across-the-board pay adjustment is not required by law. The Court, through Justice Jose Vitug, said:

We, however, do not subscribe to the labor arbiter’s exacting prescription in correcting the wage distortion. Like the majority of the members of the NLRC, we are also of the view that giving the employees an across-the-board increase of P750 may not be conducive to the policy of encouraging “employers to grant wage and allowance increases to their employees higher than the minimum rates of increases prescribed by statute or administrative regulation,” particularly in this case where both Republic Act 6727 and the CBA allow a credit for voluntary compliance.

As the Court, through Associate Justice Florentino Feliciano, also pointed out in Apex Mining Company, Inc. vs. NLRC, G.R. No. 86200, February 25, 1992, 206 SCRA 497, 501:

\[
x \times x. [T]o \text{ compel employers simply to add on legislated increases in salaries or allowances without regard to what is already being paid,}
\]
would be to penalize employers who grant their workers more than the statutorily prescribed minimum rates of increases. Clearly, this would be counter-productive so far as securing the interests of labor is concerned. x x x. (Metropolitan Bank & Trust Company Employees Union-ALU-TUCP vs. National Labor Relations Commission, G.R. No. 102636, September 10, 1993)

3.7 Summation of Principles About Salary Distortion

In National Federation of Labor vs. National Labor Relations Commission, 53 SCAD 414, 234 SCRA 311 [1994], the Court summarizes the principles relating to salary distortion, namely:

(a) The concept of wage distortion assumes an existing grouping or classification of employees which establishes distinctions among such employees on some relevant or legitimate basis. This classification is reflected in a differing wage rate for each of the existing classes of employees.

(b) Wage distortions have often been the result of government-decreed increases in minimum wages. There are, however, other causes of wage distortions, like the merger of two companies (with differing classifications of employees and different wage rates) where the surviving company absorbs all the employees of the dissolved corporation.

(c) Should a wage distortion exist, there is no legal requirement that the gap which had previously existed be restored in precisely the same amount. In other words, correction of a wage distortion may be done by reestablishing a substantial or significant gap (as distinguished from the historical gap) between the wage rates of the differing classes of employees.

(d) The reestablishment of a significant wage difference may be done through the grievance procedure or collective bargaining negotiations.

3.8 Wage Distortion: Nonstrikeable

Article 124, as amended by R.A. No. 6727, states that if wage or salary distortion results from implementation of a wage order, the employer and the union shall negotiate to correct the distortion. The distortion dispute should be resolved through grievance procedure or voluntary arbitration, or in the absence of CBA, through the NCMB or a Labor Arbiter.

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any increase in prescribed wage rates pursuant to the provisions of law or Wage Order. x x x.

In a case where the union went on strike over a salary distortion dispute, the court held the strike illegal.
Ilaw at Buklod ng Manggagawa vs. NLRC, G.R. No. 91980, June 27, 1991 —

The legislative intent that solution of the problem of wage distortions shall be sought by voluntary negotiation or arbitration, and not by strikes, lockouts, or other concerted activities of the employees or management, is made clear in the rules implementing R.A. No. 6727 issued on July 7, 1989. Section 16, Chapter I of these implementing rules, declares that, “Any issue involving wage distortion shall not be a ground for a strike/lockout.”

The Union was thus prohibited to declare and hold a strike or otherwise engage in nonpeaceful concerted activities for the settlement of its controversy with SMC in respect of wage distortions, or for that matter: any other issue “involving or relating to wages, hours of work, conditions of employment and/or employer-employee relations.”

The partial strike or concerted refusal by the Union members to follow the five-year-old work schedule which they had theretofore been observing, resorted to as a means of coercing correction of “wage distortions,” was therefore forbidden by law and contract and, on this account, illegal.

4. LIABILITY OF CONTRACTOR’S PRINCIPAL IN CERTAIN INDUSTRIES

R.A. No. 6727 also has specific provision on the liability of the principal for wage rate increases for construction and similar workers. It states in Sec. 6:

In the case of contracts for construction projects and for security, janitorial and similar services, the prescribed increases in the wage rates of the workers shall be borne by the principal or clients of the construction/service contractors and the contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client.

5. INSPECTION

The inspection procedure to verify compliance with minimum wage law is described in R.A. No. 6727 as follows:

SEC. 9. The Department of Labor and Employment shall conduct inspections as often as possible within its manpower constraint of the payroll and other financial records kept by the company or business to determine whether the workers are paid the prescribed minimum wage rates and other benefits granted by law or an Wage Order. In unionized companies, the Department of Labor and Employment inspectors shall always be accompanied by the president or any reasonable officer of the recognized bargaining unit or of any interested union in the conduct of the inspection. In non-unionized companies, establishments or businesses, the inspection should be carried out in the presence of a worker representing the workers in the said company. The workers’ representative shall have the right to
submit his own findings to the Department of Labor and Employment and to testify on the same if he cannot concur with the findings of the labor inspector.

ART. 125. FREEDOM TO BARGAIN
No Wage Order shall be construed to prevent workers in particular firms or enterprises of industries from bargaining for higher wages with their respective employer.

ART. 126. PROHIBITION AGAINST INJUNCTION
No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against any proceedings before the Commission or the Regional Boards.

ART. 127. NON-DIMINUTION OF BENEFITS
No Wage Order issued by any regional board shall provide for wage rates lower than the statutory minimum wage rates prescribed by Congress.

PROGRESS AT NOBODY’S EXPENSE
When unions get higher wages for their members by restricting entry into an occupation, those higher wages are at the expense of other workers who find their opportunities reduced. When government pays its employees higher wages, those higher wages are at the expense of the taxpayers. But when workers get higher wages and better working conditions through the free market, when they get raises by firms competing with one another for the best workers, by workers competing with one another for the best jobs, those higher wages are at nobody’s expense. They can only come from higher productivity, greater capital investment, more widely diffused skills. The whole pie is bigger – there’s more for the worker, but there’s also more for the employer, the investor, the consumer, and even the tax collector.

That’s the way a free market system distributes the fruits of economic progress among all the people. That’s the secret of the enormous improvement in the conditions of the working person over the past two centuries.

MILTON FRIEDMAN
Free to Choose (1980), pp. 290-291
Chapter VI
ADMINISTRATION AND ENFORCEMENT

Box 16
Overview/Key Questions:
1. Labor laws are enforced and administered largely through DOLE's regional offices. How is this administrative authority exercised?
2. Some labor disputes are likewise adjudicated at the regional level. What are the limits to such adjudicatory function?
3. Administrative orders or adjudications are appealable. To whom? When?

ART. 128. VISITORIAL AND ENFORCEMENT POWER
(a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the finding of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection. [As amended by R.A. No. 7730, June 2, 1994]
ART. 128 CONDITIONS OF EMPLOYMENT

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter.

In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from. [As amended by R.A. No. 7730, June 2, 1994]

(c) The Secretary of Labor may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulation poses grave and imminent danger to the health and safety of workers in the workplace. Within twenty-four hours, a hearing shall be conducted to determine whether an order for the stoppage of work or suspension of operations shall be lifted or not. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

(d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or his duly authorized representatives issued pursuant to the authority granted under this article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this Article.

(e) Any government employee found guilty of violation of, or abuse of authority, under this Article shall, after appropriate administrative investigation, be subject to summary dismissal from the service.

(f) The Secretary of Labor may, by appropriate regulations, require employers to keep and maintain such employment records as may be necessary in aid of his visitorial and enforcement powers under this Code.

COMMENTS AND CASES

1. REGIONAL ADMINISTRATION AND ENFORCEMENT OF LABOR LAWS

Provisions for law enforcement are necessary ingredients of law-making. Government instrumentalities are needed and should be held responsible for attaining the objectives of the law. In the field of labor, the Department of Labor and Employment is the primary policy, programming, coordinating and administrative entity of the government. It has the primary responsibility for:

(1) the promotion of gainful employment opportunities and the optimization of the development and utilization of the country’s resources;
ART. 128
ADMINISTRATION AND ENFORCEMENT

(2) the advancement of workers’ welfare by providing for just and humane working conditions and terms of employment;

(3) the maintenance of industrial peace by promoting harmonious, equitable, and stable employment relations that assure equal protection for the rights of all concerned parties.¹

To carry out these responsibilities, the Department is authorized to operate and maintain regional offices (including district offices and provincial extension units) in each of the country’s administrative regions. These offices serve as the operational arms — the front line action offices — of the Department. This role is described in specific terms in Articles 128 and 129.

At the regional level, five regional offices enforce the labor laws, namely:

1. The DOLE regional office, headed by a regional director, including five divisions, namely:
   a. administrative division
   b. labor standards enforcement division
   c. industrial relations division
   d. workers amelioration and welfare division
   e. employment promotion division

2. TESDA (Technical Education and Skills Development Authority)

3. Regional Arbitration Branch (RAB) of the NLRC which handles compulsory arbitration cases affecting labor and management, aside from enforcing decisions, awards or orders of the NLRC.²

4. NCMB (National Conciliation and Mediation Board) which has absorbed the conciliation, mediation, and voluntary arbitration functions of the Bureau of Labor Relations.

5. RTWPB (Regional Tripartite Wage and Productivity Board), “Wage Board,” for short, which determines minimum wages applicable in the region and issues wage orders, subject to guidelines from the National Wages and Productivity Commission (NWPC).³

In addition, special labor-related laws are administered or enforced by the concerned agencies such as the SSS, GSIS, or Philhealth regional offices.

2. THE ENFORCEMENT FRAMEWORK; D.O. NO. 57-04

The administration and enforcement responsibility of DOLE suffers severely from a shortage of labor inspectors. To remedy this problem partly and to build a culture of compliance among employers based on voluntariness

²See Art. 213, et seq.
instead of compulsion, the DOLE issued D.O. No. 57-04, also called the Labor Standards Enforcement Framework (LSEF). The framework comprises three approaches: 1. self-assessment, 2. inspection, and 3. advisory service.

Self-assessment is a voluntary compliance mode applicable to and encouraged in establishments with at least 200 workers and, regardless of number of workers, to unionized firms with CBAs. The self-assessment is guided by a checklist that DOLE regional office provides in the first quarter of every year. Within a month after receiving the checklist a committee in the employer company, composed of employer and employee representatives, shall accomplish the checklist and submit it to the DOLE in five days.

The second mode, inspection, is undertaken by DOLE inspectors in workplaces with 10 to 199 workers. Given inspection priority are workplaces that are subjects of complaints or where accidents and illnesses are imminent or work hazards exist. Also in priority list are construction sites and places where women and children work.

The third enforcement approach consists in providing advisory services to establishments with less than 10 workers and those registered as BMBEs (barangay microbusiness enterprises). These small businesses are given assistance to improve their productivity, thereby facilitating their eventual compliance with labor standards.

Finally, under D.O. No. 57-04 the DOLE may delegate to local government units the conduct of technical safety inspection required under Article 165 of the Labor Code.

Labor standards violations unearthed through self-assessment or inspection, or related cases, are to be disposed of in accordance with Articles 128, 129, 162 [now 168], and 165 [now 171] of the Labor Code.

3. **SCOPE OF VISITORIAL-ENFORCEMENT POWER UNDER ARTICLE 128**

The visitorial and investigatory power under Article 128(a) is broad enough to cover any fact, condition or matter related to the enforcement not only of the Labor Code but of any labor law.

Such power is likewise unlimited by the amount of monetary liability involved. The liability, determined through appropriate proceedings, may be enforced through an order or writ of execution regardless of the amount involved, according to Article 128(b) as amended by R.A. No. 7730.

Pursuant to R.A. No. 7730, the jurisdictional limitations imposed by Article 129 on the visitorial and enforcement powers of [the Regional] Office under Article 128 of the Labor Code, have been repealed. The phrase “notwithstanding the provisions of Articles 129 and 217 [now 224] of the Labor Code to the contrary,” erases all doubts as to the amendatory nature of R.A. No. 7730. The amendment, in effect, overturned the rulings in the Aboitiz and Servandos cases.
insofar as the restrictive effect of Article 129 on the use of the power under Article 128 is concerned.\(^1\)

The Secretary of Labor and Employment and his duly authorized representative, in the exercise of their visitorial and enforcement powers, are now authorized to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. This power is unrestricted by the jurisdictional amount of P5,000.00 provided under Article 129 and Article 217 of the Code.\(^2\)

4. **WHO DETERMINES THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP: THE BOMBO RADYO RULINGS**

In the *Cirineo* case, above, the Court itself acknowledges that the visitorial and enforcement power of the regional director has been freed by R.A. No. 7730 from the jurisdictional limitations imposed by Articles 129 and 217. This is the effect of the phrase “notwithstanding the provisions of Articles 129 and 217...” Unmistakably, the intention of R.A. No. 7730 is to broaden the extent and heighten the effectiveness of the enforcement power of the regional director, he being the government’s regional representative “to give effect to the labor standards provisions of the Labor Code and other labor legislation....”

But while R.A. No. 7730 frees the regional director from jurisdictional fetters, a Supreme Court decision in 2009 handcuffed him again as it said that determining the existence of employer-employee relationship “should be comprehensive and intensive and therefore better left to the specialized quasi-judicial body that is the NLRC.”\(^3\) In short, the NLRC’s labor arbiter, not the DOLE regional director, is the proper competent authority to say whether one is an employee or not.

This is a “simple question,” the court said prefatorily in the *People’s Broadcasting (Bombo Radyo)* case, and yet in expressing preference for the labor arbiter over the regional director, the decision avers that “the intricacies and implications of an employer-employee relationship demand that the level of scrutiny should be far above the cursory and the mechanical.”

The majority decision in *Bombo Radyo* says that the employer-employee relationship is “a matter fraught with questions of fact and law, which is best resolved by the quasi-judicial body, which is the NLRC, rather than an administrative official of the executive branch.” The existence of an employer-employee relationship is a matter which is not easily determinable from an ordinary inspection, necessarily so, because the elements of such relationship

---

\(^1\)Cirineo Bowling Plaza vs. Gerry Sensing, G.R. No. 146572, January 14, 2005.

\(^2\)Ibid.

are not verifiable from a mere ocular inspection. The decision believes that the
regional director (definitely a higher official than a labor inspector) is “not the
right person to judge existence of employer-employee relationship” because it
often becomes a “battle of evidence.”

Justice Brion registers a strong dissent.¹

4.1 Later Decision: DOLE Director has Quasi-judicial Power

Three months later, the assertion in Bombo Radyo that Article 128 does not
vest quasi-judicial power upon the DOLE regional director does not accord with
the pronouncement in Jethro Intelligence & Security Corp. and Yakult Phil. vs. Hon.
Secretary of Labor and Employment, et al., G.R. No. 172537, rendered on August 14,
2009. This decision recognizes quasi-judicial power of the Secretary of Labor
or the Regional Director. The case stemmed from monetary claims of security
guards against their security agency and its client-principal. The labor standards
violations were verified through an inspection and caused the issuance of a writ
of execution and garnishment by the DOLE regional director.

Jethro, the security agency and admittedly the employer of the complainant
guards, assailed the regional director’s writ of execution and garnishment. But
the High Court upheld the director’s issuance of the writs by stressing that the
director “exercises quasi-judicial power”:

It bears emphasis that the SOLE, under Article 106 of the Labor
Code, as amended exercises quasi-judicial power, at least to the extent

¹In the 2010 edition of this book, we conformed with the dissenting opinion
of Justice Brion, and we further said:

“Moreover, by declaring in Bombo Radyo that determination of employer-
employee relationship is “best resolved by the quasi-judicial body which is the
NLRC,” the Court has probably forgotten what it said in Republic of the Phil. vs. Asiapro
Cooperative, G.R. No. 172101, November 23, 2007. In this case where employer-
employee relationship is involved in connection with registration with the SSS, the
Court upheld the jurisdiction of the Social Security Commission to hear and resolve
the question. Unequivocally, the Court said:

“The NLRC does not have exclusive jurisdiction over a question of
existence of employer-employee relationship... The SSC may inquire into the
presence or absence of an employer-employee relationship as an incident to
the issue of compulsory SSS coverage.”

“If determining the existence of employment relationship is incidental to
the law-implementation responsibility of the SSC, is it not likewise incidental to the
law-enforcement responsibility of the Secretary of Labor? The Bombo Radyo ruling
debilitates the administrative machinery of labor dispute settlement. Does this accord
with the objective of the law to dispense expeditious and inexpensive labor justice?
Does it help the poor workers? Does this accord with the general policy to promote
ADR (alternative dispute resolution) methods instead of litigations?”

378
necessary to determine violations of labor standards provisions of the Code and other labor legislation. He/She or the Regional Directors can issue compliance orders and writs of execution for the enforcement thereof. The significance of and binding effect of the compliance orders of the DOLE Secretary is enunciated in Article 128 of the Labor Code, as amended....

4.2  

_Bombo Radyo Revisited and Modified in 2012_

The High Court revisited the _Bombo Radyo_ ruling of 2009 and modified it in March 2012 through an *en banc* resolution. The Court now concedes that DOLE has the authority to determine the existence of an employer-employee relationship, “subject to judicial review, not review by NLRC.” We quote —

No limitation in the law was placed upon the power of the DOLE to determine the existence of an employer-employee relationship. No procedure was laid down where the DOLE would only make a preliminary finding, that the power was primarily held by the NLRC. The law did not say that the DOLE would first seek the NLRC’s determination of the existence of an employer-employee relationship, or that should the existence of the employer-employee relationship be disputed, the DOLE would refer the matter to the NLRC. The DOLE must have the power to determine whether or not an employer-employee relationship exists, and from there to decide whether or not to issue compliance orders in accordance with Art. 128(b) of the Labor Code, as amended by R.A. 7730.

This is not to say that the determination by the DOLE is beyond question or review. Suffice it to say, there are judicial remedies such as a petition for certiorari under Rule 65 that may be availed of, should a party wish to dispute the findings of the DOLE.

It must also be remembered that the power of the DOLE to determine the existence of an employer-employee relationship need not necessarily result in an affirmative finding. The DOLE may well make the determination that no employer-employee relationship exists, thus divesting itself of jurisdiction over the case. It must not be precluded from being able to reach its own conclusions, not by the parties, and certainly not by this Court.

Under Art. 128(b) of the Labor Code, as amended by R.A. 7730, the DOLE is fully empowered to make a determination as to the existence of an employer-employee relationship in the exercise of its visitorial and enforcement power, subject to judicial review, not review by the NLRC.¹

5.  

WORK RELATIONSHIP STILL EXISTING

For the Regional Director to exercise the enforcement power under Article 128(b), the work relationship between the complaining workers and the alleged

¹People’s Broadcasting Service [Bombo Radyo Phil., Inc.] vs. Secretary of Labor, etc., G.R. No. 179652, March 6, 2012.
employer must be existing at the time the complaint (formal or informal) is presented.

In one case the Regional Director, responding to a complaint of some workers, authorized the conduct of inspection in the establishment and subsequently issued an Order requiring payment of statutory benefits to the workers. The employer impugned the RD’s jurisdiction by presenting release and quitclaims documents allegedly signed by the workers. The Regional Director and, on appeal, the Undersecretary of Labor and the Court of Appeals dismissed the employer’s objection. The High Court agreed that photocopies of documents entitled “Release and Quitclaims” are unreliable and insufficient to divest the Regional Director of the jurisdiction to conduct a complaint inspection, especially considering the fact that the complaining workers continue working for the employer up to more than one week after the inspection. The conclusion of the Regional Director and, later the Undersecretary of Labor and the Court of Appeals that such documents are unreliable deserves respect from the Supreme Court.1

Where one of several complainants alleges illegal dismissal, his allegation deprives the regional director of jurisdiction as the dismissal complaint will fall under the Labor Arbiter’s jurisdiction, according to Article 217 [224 as renumbered]. But the regional director retains jurisdiction over his other complaints and those of the other complainants about underpayment of wages and other violations of labor laws, regardless of amount involved under Article 128(b).2

6. SUBJECTS OF ENFORCEMENT

The regional director, in cases where employer-employee relationship still exists, has the power to order and administer, after due notice and hearing, compliance with the labor standards provisions of the Labor Code and other legislation. An enforcement order is normally based on the findings of labor regulation officers or industrial safety engineers made in the course of inspection. The director may also issue writs of execution to the appropriate authority for the enforcement of his orders in line with the provisions of Article 128 in relation to Articles 289 and 290 of the Labor Code.

However, in those cases where the employer contests the findings of the labor standards and welfare officers and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection, the regional director must endorse the case to the appropriate arbitration branch (labor-arbiter) of the NLRC for adjudication.3

The visitorial enforcement power is thorough and piercing; it extends even to issues not formally included in the complaint.

---

1EJR Crafts Corp. vs. CA, et al., G.R. No. 154101, March 10, 2006.
3Sec. 1, Rule X, Book III, Omnibus Rules Implementing for Labor Code.
The Supreme Court has upheld the visitorial power of the Regional Director to enforce a labor standards law even if the compliance issue is not raised in the complaint. The Court said:

We also do not agree with the petitioner’s allegation that it was improper for the respondent Regional Director to order, in the questioned Order dated 13 October 1988, compliance with PD 1678 [which mandated certain emergency allowance] as the issue on the said decree was never raised by private respondent in its complaint filed before the Regional Director. While it may be true that PD 1678 is not one of the laws where noncompliance therewith was complained of, still the Regional Director correctly acted in ordering petitioner to comply therewith, as he (Regional Director) has such power under his visitorial and enforcement authority provided under Article 128(a) of the Labor Code. (Aboitiz Shipping Corp. vs. Dela Serna, etc., G.R. No. 88538, April 25, 1990)

However, a regional director is plainly without the authority to declare an order or law unconstitutional and his duty is merely to enforce the law which stands valid, unless otherwise declared by this Tribunal [the Supreme Court] to be unconstitutional. On our part, we [the Supreme Court] hereby declare the assailed Wage Orders as constitutional, there being no provision of the 1973 Constitution and the 1987 Constitution (or even both the Freedom Constitution and the 1987 Constitution) violated by said Wage Orders, which Orders are without doubt for the benefit of labor.1

6.1 Unless Agreed Otherwise, Statutory Benefits are Apart from Contractual Benefits

Meycauayan College vs. Drilon, G.R. No. 81144, May 7, 1990 —

Facts: On January 16, 1987, the Board of Trustees of Meycauayan College recognized the school’s faculty and personnel association as the employees’ union. Prior to the recognition, the College and the union had entered into a collective bargaining agreement which provided for a salary scale.

During the lifetime of the collective bargaining agreement, several wage orders were issued. The union admitted that its members were paid all the increases in pay mandated by law, but the union president discovered that Article IV of the CBA itself, regarding the new salary scale, had not been implemented. The Union filed a notice of strike on the ground of unfair labor practice.

The College countered that an agreement on a salary scale should be distinguished from an agreement on a salary increase. It argued that an agreement on a salary scale should not be considered as an addition to the salary increase imposed by law and vice versa.

1Brokenshire Memorial Hospital, Inc. vs. Minister of Labor, et al., G.R. No. 74621, February 2, 1990.
The Regional Director found that the collective bargaining agreement had not been complied with and therefore directed the College to comply with the salary scale provision of the collective bargaining agreement. The Secretary of Labor agreed with the Director.

**Ruling:** The Supreme Court affirmed the Labor Secretary’s decision. A collective bargaining agreement is a contractual obligation. It is distinct from an obligation imposed by law. The terms and conditions of a collective bargaining agreement constitutes the law between the parties. Beneficiaries thereof are, therefore, by right, entitled to the fulfillment of the obligation prescribed therein. Consequently, to deny binding force to the collective bargaining agreement would place a premium on a refusal by a party thereto to comply with the terms of the agreement. Such refusal would constitute an unfair labor practice.

Compliance with a collective bargaining agreement is mandated by the express policy to give protection to labor. Unless otherwise provided by law, said policy should be given paramount consideration. Since the College has failed to point to any provision of law or even of the collective bargaining agreement itself to the effect that benefits provided by the former encompass those provided by the latter, benefits derived from either the law or a contract should be treated as distinct and separate from each other. (Italics supplied — CAA)

The contention of the College that an agreement on a salary scale should not be considered as an additional to the salary increase imposed by law and vice versa is fallacious. Increments to the laborers’ financial gratification, be they in the form of salary increases or changes in the salary scale are aimed at one thing — improvement of the economic predicament of the laborers. As such, they should be viewed in the light of the State’s avowed policy to protect labor. Thus, having entered into an agreement with its employees, an employer may not be allowed to renege on its obligations under a collective bargaining agreement should, at the same time, the law grant the employees the same or better terms and conditions of employment.

Employee benefits derived from law are exclusive of benefits arrived at through negotiation and agreement, unless otherwise provided by the agreement itself or by law.

As the key to the interpretation of contracts, including collective bargaining agreements, is the intention of the parties, we examined the record and found that the collective bargaining agreement herein involved was entered into by the parties to improve the plight of the teachers’ salary or rate per period, by drafting a salary scale “based on the length of service” of the teachers and eventually came up with Article IV of the collective bargaining agreement. Clearly, the parties wanted to attain one goal — increase the salaries of the teachers on the basis of their length of service. Hence, it is immaterial that the means by which the goal is achieved is through the alteration of the salary scale.

---

**6.2 Teachers’ Share in Tuition Fee Increase**

Also covered by DOLE’s visorial-enforcement power is the compliance with the law requiring a school to give the teachers a share in tuition fee increases.
But, what if the school is losing? Does this obligation exist if there was tuition fee increase but no “incremental proceeds” because of decreased enrollment or increased bad debts? The answer is given in sympathetic lines by Justice (later Chief Justice) Artemio V. Panganiban.

_St. Joseph’s College vs. St. Joseph’s College Workers’ Association, G.R. No. 155609, January 17, 2005 —_

_Facts:_ This petition asks the Supreme Court to settle once and for all the meaning of “incremental proceeds” from tuition fee increase.

Specifically, petitioner [employer school] submits the question of whether or not there are “incremental proceeds from a tuition fee increase” to be distributed as mandated by R.A. No. 6728 when a school increases tuition fees for a succeeding school year but actually ends up with a lower income than the previous school year because some of its students can no longer afford the higher tuition and are forced to drop out or transfer to another school, public or private, which charges a lower tuition fee they can afford.

Petitioner submits that in this situation, though there is a ‘tuition fee increase,’ there is no ‘incremental proceeds’ that is derived from the tuition fee increase; and therefore there is nothing to distribute to the employees.

_Ruling:_ Indeed this Court sympathizes with the dilemma of petitioner and other educational institutions similarly situated. In their desire to raise teacher compensation and to expand school facilities, they resort to sometimes painful increases in tuition fees, only to find out later that — despite their good intentions — their gross revenues actually decrease because of the lesser number of enrollees who can afford the increases. However, the Court cannot agree with their position on the present legal issue because of the following reasons:

_First,_ the judiciary merely applies what the law is, not what its hould be. Section 5(2) of R.A. No. 6728 allows a tuition fee increase only under the condition that at least 70 percent of the increase shall be disbursed as salaries, wages, allowances and other benefits for teaching and nonteaching personnel. The law imposes this requirement without exceptions or qualifications:

“2) xxx tuition fees under subparagraph (c) may be increased, on the condition that seventy percent (70%) x x x of the tuition fee increases shall go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel x x x. At least 20% shall go to the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasium and similar facilities and to the payment of other costs of operation. For this purpose, schools shall maintain a separate record of accounts for all assistance received from the government, any tuition fee increase, and the detailed disposition and use thereof, which record shall be made available for periodic inspection x x x.” (Underscoring supplied)

It is not the province of the judiciary to look into the wisdom of the law nor to question the policies adopted by the legislative branch. Nor is it the business of this Tribunal to remedy every unjust situation that may arise from the application of a
particular law. It is for the legislature to enact remedial legislation if that would be necessary in the premises.

Second, the question of whether to increase tuition fees within the parameters of the law lies within the discretion and power of the school, not the personnel thereof. When such a decision is made, it is assumed that the school has undertaken a serious and thorough study of the probable consequences. In this sense, the action on whether to raise these fees becomes an entrepreneurial risk that the owner assumes. In case such action turns out to be unwise or inconvenient, its result should be the primary responsibility of the risk taker.

Third, apart from making theoretical calculations, petitioner has not provided the Court with hard evidence on the actual loss it has incurred as a result of the tuition fee increase. Note that a mere decrease in the gross income of a corporation does not necessarily and automatically translate into a negative bottom line. Decreased income may also mean decreased expenses.

Fourth, if the law is indeed disadvantageous to the educational system and grossly harmful to private schools, the remedy lies not in this Court but in Congress which controls not only issues of policy, but also the purse strings of government. We are confident that, given the opportunity to weigh the contentious sides of this question, Congress will find a wise answer.

6.3 CBA Salary Increase Charged to the 70% Share

In a case involving implementation of salary increases granted in the CBA in a school, there were two kinds of salary increases: (1) the CBA-negotiated increase takes from the university fund, and (2) the increase resulting from the incremental proceeds (IP) integration. The latter kind of pay increase was taken from the 70% share of the school personnel from the incremental proceeds. This the union objected to. It maintained that the 70% share in the incremental proceeds of the tuition fee increase should not be the source of a pay increase mandated in the CBA of the parties. In other words, the 70% share should be kept intact apart and separate from the CBA increase. The Court decided that the charging of the integrated IP against the 70% share is not violative of the CBA. The Court said:

The integrated IP provided in the CBAs of the teaching and the nonteaching staff is actually the share of the employees in the 70% of the IP that is incorporated into their salaries as a result of the negotiation between the university and its personnel. The purpose of the integration is to regularize the receipt by the personnel of the benefits arising from the increase in the school’s tuition fees. But it does not change the nature of the benefit as IP. There is no basis, therefore, for petitioner’s objection to the sourcing of the integrated IP from the 70% of the tuition fee increase.

(Centro Escolar University Faculty and Allied Workers Union vs. Hon. Court of Appeals, etc., G.R. No. 165486, May 31, 2006)
7. **DISPOSITION OF LABOR STANDARD CASES**

A labor standard case is processed administratively under Articles 128 and 129 of the Labor Code, as amended. Labor standards refer to the minimum requirements prescribed by existing laws, rules and regulations relating to wages, hours of work, cost-of-living allowance and other monetary and welfare benefits including occupational, safety, and health standards. Under the present rules, a Regional Director exercises both visitorial and enforcement power over labor standard cases, and is, therefore, empowered to adjudicate money claims, provided there still exists an employer-employee relationship, and the findings of the regional office are not contested by the employer concerned.¹

Pursuant to the provisions of Article 5, in relation to Article 128[b] of the Labor Code, the Secretary of Labor and Employment issued on September 16, 1987 the Rules on the Disposition of Labor Standards Cases in the Regional Offices to govern the enforcement of labor standards at the regional level. After the issuance of those Rules, Article 128[b] was amended by R.A. No. 7730 on June 2, 1994 whose provisions are now reflected in the present Article 128.

7.1 **Inspection Report**

Where [a reported violation of labor standards] is assigned to LSWO [Labor Standards and Welfare Officer] for inspection, the latter shall conduct the necessary investigation and submit a report thereon to the Regional Director, through the Chief of the Labor Standards Enforcement Division (LSED), within twenty-four (24) hours after the investigation or within a reasonable period as may be determined by the Regional Director. The report shall specify the violations discovered, if any, together with his recommendations and computation of the amount due each worker.²

7.2 **Coverage of Complaint Inspection**

A complaint inspection shall not be limited to the specific allegations or violations raised by the complainants/workers but shall be a thorough inquiry into and verification of the compliance by employer with existing labor standards and shall cover all workers similarly situated.³

7.3 **Restitution**

Where the employer has agreed to make the necessary restitution of violations discovered in the course of inspection, such restitution may be effected

¹Maternity Children’s Hospital, etc. vs. Secretary of Labor and Regional Director of Labor, G.R. No. 78909, June 30, 1989.

²Sec. 5, Rule II, Rules on the Disposition of Labor Standards Cases in the Regional Offices.

³Sec. 6, Rule II, ibid.
at the plant-level within five (5) calendar days from receipt of the inspection results by the employer or his authorized representative.¹

Plant-level restitution may be effected for money claims not exceeding fifty thousand pesos (P50,000.00). A report of the restitution shall be immediately submitted to the Regional Director for verification and confirmation. In case the Regional Director finds that the restitutions effected at the plant-level are not in order, he may direct the LSED Chief to check on the correctness of the restitution report.² [The first sentence of this paragraph is rendered obsolete by R.A. No. 7730, as explained above. — CAA]

Restitutions in excess of the aforementioned amount shall be effected at the Regional Office or at the worksite subject to the prior approval of the Regional Director.³

7.4 Compromise Agreement

Should the parties arrive at an agreement as to the whole or part of the dispute, said agreement shall be reduced in writing and signed by the parties in the presence of the Regional Director or his duly authorized representative.⁴

A settlement that provides for an amount of money far below the sum legally due violates public policy. Such settlement, although reached with the participation of the regional director, may be appealed to and reversed by the secretary of labor.⁵

7.5 Hearing

Where no proof of compliance is submitted by the employer after seven (7) calendar days from receipt of the inspection results, the Regional Director shall summon the employer and the complainants to a summary investigation. In regular routine inspection cases, however, such investigation shall be conducted where no complete field investigation can be made for reasons attributable to the fault of the employer or his representatives, such as those but not limited to instances when the field inspectors are denied access to the premises, employment records, or workers of the employer.⁶

7.6 Complaint Inspection Under Article 128; Illustrative Case


Facts: An inspection conducted by the Department in response to complaints filed by two employees, revealed that COCOFED was guilty of underpayment of

¹Sec. 7[a], Rule II, ibid.
²Sec. 7[b], Rule II, ibid.
³Sec. 7[c], Rule II, ibid.
⁴Sec. 8, Rule II, ibid.
⁵See topic Appeal, below.
⁶Sec. 11, Rule II, ibid.
wages, emergency cost of living allowance (ECOLA) and 13th-month pay. A notice of inspection results was issued requiring COCOFED to effect restitution or correction within five (5) days from notice.

Summary investigations were conducted.

COCOFED alleged that complainants worked for less than eight hours, a minimum of four and a maximum of six, and that, therefore, COCOFED was justified in paying an amount less than the statutory minimum wage.

The Regional Director issued a Compliance Order, ruling that the documents confirmed the manifestation by the counsel of complainants that the workers paid on a daily and monthly basis are receiving wages below the statutory minimum.

COCOFED appealed to the Secretary of Labor and Employment who denied the appeal and ruled that:

"On the basis of the payrolls submitted by the respondent, we find that [the] Regional Director was correct in ruling that the complainants are daily-paid workers. While respondent claims that in 1985 these workers were paid on piece-rate basis, still the payrolls show that from March 1985 to February 1989, the complainants were paid on a daily basis. Granting that these workers were indeed converted to piece-rate workers, said conversion is an outright violation of the Labor Code. An employer cannot unilaterally decrease the salary being given to the employees pursuant to Article 100 of the Labor Code. What it has voluntarily given cannot be unilaterally withdrawn. Besides, the implementing rules are explicit to the effect that nothing therein shall justify an employer from withdrawing or reducing benefits or supplements provided in existing individual or collective agreement or employer practice or policy. (Oceanic Pharmacal Employees Union vs. Hon. A. Inciong, G.R. No. L-50568, November 7, 1979)

COCOFED filed a petition with the Supreme Court alleging that the regional director and the Secretary of Labor committed grave abuse of discretion (1) in not categorizing it as an establishment with less than 30 employees and with a paid-up capital of P500,000.00 or less and (2) in not finding that complainants are piece-rate workers or paid by results.

Ruling: We find no grave abuse of discretion on the part of public respondents. x x x x

Petitioner would have us overturn the factual finding of public respondents that its employees are daily paid workers. This we are unable to do for the payrolls submitted by it support the latter’s position. Findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality.

8. SUSPENSION OF OPERATIONS

Paragraph (c) of this Article authorizes the Secretary of Labor to suspend the operations of an establishment whose non-compliance with law or regulations poses grave and imminent danger to workers.
ART. 128  CONDITIONS OF EMPLOYMENT

Enforcement orders under this Article are beyond injunctive power of an inferior court.

9. APPEAL

An order issued under this Article is appealable to the DOLE Secretary, the administrative superior of the regional director.

The decision of the Secretary becomes final and executory after ten calendar days from receipt of the records of the case. A motion for reconsideration of the secretary’s decision has to be filed as a precondition for any further or subsequent remedy. If the motion is denied, a special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure may be filed with the Court of Appeals within 60 days from receipt of the denial of the motion.¹

Following the rationale of St. Martin ruling, decisions of the Secretary of Labor, such as those under Articles 128, 239, 259, and 263 may be elevated initially to the Court of Appeals through certiorari.²

The validity of quitclaims may be assailed in an appeal to the labor secretary despite the fact that they were signed voluntarily and under the supervision of the regional director. If the sum agreed upon, for instance, is only about one-half of what is legally due, the settlement contradicts public policy and can be voided. The Supreme Court said:

A quitclaim is said to be invalid and against public policy (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their face. In such cases, the law will step in to annul the questionable transaction. The second exception obtains in the case at bar. As succinctly put by the Secretary of Labor:

As to the claim that this Office failed to show why the Quitclaims and Releases were unconscionable, despite the fact that it was executed before the DOLE-CAR Regional Office, the same is totally misplaced. Clear from the record is that, except for the quitclaim signed by complainant Felix Padilla, the monetary considerations indicated in the 22 Quitclaims and Releases were way below the total claims of each complainants. The presence and assistance of the representatives of the DOLE-CAR Regional Office in the execution and consummation of the same is of no moment. This Office, pursuant to its administrative supervision and control over the Regional Offices and the power to review actions and decisions of her subordinates, can exercise corrective measures, where the circumstances


388
ART. 128

ADMINISTRATION AND ENFORCEMENT

warrant and to prevent injustice. (*Catholic Vicariate Baguio City vs. Hon. P.A. Sto. Tomas, G.R. No. 167334, March 7, 2008*)

9.1 Who Benefits from Rectification

A rectification resulting from inspection findings under Article 128 is a regulatory action by DOLE. Even non-complaining employees will benefit from the rectification order. In the above Catholic Vicariate case where the labor secretary’s monetary award extended even to noncomplainants, the Court justifies the coverage by saying —

The doctrine in *Maternity Children’s Hospital v. Secretary of Labor* is instructive. In said case, the award is extended to all employees of the establishment concerned, including those who did not sign the complaint. This Court explained, thus:

The justification for the award to this group of employees who were not signatories to the complaint is that the visitorial and enforcement powers given to the Secretary of Labor is relevant to, and exercisable over establishments, not over the individual members/employees, because what is sought to be achieved by its exercise is the observance of, and/or compliance by, such firm/establishment with the labor standards regulations. Necessarily, in case of an award resulting from a violation of labor legislation by such establishment, the entire members/employees should benefit therefrom.

9.2 Bond

Under Rule X-A of D.O. No. 7-A, Series of 1995, the appeal may be perfected only upon the posting of a cash or surety bond equivalent to the monetary award. The rule does not allow the DOLE Secretary, unlike the rules of the NLRC, to entertain a motion to reduce the amount of the bond. Thus, in a case where the award was more than P300 Thousand, but the employer posted only P1,000.00 cash bond, the Secretary dismissed the appeal, and both the Court of Appeals and the Supreme Court sustained the dismissal.1

10. ENFORCEMENT OF WAGE ORDER

Under R.A. No. 6727 [*June 9, 1989*], otherwise known as the *Wage Rationalization Act* and its implementing rules, the Department of Labor and Employment shall conduct inspections as often as possible or necessary, within its manpower constraint, of the payroll and other financial records kept by the company or business, to determine whether the workers are paid the prescribed minimum wage rates and other benefits granted by law or any wage order.2

1Yanson vs. Secretary of Labor, G.R. No. 159026, February 11, 2008.
2Sec. 9, R.A. No. 6727; Sec. 18, Chapter 1, Rules Implementing R.A. No. 6727.
CONDITIONS OF EMPLOYMENT

In unionized companies, the DOLE inspectors shall always be accompanied by the president or any responsible officer of the recognized bargaining union or of any interested union in the conduct of the inspection.1

In non-unionized companies, establishments or businesses, the inspection should be carried out in the presence of a worker representing the workers in the said company. The worker’s representative shall have the right to submit his own findings to the DOLE and to testify on the same if he cannot concur with the findings of the labor inspector.2

Complaints for non-compliance by employers with the wage increases prescribed under R.A. No. 6727 shall be filed with the Regional Office of the DOLE having jurisdiction over the workplace and shall be the subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended.3

10.1 Penalty for Noncompliance; Double Indemnity

The wage rationalization law (R.A. No. 6727, approved on June 9, 1989), specifies the penalty for an employer’s refusal or failure to comply with wage orders. The penalty was in the form of a fine. Convinced that this penalty was too light for a prevalent “sin” among employers, the legislature passed R.A. No. 8188, approved on June 11, 1996, to make the penalty heavier. As amended, Section 12 of R.A. No. 6727 punishes the noncompliance with imprisonment and double indemnity. It states:

“SEC. 12. Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with this Act shall be punished by a fine of not less than Twenty-five thousand pesos (P25,000) nor more than One hundred thousand pesos (P100,000) or imprisonment of not less than two (2) years nor more than four (4) years, or both such fine and imprisonment at the discretion of the court: Provided, That any person convicted under this Act shall not be entitled to the benefits provided for under the Probation Law.

“The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employee: Provided, That payment of indemnity shall not absolve the employer from the criminal liability imposable under this Act.

“If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity’s responsible officers, including, but not

---

1Sec. 9. R.A. No. 6727; Sec. 18, Chapter 1, Rules Implementing R.A. No. 6727
2Ibid.
3Sec. 17, Chapter 1, Rules Implementing R.A. No. 6727.
limited to, the president, vice-president, chief executive officer, general manager, managing director or partner.”

To implement the amending law, the Secretary of Labor and Employment issued Department Order No. 10 dated 4 May 1998. It defines “double indemnity” as the payment to a concerned employee of the prescribed increases or adjustments in the wage rate which was not paid by an employer in an amount equivalent to twice the unpaid benefits owing to such employee. “Unpaid benefits” is explained as the prescribed wage rates which the employer failed to pay upon the effectivity of a wage order, exclusive of other wage-related benefits. Unpaid benefits, as defined, serves as the principal basis for computing the double indemnity.¹

For instance, if a wage order imposes a minimum wage increase of, say, P20.00 a day, the employer who fails or refuses to comply with the order may be required to pay P40.00 wage increase per day to the employee entitled thereto.

The computation for double indemnity starts from the effectivity of the prescribed increases or adjustments as indicated in the wage order. The basis for the computation of double indemnity is limited to the unpaid benefits, as already defined. Where there is partial compliance with the prescribed increase or adjustment, the basis for computing double indemnity is the balance of unpaid benefits reckoned from the effectivity of the wage order.²

10.2 CBA Anniversary Wage Increase as Compliance with Wage Order; Sec. 8 of R.A. No. 6640 Invalid

*Cebu Oxygen & Acetylene Co., Inc. vs. Drilon, G.R. No. 82849, August 2, 1989 —*

**Facts:** R.A. No. 6640, passed on December 14, 1987, increased by ten pesos the statutory minimum daily wage rates of workers and employees in the private sector, whether agricultural or non-agricultural.

The Secretary of Labor issued the pertinent rules implementing R.A. No. 6640, Sec. 8 of which provides: “No wage increase shall be credited as compliance with the increase prescribed herein unless expressly provided under valid individual written/collective agreements; and, **Provided further, That such wage increase was granted in anticipation of the legislated wage increase under the Act. Such increases shall not include anniversary wage increase provided in collective bargaining agreements.”

Cebu Oxygen Co. and the union of its rank-and-file employees entered into a collective bargaining agreement covering the years 1986 to 1988. Under the CBA, the management gave salary increases as follows: x x x The CBA contained a proviso that the “pay increase shall be credited as payment to any mandated government wage adjustment or allowance increases which may be issued by way of legislation, decree or presidential edict counted from the above date to the next increase.”

The Regional Director ordered Cebu Oxygen Co. to pay the deficiency of P200 in the monthly salary and P231 in the 13th-month pay of its employees for the period...

¹Sec. 2, D.O. No. 10 [1998].
²Sec. 4, *ibid.*
stated. Cebu Oxygen protested the director’s order, saying that the anniversary wage increase under the CBA could be credited against the wage increase mandated by R.A. No. 6640. It argued that the payment of the differentials constituted full compliance with R.A. No. 6640.

**Issue:** Whether the wage increase under the CBA can be credited as compliance with the statutory wage increase.

**Ruling:** Cebu Oxygen correctly contended that the salary increases granted by it pursuant to the existing CBA including anniversary wage increase should be considered in determining compliance with the wage increase mandated by R.A. No. 6640. It therefore correctly credited its employees P62 for the differential of two (2) month’s increase and P31.00 each for the differential in the 13th-month pay, after deducting the P200 anniversary wage increase for 1987 under the Collective Bargaining Agreement.

Section 8 of the Rules Implementing R.A. No. 6640 is declared null and void insofar as it excludes the anniversary wage increases negotiated under collective bargaining agreements from being credited to the wage increases provided for under R.A. No. 6640.

**10.3 CBA Increases and Statutory Increases; Intention of Parties**

The intention of the parties whether or not to equate benefits under the collective bargaining agreement with those granted by law must prevail and be given effect. Thus, the employees are entitled to the full amounts of both a wage increase under a collective bargaining agreement and an increase in living allowance prescribed by law during the period when both increases are concurrently effective, for want of an agreement between the parties to treat the increase in living allowance as applicable to the wage increase. The manifest will and intent of the parties to treat the legislated increases as equivalent *pro tanto* to those stipulated in their bargaining agreement must be respected and given effect.1

The Court must ascertain and give effect to the intent projected by the parties to the Collective Bargaining Agreement. That intent is to be determined in the first instance by examining the words used by the parties in setting forth their agreement. The contemporaneous and subsequent conduct of the parties may be taken into account by a court which must interpret and apply a contract entered into by them. Stipulations of a contract must be read together with its other provisions and not in isolation from each other.2

---


ART. 129. RECOVERY OF WAGES, SIMPLE MONEY CLAIMS AND OTHER BENEFITS.¹

Upon complaint of any interested party, the regional director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper under this Code, arising from employer-employee relations: Provided, That such complaint does not include a claim for reinstatement, Provided further, that the aggregate money claims of each employee or househelper does not exceed five thousand pesos (P5,000.00). The regional director or hearing officer shall decide or resolve the complaint within thirty (30) calendar days from the date of the filing of the same. Any sum thus recovered on behalf of any employee or househelper pursuant to this Article shall be held in a special deposit account by, and shall be paid on order of, the Secretary of Labor and Employment or the regional director directly to the employee or househelper concerned. Any such sum not paid to the employee or househelper, because he cannot be located after diligent and reasonable effort to locate him within a period of three (3) years, shall be held as a special fund of the Department of Labor and Employment to be used exclusively for the amelioration and benefit of workers.

Any decision or resolution of the regional director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 223 of this Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from the submission of the last pleading required or allowed under its rules.

The Secretary of Labor and Employment or his duly authorized representative may supervise the payment of unpaid wages and other monetary claims and benefits, including legal interest, found owing to any employee or househelper under this Code.

COMMENTS AND CASES

1. MONEY CLAIMS ADJUDICATION UNDER ARTICLE 129

Article 129 treats of small money claims. They ought to be disposed of quickly, free from legal technicalities, and with least expense to the claimants. Aside from these, the claimants should be shielded from retaliation by the employer, as implicitly feared by Article 118.

¹As amended by Sec. 2, R.A. No. 6715.
Under the provisions of Article 129, the Regional Director is empowered, through summary proceedings and after due notice, to hear and decide cases involving recovery of wages and other monetary claims and benefits, including legal interest, provided the following requisites are present:

1) the claim is presented by an employee, or a person employed in domestic or household service, or househelper;
2) the claim arises from employer-employee relations;
3) the claimant does not seek reinstatement; and
4) the aggregate money claim of each claimant does not exceed P5,000.00.1

In the absence of any of the above requisites, the Labor Arbiter shall have exclusive original jurisdiction over claims arising from employer-employee relations, (except claims for employees’ compensation, social security, medicare and maternity benefit), pursuant to Article 224 of the Labor Code.2

The article does not require that the complainant be an employee at the time the complaint is filed. It is enough that the claim arises from employment. Thus, if the complainant has been dismissed but is not demanding reinstatement, the regional director still has jurisdiction over the case, assuming that the claim does not exceed P5,000.00.

1.1 When claim exceeds P5,000.00

When the evidence shows that the claim amounts to more than five thousand pesos (P5,000.00), the Regional Director or Hearing Officer shall advise the complainant to amend the complaint if the latter so desires and file the same with the appropriate regional branch of the National Labor Relations Commission.3

2. NATURE OF PROCEEDINGS

The proceedings before the Regional Office shall be summary and non-litigious. Subject to the requirements of due process, the technicalities of law and procedure and the rules governing admissibility and sufficiency of evidence in the courts of law shall not strictly apply thereto. The Regional Office may, however, avail itself of all reasonable means to ascertain the facts of the controversy speedily and objectively, including ocular inspection and examination of well-informed persons. Substantial evidence, whenever necessary, shall be sufficient to support a decision or order.4

---

1Article 129, Labor Code, as amended by R.A. No. 6715.
2Aboitiz Shipping Corp. vs. De la Serna, etc., G.R. No. 88538, April 25, 1990.
3Sec. 1[c], Rule XI, Book III, Rules to Implement the Labor Code.
4Sec. 12, Rule II, Rules on the Disposition of Labor Standards Cases in the Regional Offices.
2.1 Due Process in Administrative Proceedings

The Court has already set forth what is now known as the “cardinal primary” requirements of due process in administrative proceedings, to wit: “(1) the right to a hearing which includes the right to present one’s case and submit evidence in support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must have something to support itself; (4) the evidence must be substantial, and substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion; (5) the decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the tribunal or body of any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; (7) the board or body should, in all controversial questions, render its decisions in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.”

2.2 Due Process, Principle of Jurisdiction by Estoppel


Facts: The private respondents (employees) filed with the DOLE a complaint charging the petitioner (employer) with underpayment of wages, illegal deductions, nonpayment of night shift differential, overtime pay, etc. When conciliation efforts failed, the parties were required to submit their position papers. Based on the position papers, the Regional Director issued an order directing the employer to pay the employees the benefits prayed for.

Claiming that he was denied due process, the petitioner filed a motion for reconsideration which was treated as an appeal. The Undersecretary affirmed with modification the order of the Regional Director.

Hence, this petition for certiorari and prohibition.

Ruling: 1) Requirement of the process is satisfied when the parties are given an opportunity to submit position papers; what the fundamental law abhors is not absence of previous notice but the absolute lack of opportunity to be heard. — The petitioner was not denied due process, for several hearings were in fact conducted by the hearing officer of the Regional Office of the DOLE and the parties submitted position papers upon which the Regional Director based his decision in the case. The requirements of due process are satisfied when the parties are given an opportunity to submit position papers.

2) Principle of jurisdiction by estoppel. — The petitioner is estopped from questioning the alleged lack of jurisdiction of the Regional Director over the private

respondents’ claims. Petitioner submitted to the jurisdiction of the Regional Director by taking part in the hearings before him and by submitting a position paper. This act of participation amounts to estoppel, [that is, action speaks louder than words: the law does not allow a person to speak against his own act or deed.]

3. **ARTICLES 128 AND 129 COMPARED**

The two articles are similar as they both involve labor law administration and enforcement. But they differ in at least four important respects.

*Firstly, as to nature and subject of the proceedings.* Article 128 speaks of inspection of establishments and the issuance of orders to compel compliance with labor standards, wage orders and other labor laws and regulations; Article 129, on the other hand, refers to adjudication, through summary proceedings after notice and hearing, of employees’ claims for wages and benefits. Article 128 covers enforcement of labor legislation in general, while Article 129 limits the proceedings to monetary claims which therefore involve only labor standards laws. The proceedings under Article 128 are offshoots of inspections done by labor officers or safety engineers while those under Article 129 are initiated by sworn complaints filed by any interested party.

*Secondly, as to workers involved.* Article 128 involves employees still in the service; Article 129 applies to present or past employees at the time the complaint is filed, provided there is no demand for reinstatement, otherwise the case will fall under the labor arbiter’s jurisdiction. But the article says there should be no claim for reinstatement. This does not mean that the complainant in Article 129 has to be an ex-employee. Possibly, he is still employed and that is the reason he is not seeking reinstatement; he is only pursuing a money claim. If Article 129 would apply only to dismissed employees, where would a *presently employed* worker file his money claim for *less* than five thousand pesos? Not with the regional director under Article 129 because he would not be a dismissed employee, and not with a labor arbiter because his claim would be less than P5,000.00. Perhaps he could resort to complaint inspection under Article 128. But a complaint inspection is a regulatory activity of DOLE; it is not a formal complaint signed and filed by an employee. Thus, it is incorrect to say that Article 129 applies only to employees “already separated” from the service. In other words, Article 129 is operative for money claims not exceeding P5,000.00, whether or not employer-employee relationship is existing at the time of the complaint, unlike Article 128 where existing employer-employee relationship is a prerequisite.

*Thirdly, as to jurisdictional limits.* The law fixes no maximum monetary amount for the exercise of enforcement power under Article 128, whereas under Article 129, the amount of money claim per claimant should not exceed P5,000.00.
Paragraph (b) of Article 128 was changed to its present wording by R.A. No. 7730 (June 2, 1994) purposely to strengthen the visitorial-enforcement power by freeing it from the limitations of Article 129.

In a case where labor standards violations were found in a DOLE inspection following receipt of a letter-complaint, the employer contended that the DOLE regional director had no jurisdiction over the complaint of the 21 employees since their individual monetary claims exceeded the P5,000.00 limit. The DOLE Secretary, who sustained the regional director’s decision in favor of the employees, explained that the **jurisdictional limitation imposed by Article 129 on his visitorial and enforcement power under Article 128(b) of the Labor Code, as amended, has been repealed by R.A. No. 7730 (approved on June 2, 1994).** He pointed out that the amendment “[n]otwithstanding the provisions of Articles 129 and 217 of the Labor Code to the contrary” erased all doubts as to the amendatory nature of the new law, and in effect, overturned this Court’s ruling in the case of **Servando’s, Inc. vs. Secretary of Labor and Employment** (198 SCRA 156 [1991]).

The Supreme Court unequivocally upheld this explanation of the DOLE Secretary. In other words, the P5,000 limit in Article 129 does not apply to the exercise of power under Article 128(b).1

What will happen if a claim under Article 129 exceeds P5,000.00? The Implementing Rules, in Section 1(c), Rule XI, instructs the regional director or hearing officer to advise the complainant to amend the complaint and file it with the NLRC for hearing and decision by a labor arbiter by virtue of Article 224. The same course of action will be done if there is a claim for reinstatement.

**Fourthly, as to the officers designated.** The person exercising the visitorial-enforcement power under Article 128 is the Secretary of Labor or any of his duly authorized representatives who may or may not be a regional director, while the adjudicatory power under Article 129 is vested upon a regional director or any duly authorized hearing officer of the Department of Labor and Employment.

**Finally, regarding appeal.** An order issued under Article 128 is appealable to the Secretary of Labor and Employment while that under Article 129 is to the National Labor Relations Commission.

4. **EMPLOYEES’ CLAIMS ONLY**

Articles 128 and 129 are operative only in the context of employment relationship. A regular court, not DOLE or NLRC, has jurisdiction over claim of an independent contractor to adjust contractual fee.

**Urbanes, etc. vs. Hon. Secretary of Labor, G.R. No. 122791, February 19, 2003 —**

**Facts:** The regional wage board issued a wage order. The security agency demanded from its client an adjustment of the contract rate. Because the client did not heed the request, the agency filed a complaint with the DOLE regional office.

---

Ruling: Neither Article 128 nor Article 129 is applicable. In a very similar case, *Lapanday Agricultural Development Corp. vs. CA*, the Supreme Court ruled: “We agree with the respondent that the RTC has jurisdiction over the subject matter of the present case. It is well settled in law and jurisprudence that where no employer-employee relationship exists between the parties and no issue is involved which may be resolved by reference to the Labor Code, other labor statutes or any collective bargaining agreement, it is the Regional Trial Court that has jurisdiction. In its complaint, private respondent [contractor] is not seeking any relief under the Labor Code but seeks payment of a sum of money and damages on account of [the principal’s] alleged breach of its obligation under their Guard Service Contract. The action is within the realm of civil law, hence jurisdiction over the case belongs to the regular courts. While the resolution of the issue involves the application of labor laws, reference to the Labor Code was only for the determination of the solidary liability of the petitioner to the respondent where no employer-employee relation exists.

5. **SEnA (SINGLE ENTRY APPROACH)**

D.O. No. 107-10 (Series of 2010) aims to simplify the filing of labor complaints. At least, the complainant must get immediate advice or guidance about his problem when he goes to a DOLE regional, or provincial, or district office. Every such office is directed to have a Single Entry Approach Desk (SEAD) manned by a SEAD Officer. This officer is assigned to assist the worker to clarify and evaluate his problem, or provide counseling before formal filing of a labor complaint or dispute.

This SEnA or single entry approach system applies to all cases under the administrative and quasi-judicial function of all DOLE offices and attached agencies including the NLRC. It requires the conduct of conciliation-mediation meetings within thirty days from the time the DOLE assistance is requested by a worker, group of workers, or employee. If the conciliation-mediation succeeds, the parties sign a Settlement Agreement; otherwise, the SEAD officer issues a Referral to the DOLE office or agency that has jurisdiction over the dispute.

The SEnA system, however, does not apply to:

1. notices of strike or lockout which NCMB handles, and
2. CBA implementation or personnel policy disputes that ought to be brought to the in-house grievance machinery.

6. **MANDATORY CONCILIATION-MEDIATION**

As this edition went to print, R.A. No. 10396 was issued, providing for mandatory conciliation-mediation of all labor disputes. See notes under Article 228 in volume two of this work.
Title III
WORKING CONDITIONS
FOR SPECIAL GROUPS OF EMPLOYEES

Chapter I
EMPLOYMENT OF WOMEN

Overview/Key Questions:
1. What particular employment benefits are given by law to women employees?
2. Sex discrimination at work is basically wrongful. What acts are considered discriminatory against women employees?

R.A. NO. 10151

R.A. No. 10151, approved on June 21, 2011, repeals the law prohibiting night work of women workers under Articles 130 and 131.1 Article 130 now was

1Articles 130 and 131 stated:

ART. 130. NIGHTWORK PROHIBITION

No woman, regardless of age, shall be employed or permitted or suffered to work, with or without compensation:
(a) In any industrial undertaking or branch thereof between ten o’clock at night and six o’clock in the morning of the following day; or
(b) In any commercial or non-industrial undertaking or branch thereof, other than agricultural, between midnight and six o’clock in the morning of the following day; or
(c) In any agricultural undertaking at nighttime unless she is given a period of rest of not less than nine (9) consecutive hours.

ART. 131. EXCEPTIONS

The prohibitions prescribed by the preceding Article shall not apply in any of the following cases:
(a) In cases of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disasters or calamity, to prevent loss of life or property, or in cases of force majeure or imminent danger to public safety;
previously Article 132, and the rest of the codal articles have accordingly been renumbered.

As R.A. No. 10151 repeals the law prohibiting night work, it creates the law on employment of night workers, constituting Articles 154 to 161.

PERSPECTIVE: LAWS PROTECTING WOMEN WORKERS

Justice Regalado paints a canvas of Philippine laws extending protection to women workers.

“The Constitution, cognizant of the disparity in rights between men and women in almost all phases of social and political life, provides a gamut of protective provisions. To cite a few of the primordial ones, Section 14, Article II on the Declaration of Principles and State Policies, expressly recognizes the role of women in nation-building and commands the State to ensure, at all times, the fundamental equality before the law of women and men. Corollary thereto, Section 3 of Article XIII (the progenitor whereof dates back to both the 1935 and 1973 Constitution) pointedly requires the State to afford full protection to labor and to promote full employment and equality of employment opportunities for all, including an assurance of entitlement to tenurial security of all workers. Similarly, Section 14 of Article XIII mandates that the State shall protect working women through provisions for opportunities that would enable them to reach their full potential.1

“Corrective labor and social laws on gender inequality have emerged with more frequency in the years since the Labor Code was enacted on May 1, 1974 as Presidential Decree No. 442, largely due to our country’s commitment as a

(b) In case of urgent work to be performed on machineries, equipment or installation, to avoid serious loss which the employer would otherwise suffer;

(c) Where the work is necessary to prevent serious loss of perishable goods;

(d) Where the woman employee holds a responsible position of managerial or technical nature, or where the woman employee has been engaged to provide health and welfare service;

(e) Where the nature of the work requires the manual skill and dexterity of women workers and the same cannot be performed with equal efficiency by male workers;

(f) Where the women employees are immediate members of the family operating the establishment or undertaking; and

(g) Under other analogous cases exempted by the Secretary of Labor in appropriate regulations.

signatory to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).\(^1\)

Principal among these laws are R.A. No. 6725 which explicitly prohibits discrimination against women with respect to terms and conditions of employment, promotion, and training opportunities; R.A. No. 6955 which bans the “mail-order-bride” practice for a fee and the export of female labor to countries that cannot guarantee protection to the rights of women workers; R.A. No. 7192, also known as the “Women in Development and Nation Building Act,” which affords women equal opportunities with men to act and to enter into contracts, and for appointment, admission, training, graduation, and commissioning in all military or similar schools of the Armed Forces of the Philippines and the Philippine National Police; R.A. No. 7322 increasing the maternity benefits granted to women in the private sector; R.A. No. 7877 which outlaws and punishes sexual harassment in the workplace and in the education and training environment; and R.A. No. 8042, or the “Migrant Workers and Overseas Filipinos Act of 1995,” which prescribes as a matter of policy, *inter alia*, the deployment of migrant workers, with emphasis on women, only in countries where their rights are secure. Likewise, it would not be amiss to point out that in the Family Code, women’s rights in the field of civil law have been greatly enhanced and expanded.\(^2\)

In the Labor Code, the basic provisions governing the rights of women workers are found in Articles 130 to 136.

ART. 130 [132]. **FACILITIES FOR WOMEN**

The Secretary of Labor shall establish standards that will insure the safety and health of women employees. In appropriate cases, he shall by regulations, require employers to:

(a) Provide seats proper for women and permit them to use such seats when they are free from work and during working hours, provided they can perform their duties in this position without detriment to efficiency;

(b) To establish separate toilet rooms and lavatories for men and women and provide at least a dressing room for women;

(c) To establish a nursery in a workplace for the benefit of the woman employees therein; and

(d) To determine appropriate minimum age and other standards for retirement or termination in special occupations such as those of flight attendants and the like.

---


\(^2\)Ibid.
ART. 131  [133]. **MATERNITY LEAVE BENEFITS**

(a) Every employer shall grant to any pregnant woman employee, who has rendered an aggregate service of at least six (6) months for the last twelve (12) months, maternity leave of at least two (2) weeks prior to the expected date of delivery and another four (4) weeks after normal delivery or abortion with full pay based on her regular or average weekly wages. The employer may require from any woman employee applying for maternity leave the production of a medical certificate stating that delivery will probably take place within two weeks.

(b) The maternity leave shall be extended without pay on account of illness medically certified to arise out of the pregnancy, delivery, abortion, or miscarriage, which renders the woman unfit for work, unless she has earned unused leave credits from which such extended leave may be charged.

(c) The maternity leave provided in this Article shall be paid by the employer only for the first four (4) deliveries by a woman employee after the effectivity of this Code.

**COMMENTS**

1. **MATERNITY LEAVE UNDER SSS LAW**

   Paragraphs (a) and (c) of this Article should give way to the Social Security law (R.A. No. 1161, as amended). Its Section 14-A as amended by R.A. No. 7322 (April 23, 1992) and R.A. No. 8282 (May 1, 1997) basically provides:

   “Sec. 14-A. Maternity Leave Benefit. — A female member who has paid at least three (3) monthly contributions in the twelve-month period immediately preceding the semester of her childbirth or miscarriage shall be paid a daily maternity benefit equivalent to one hundred percent (100%) of her average daily salary credit for sixty (60) days or seventy-eight (78) days in case of caesarian delivery.

2. **“BATTERED WOMAN LEAVE”**

   A recent addition to the list of statutory leaves for female employees is that which R.A. No. 9262 (the “AVAWC law”) requires.

   This law — titled “Anti-violence Against Women and their Children Act of 2004,” approved on March 8, 2004 — allows the victim of violence, which may be physical, sexual or psychological, to apply for the issuance of a “protection order.” This will shield her from further violence and provide her related reliefs. Additionally, if such victim is an employee, she is entitled to a paid leave of up to ten days in addition to other paid leaves under the Labor Code, other laws, and company policies. The leave is extendible when the necessity arises as specified in the protection order. To apply for such leave (which in practice is called “battered woman leave” or BWL) the employee has to submit a certification
from the Punong Barangay or kagawad or prosecutor or the clerk of court that an action under R.A. No. 9262 has been filed and is pending. (R.A. No. 9262 is reproduced in the book *Special Labor Laws*.)

3. **TWO MONTH’S LEAVE UNDER THE MAGNA CARTA OF WOMEN**

Another recent and further addition to the paid absences of women workers is the two months’ “special leave” (or surgical leave) under R.A. No. 9710, approved on August 14, 2009. This law, known as the “Magna Carta of Women,” which took effect on September 15, 2009, provides that as a policy, the state ensures the substantive equality of men and women and that “the State realizes that equality of men and women entails the abolition of the unequal structures and practices that perpetuate discrimination, and inequality.”

Under the chapter on Rights and Empowerment, the law states:

“Section 18. **Special Leave Benefits for Women.** — A woman employee having rendered continuous aggregate employment service of at least six (6) months for the last twelve (12) months shall be entitled to a special leave benefit of two (2) months with full pay based on her gross monthly compensation following surgery caused by gynecological disorders.”

Although R.A. No. 9710 was approved by the President on August 14, 2009 and took effect on September 15, 2009, the DOLE Implementing Guidelines (D.O. No. 112-11) was issued much later on March 11, 2011, followed by amendments through D.O. No. 112-A dated 22 May 2012.*1 (See excerpts of R.A. No. 9710 and the implementing guidelines in the book *Special Labor Laws*)

---

* Incidentally but interestingly, the Magna Carta likewise commands the State to ensure “... (c) the joint decision [of husband and wife?] on the number and spacing of their children and to have access to the information, education and *means* to enable them to exercise these rights.” By this provision, a woman has access to and may use **any means of birth control** that she prefers. This law was already in effect at the time the reproductive health bill was the subject of sweltering debates inside and outside Congress.
The increasing number of legislated absences with pay effectively reduces the productivity of a female employee. She is allowed by law to be absent from work for various reasons for a number of days:

- Holidays: 22 days (12 regular, 3 special, 7 other)
- Service incentive leave: 5
- Maternity leave: 60 or 78
- Solo parent’s leave: 7
- “VAWC”: 10
- Rest days: 52
- “Special leave”: 60

The total is 216 or 234 days, equivalent to 7.2 or 7.8 months. Seventy percent of the unproductive absences is with pay. This, to an employer, is an expensive proposition. Imposition of gratuitous benefits of this kind immediately raises challenging questions: Will this additional imposition encourage business firms to employ women? Will it bring down prices and therefore help the poor? Can poverty be reduced by reducing the work days?

ART. 132 [134]. FAMILY PLANNING SERVICES; INCENTIVES FOR FAMILY PLANNING

(a) Establishments which are required by law to maintain a clinic or infirmary shall provide free family planning services to their employees which shall include but not be limited to, the application or use of contraceptive pills and intrauterine devices.

(b) In coordination with other agencies of the Government engaged in the promotion of family planning, the Department of Labor shall develop and prescribe incentive bonus schemes to encourage family planning among female workers in any establishment or enterprise.

ART. 133 [135]. DISCRIMINATION PROHIBITED

It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.

The following are acts of discrimination:

(a) Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and

---

1As amended by R.A. No. 6725, May 12, 1989.
(b) Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.

Criminal liability for the willful commission of any unlawful act as provided in this article or any violation of the rules and regulations issued pursuant to Section 2 hereof shall be penalized as provided in Articles 288 and 289 of this Code: Provided, That the institution of any criminal action under this provision shall not bar the aggrieved employee from filing an entirely separate and distinct action for money claims, which may include claims for damages and other affirmative reliefs. The actions hereby authorized shall proceed independently of each other. (As amended by R.A. No. 6725, May 12, 1989)

COMMENTS

1. BFOQ

One basic objective of labor law, we may recall from Article 3, is “to ensure equal work opportunities regardless of sex, race, or creed...” Accordingly, this Article 133, in particular, prohibits any form of discrimination against a woman on account of her sex. Being a woman should not be a basis for disqualification from a work opportunity or a particular term or condition of employment. In short, entitlements should, in general, apply equally to workers, whether male or female.

Judicial decisions, however, do recognize exceptions. Where the job itself necessarily requires a particular qualification, then the job applicant or worker who does not possess it may be disqualified on that basis. This will not be unlawful discrimination. This is known as bona fide occupational qualification or BFOQ. For instance, one whose job is to preach the teachings of a religious sect must himself/herself be a member of that sect, otherwise, he/she is disqualified. Or where the job itself necessarily requires a male, then a female is disqualified. An example may be the job that hauls or saws logs in logging operations.

To justify the selective employment or entitlement policy, the employer must prove a compelling business necessity for which no alternative exists other than discriminatory practice. In a company where employees were dismissed because company policy does not allow retention of employees who are married to each other, the Supreme Court found the policy and the dismissal unlawful. Rejecting the employer’s citation of BFOQ, the Court rules:

To justify a bona fide occupational qualification, the employer must prove two factors: (1) that the employment qualification is reasonably related to the essential operation of the job involved; and (2) that there is a factual basis for believing that all or substantially all persons meeting the qualification would be unable to properly perform the duties of the
job. The concept of a *bona fide* occupational qualification is not foreign in our jurisdiction. We employ the standard of reasonableness of the company policy which is parallel to the *bona fide* occupational qualification requirement. (*Star Paper Corporation vs. Simbol, G.R. No. 164774, April 12, 2006*) The employer has the burden to prove the existence of a reasonable business necessity so that the exclusionary specifics will not amount to unlawful discrimination.

2. **WOMAN AS EQUAL PARTNER**

A significant development in this area is the enactment of R.A. No. 7192 on February 12, 1992. It promotes the integration of women as full and equal partners of men in development and nation-building. In its declaration of policy, R.A. No. 7192 provides that “the state recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men. The State shall provide women rights and opportunities equal to that of men.”

To attain this policy:

1. A substantial portion of official development assistance funds received from foreign governments and multilateral agencies and organizations shall be set aside and utilized by the agencies concerned to support programs and activities for women;
2. All government departments shall ensure that women benefit equally and participate directly in the development programs and projects of said departments specifically those funded under official foreign development assistance, to ensure the full participation and involvement of women in the development process; and
3. All government departments and agencies shall review and revise all their regulations, circulars, issuances and procedures to remove gender bias therein.¹

**ART. 134 [136]. STIPULATION AGAINST MARRIAGE**

It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

¹Sec. 2, R.A. No. 7192.
EMPLOYMENT OF WOMEN

ART. 134

COMMENTS AND CASES

NONDISCRIMINATION; POLICY AGAINST MARRIED STATUS

Article 135 prohibits discrimination against women employees as regards terms and conditions of employment on account of sex. This policy is illustrated in the following cases which likewise reiterate the invalidity of a dismissal that violates Article 134.

Zialcita, et al. vs. Philippine Air Lines, Case No. RO4-3-3398-76, February 20, 1977 (Office of the President Decision)

Facts: Complainant Zialcita, an international flight stewardess of PAL, was discharged from the service on September 9, 1975 on account of her marriage. Is the termination legal? Justifying the dismissal, Philippine Air Lines invoked its policy as follows:

“D. Flight Attendants. — Flight attendant applicants must be single. Flight attendants will be automatically separated from employment in the event they subsequently get married.”

which is allegedly in conformity with the following provision of law:

“Article 132. Facilities for women. — The Secretary of Labor shall establish standards that will insure the safety and health of women employees. In appropriate cases, he shall by regulations require any employer to x x x:

“(d) determine appropriate minimum age and other standards for retirement or termination in special occupations such as those of flight attendants and the like.” [Article 132 is renumbered as 130]

On the other hand, complainant questioned her termination on account of her marriage based on the policy above quoted, invoking Article 136 [now 134] of the Labor Code.

Ruling: Of first impression is the incompatibility of the PAL’s policy or regulation with the codal provision of law. PAL is resolute in its contention that Article 136 [134] of the Labor Code applies only to women employed in ordinary occupations and that the prohibition against marriage of women engaged in extraordinary occupations, like flight attendants, is fair and reasonable, considering the peculiarities of their chosen profession.

We cannot subscribe to the line of reasoning pursued by respondent PAL.

True, Article 132 [130] enjoins the Secretary of Labor to establish standards that will ensure the safety and health of women employees and in appropriate cases shall by regulation require employers to determine appropriate minimum standards for termination in special occupations, such as those of flight attendants, but that is precisely the factor that militates against the policy of respondent [employer]. The standards have not yet been established as set forth in the first paragraph, nor has the Secretary of Labor issued any regulation affecting flight attendants.

It is logical to presume that, in the absence of said standards or regulations which are as yet to be established, the policy of respondent PAL against marriage is patently illegal.

407
ART. 134  CONDITIONS OF EMPLOYMENT

In a vain attempt to give meaning to its position, respondent went as far as invoking the provisions of Articles 52 and 216 of the New Civil Code on the preservation of marriage as an inviolable social institution and the family as a basic social institution, respectively, as bases for its policy of non-marriage. In both instances, respondent predicates absence of a flight attendant from her home for long periods of time as contributory to an unhappy married life. This is pure conjecture not based on actual conditions, considering that, in this modern world, sophisticated technology has narrowed the distance from one place to another. Moreover, [employer] overlooked the fact that married flight attendants can program their lives to adapt to prevailing circumstances and events.

Article 136 [134] is not intended to apply only to women employed in ordinary occupations, or it should have categorically expressed so. The sweeping intendment of the law, be it on special or ordinary occupations, is reflected in the whole text and supported by Article 135 [133] that speaks of nondiscrimination on the employment of women.

Similar to the Zialcita vs. PAL case is that of PT & T, except that the employer did not admit that the employee was dismissed because she was married. The cause of the dismissal, the employer insisted, was her dishonesty in stating in the job application form that she was “single” though in fact she was not. The employer’s argument did not please the Court.


[PT&T’s] policy of not accepting or considering as disqualified from work any woman worker who contracts marriage runs afoul of the test of, and the right against, discrimination, afforded all women workers by our labor laws and by no less than the Constitution. Contrary to petitioner’s assertion that it dismissed private respondent from employment on account of her dishonesty, the record discloses clearly that her ties with the company were dissolved principally because of the company’s policy that married women are not qualified for employment in PT&T, and not merely because of her supposed acts of dishonesty.

Petitioner’s policy is not only in derogation of the provisions of Article 136 of the Labor Code on the right of a woman to be free from any kind of stipulation against marriage in connection with her employment, but it likewise assaults good morals and public policy, tending as it does to deprive a woman of the freedom to choose her status, a privilege that by all accounts inheres in the individual as an intangible and inalienable right. Hence, while it is true that the parties to a contract may establish any agreements, terms, and conditions that they may deem convenient, the same should not be contrary to law, morals, good customs, public order, or public policy. Carried to its logical consequences, it may even be said that petitioner’s policy against legitimate marital bonds would encourage illicit or common-law relations and subvert the sacrament of marriage.

**Facts:** Plaintiff, while still single, was employed in 1971 by defendant as company dentist. In March 1972, she married Roberto Gualberto, an electrical engineer in the same project. In the same month, the company informed her that it had considered her resigned effective April 15, 1972. The company explained that it lacked facilities for married women in the project at Nonoc Island, Surigao; therefore, it had a policy to consider female employees as separated the moment they get married. The company also asserted that plaintiff was employed in the project with an oral understanding that her services would be terminated when she gets married.

Plaintiff and her husband, who alleges he was forced to resign because of his wife’s illegal dismissal complaint, claim moral, exemplary and other damages.

**Ruling:** The simple question is whether the termination of the employment of Olympia Recreo Gualberto by reason of her marriage is valid or not.

The efforts of the defendant employer to distinguish between a verbal preemployment agreement of the project engineer and the plaintiff on the one hand and company policy on the other do not impress us at all. Whether preemployment agreement or company policy, the same is void. And the supposed letter of resignation based on the same considerations as the preemployment agreement is equally illegal and void.

No employer may require female applicants for jobs to enter into preemployment agreements that they would be dismissed once they get married and afterwards expect the Courts to sustain such an agreement. Neither may an employer ask a female employee to sign an undated letter of resignation which would be accepted once she gets married.

The lower court cited various reasons. It stated, firstly, that the Women and Child Labor Law prohibits discrimination against women in respect to terms and conditions of employment on account of sex. Secondly, business and industrial facilities are required to provide facilities for married women. Thirdly, it is unlawful under Section 12 of R.A. No. 679 to discharge a woman for various stated reasons attributable to marriage.

The appellant is mistaken in stating that prior to P.D. No. 148 no law prohibited a preemployment contract that upon getting married a woman’s employment would be terminated.

Apart from the Civil Code and Women and Child Labor Law provisions cited by the lower court, no less than the Constitution frowns upon and rejects such agreements. Article XIII, Section 6 of the 1935 Constitution expressly provided that “The State shall afford protection to labor, especially to working women and minors.”

The agreement which the appellants want this Court to sustain on appeal is an example of discriminatory chauvinism. Acts which deny equal employment opportunities to women simply because of their sex are inherently odious and must be struck down. We note throughout the records of the case that the prohibition
against marriage was only for women employees. Male employees were not enjoined from marrying.

ART. 135 [137]. PROHIBITED ACTS
It shall be unlawful for any employer:

(1) To deny any woman employee the benefits provided for in this Chapter or to discharge any woman employed by him for the purpose of preventing her from enjoying any of the benefits provided under this Code.

(2) To discharge such woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy;

(3) To discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant.

ART. 136 [138]. CLASSIFICATION OF CERTAIN WOMEN WORKERS
Any woman who is permitted or suffered to work, with or without compensation, in any night club, cocktail lounge, massage clinic, bar or similar establishment, under the effective control or supervision of the employer for a substantial period of time as determined by the Secretary of Labor, shall be considered as an employee of such establishment for purposes of labor and social legislation.

COMMENTS

SEXUAL HARASSMENT

Not part of Book III of this Code, yet related to it, is a problem commonly met at the work place, though it exists also in training and educational institutions. It can happen to anyone — industrial or agricultural worker, a manager or a clerk, a male or a female, youthful or otherwise. A discussion of conditions of employment would be deficient if it leaves out the issue of sexual harassment.

Republic Act No. 7877, approved on Valentine’s Day of 1995, otherwise known as the “Anti-Sexual Harassment Act of 1995” declares sexual harassment unlawful in the employment, education or training environment. The victim of sexual harassment may be a woman or a man.

Republic Act No. 7877 states as a policy that the State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education. Towards this end, all forms of sexual harassment in the employment, education or training environment, are hereby declared unlawful.  

\[1\] Sec. 2, R.A. No. 7877.
PERSONS WHO MAY BE LIABLE FOR SEXUAL HARASSMENT

Work, education or training-related sexual harassment is committed by any employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from another, regardless of whether the demand, request or requirement for submission is accepted by the object of said act.¹

Any person who directs or induces another to commit any act of sexual harassment as defined in the law, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under the law.² See further discussion in the book Special Labor Laws, 2012 edition.

NO SEX BARRIER

For there is to be no sex barrier of any kind in this community; least of all in education — the girl shall have the same intellectual opportunities as the boy. The same chance to rise to the highest positions in the state. When Glaucon objects that this admission of woman to any office, provided she has passed the tests, violates the principle of the division of labor, he receives the sharp reply that division of labor must be by aptitude and ability, not by sex; if a woman shows herself capable of political administration, let her rule; if a man shows himself to be capable only of washing dishes let him fulfill the function to which Providence has assigned him.

WILL DURANT explaining Plato’s Philosophy in the Story of Philosophy (Pocket Book, 1974), p. 35.

¹Sec. 3, R.A. No. 7877.
²Ibid.
FEMINIZATION AND DEFEMALIZATION

The trends on flexibilization, informatization and migration in the labor market are also built on gendered realities which place women in more vulnerable, disadvantaged, and marginalized positions in relation to men. There is increasing feminization of migration, as half of all those who leave are women. Filipinas are now well known worldwide mainly as domestics and entertainers. Many of them earn much more than what they ever get here but at an immeasurable cost in terms of loneliness, loss of dignity, sexual and other forms of abuse. Some even end up in boxes such as Maricris Sioson and Flor Contemplacion.

Lack of rewarding employment opportunities has pushed a lot of Filipino women out of their villages and out of their country as well. The figures for females are increasing for both internal and international migration. According to the National Statistics Office, “there are more women than men migrants across regions.” Such migration occurs against a backdrop of continuing poverty and increasing landlessness in the countryside, coupled with the “defemalization” of many agricultural tasks with the introduction of new farm technology.

DEAN RENE E. OFRENEO
Notes on Globalization (1996)
Chapter II
EMPLOYMENT OF MINORS

Box 18
Overview/Key Questions:
1. Childwork is wrongful and generally illegal. Before a child may be put to work, what are the legal requirements?
2. What are the employable ages?

ART. 137 [139]. MINIMUM EMPLOYABLE AGE
(a) No child below fifteen (15) years of age shall be employed, except when he works directly under the sole responsibility of his parents or guardian, and his employment does not in any way interfere with his schooling.
(b) Any person between fifteen (15) and eighteen (18) years of age may be employed for such number of hours and such periods of the day as determined by the Secretary of Labor in appropriate regulations.
(c) The foregoing provisions shall in no case allow the employment of a person below eighteen (18) years of age in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labor.

ART. 138 [140]. PROHIBITION AGAINST CHILD DISCRIMINATION
No employer shall discriminate against any person in respect to terms and conditions of employment on account of his age.

COMMENTS

1. HAZARDOUS WORK
The Implementing Rules explain that any person, regardless of sex, between ages 15 and 18 may be employed in any nonhazardous work.\(^1\) It follows that in any hazardous work, the employable age is 18 and up. A nonhazardous work or undertaking is one where the employee is not exposed to any risk which constitutes an imminent danger to his safety and health.

The following are considered hazardous workplaces:
(a) where the nature of the work exposes the workers to dangerous environmental elements, contaminations or work conditions including ionizing

\(^1\)Book III, Rule XII, Sec. 3.
radiations, chemicals, fire, flammable substances, noxious components, and the like;

(b) where the workers are engaged in construction work, logging, firefighting, mining, quarrying, blasting, stevedoring, dock work, deep-sea fishing, and mechanized farming;

(c) where the workers are engaged in the manufacture or handling of explosives and other pyrotechnic products;

(d) where the workers use or are exposed to heavy or power-driven machinery or equipment; and

(e) where workers use or are exposed to power-driven tools.1

2. CHILD ABUSE AND CHILD LABOR

Related to this subject is the law against child abuse, R.A. No. 7610 (June 17, 1992), strengthened by R.A. No. 7658, and recently amended by R.A. No. 9231, known as the law eliminating the worst forms of child labor, approved on December 19, 2003.

Most pertinent here are the following provisions of R.A. No. 9231. Section 12, prohibits employment of children below fifteen (15) years of age except:

When a child works directly under the sole responsibility of his/her parents or legal guardian and where only members of his/her family are employed, provided, That his/her employment neither endangers his/her life, safety, health, and morals, nor impairs his/her normal development. The parent or legal guardian shall provide the said child with the prescribed primary and/or secondary education.

Another exception is where a child’s employment or participation in public entertainment or information through cinema, theater, radio, television or other forms of media is essential. The contract has to be signed by the parents or legal guardian, with the child’s express consent. A permit from the Department of Labor and Employment is also required.

3. EMPLOYMENT OF POOR BUT DESERVING STUDENTS

Republic Act No. 7323, approved on March 30, 1992 by President Corazon C. Aquino, aims to help poor but deserving students pursue their education. It encourages their employment in private firms and government agencies through incentives granted to employers, allowing them to pay only sixty per centum of their salaries or wages and the forty per centum through education vouchers to be paid by the government.

Together with other special laws, R.A. No. 7610 and R.A. No. 7323 as amended, are reproduced and discussed in the book Special Labor Laws.

1Book IV, Rule 1, Sec. 8.
Chapter III
EMPLOYMENT OF HOUSEHELPERS

Overview/Key Questions:
1. What statutory employment benefits do househelpers have?
2. When a househelper’s employment is terminated, is he entitled to separation pay?
3. Does the SSS law apply to househelpers?

ART. 139 [141]. COVERAGE
This Chapter shall apply to all persons rendering services in household for compensation.

“Domestic or household service” shall mean services in the employer’s home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer’s household, including services of family drivers.

ART. 140 [142]. CONTRACT OF DOMESTIC SERVICE
The original contract of domestic service shall not last for more than two (2) years but it may be renewed for such periods as may be agreed upon by the parties.

COMMENTS
Republic Act No. 10361 is a new law particularly addressing the employment of househelpers. Titled “Domestic Workers’ Act” or “Batas Kasambahay,” it was signed into law by President Benigno S. Aquino III on January 18, 2013. It modifies or repeals all laws or regulations inconsistent with it. But in fact, it merely modifies or complements, but does not repeal, most of the provisions in this chapter. The text of R.A. No. 10361 is reproduced in the Appendix of this volume.

ART. 141 [143]. MINIMUM WAGE
(a) Househelpers shall be paid the following minimum wage rates:
   (1) Eight hundred pesos (P800.00) a month for househelpers in Manila, Quezon, Pasay and Caloocan cities and the municipalities of Makati, San Juan, Mandaluyong, Muntinlupa, Navotas, Malabon, Parañaque, Las
Piñas, Pasig, Marikina, Valenzuela, Taguig and Pateros in Metro Manila and in highly urbanized cities;

(2) Six hundred fifty pesos (P650.00) a month for those in other chartered cities and first-class municipalities; and

(3) Five hundred fifty (P550.00) a month for those in other municipalities.

Provided, that the employers shall review the employment contracts of their househelpers every three (3) years with the end in view of improving the terms and conditions thereof.

Provided, further, That those househelpers who are receiving at least one thousand pesos (P1,000.00) shall be covered by the Social Security System (SSS) and be entitled to all the benefits provided thereunder. (As amended by R.A. No. 7655)

COMMENTS

The wage rates in Article 141 are inconsistent with, hence superseded by the Kasambahay law, R.A. No. 10361; see in the Appendix.

ART. 142 [144]. MINIMUM CASH WAGE

The minimum wage rates prescribed under this Chapter shall be the basic cash wages which shall be paid to the househelpers in addition to lodging, food and medical attendance.

ART. 143 [145]. ASSIGNMENT TO NON-HOUSEHOLD WORK

No househelper shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage or salary rate lower than that provided for agricultural or non-agricultural workers as prescribed herein.

ART. 144 [146]. OPPORTUNITY FOR EDUCATION

If the househelper is under the age of eighteen (18) years, the employer shall give him or her an opportunity for at least elementary education. The cost of such education shall be part of the househelper’s compensation, unless there is a stipulation to the contrary.

ART. 145 [147]. TREATMENT OF HOUSEHELPERS

The employer shall treat the househelper in a just and humane manner. In no case shall physical violence be used upon the househelper.

ART. 146 [148]. BOARD, LODGING AND MEDICAL ATTENDANCE

The employer shall furnish the househelper free of charge suitable and sanitary living quarters as well as adequate food and medical attendance.

COMMENTS

Under this article, the employer shall furnish the househelper living quarters and adequate food and medical attendance. How much medical
attendance? Are expensive surgical operations included? No hard and fast rule can be drawn but it is believed that the financial capacity of the employer and length of service are factors to consider.

**ART. 147 [149]. INDEMNITY FOR UNJUST TERMINATION OF SERVICES**

If the period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.

If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days.

**COMMENTS**

In one case, the househelper’s contractual employment for two years was prematurely terminated just seven days after hiring. The dismissal having been found illegal, the employer was ordered to pay the salary for the unexpired portion of the contract. The employer argued that, if it is liable at all, the liability should be limited to 15 days’ pay under Article 149 of the Labor Code. The Court rejected the contention. It explained that the 15-day salary is awarded as indemnity for the unjust dismissal. It is in addition to and not a substitute for the househelper’s salary for the unexpired portion of the contract. The salary for the unexpired period is awarded as a result of the violation of her security of tenure under the contract term.¹

**ART. 148 [150]. SERVICE OF TERMINATION NOTICE**

If the duration of the household service is not determined either in stipulation or by the nature of the service, the employer or the househelper may give notice to put an end to the relationship five (5) days before the intended termination of the service.

**ART. 149 [151]. EMPLOYMENT CERTIFICATION**

Upon the severance of the household service relation, the employer shall give the househelper a written statement of the nature and duration of the service and his or her efficiency and conduct as househelper.

**ART. 150 [152]. EMPLOYMENT RECORDS**

The employer may keep such records as he may deem necessary to reflect the actual terms and conditions of employment of his househelper, which the latter shall authenticate by signature or thumbmark upon request of the employer.

¹Philippine Integrated Labor Assistance Corporation vs. NLRC and L. Dayag, G.R. No. 123354, November 19, 1996.
1. **HOUSEHELPER: WHO IS AND WHO IS NOT**

*Apex Mining Co., Inc. vs. National Labor Relations Commission, G.R. No. 94951, April 22, 1991 —*

Under Rule XIII, Section 1(b), Book 3 of the Labor Code, as amended, the terms “househelper” or “domestic servant” are defined as follows:

The term “househelper” as used herein is synonymous to the term “domestic servant” and shall refer to any person, whether male or female, who renders services in and about the employer’s home and which services are usually necessary or desirable for the maintenance and enjoyment thereof, and ministers exclusively to the personal comfort and enjoyment of the employer’s family.

This definition covers family drivers, domestic servants, laundry women, *yayas*, gardeners, houseboys and other similar househelps.

The definition cannot be interpreted to include househelper or laundry woman working in staffhouses of a company who attends to the needs of the company’s guests and other persons availing of said facilities. By the same token, it cannot be considered to extend to the driver, houseboy, or gardener exclusively working in the company, the staffhouses and its premises. They may not be considered as within the meaning of a “househelper” or “domestic servant” as defined by law.

The criterion is the personal comfort and enjoyment of the family of the employer in the home of said employer. While the nature of the work of a househelper, domestic servant or laundry woman in a home or in a company staffhouse may be similar in nature, the difference in their circumstances is that in the former instance they are actually serving the family while in the latter case, whether it is a corporation or a single proprietorship engaged in business or industry or any other agricultural or similar pursuit, service is being rendered in the staffhouses or within the premises of the business of the employer. In such instances, they are employees of the company or employer in the business concerned entitled to the privileges of a regular employee.

The mere fact that the househelper or domestic servant is working within the premises of the business of the employer and in relation to or in connection with its business, as in the staffhouses for its guests or even for its officers and employers, warrants the conclusion that such househelper or domestic servant is and should be considered as a regular employee of the employer and not as a mere family househelper or domestic servant as contemplated in Rule XIII, Section 1(b), Book 3 of the Labor Code, as amended.

2. **CERTAIN CIVIL CODE PROVISIONS INCONSISTENT WITH R.A. NO. 10361**

Section 20 of R.A. No. 10361 (“Batas Kasambahay”) entitles a domestic worker to “an aggregate daily rest period of eight (8) hours per day.” In other
words, the work hours in a day may be as long as sixteen (16) hours. This provision of this new special law appears inconsistent with Article 1695 of the Civil Code which prohibits more than ten (10) hours of work of a househelper.

The Kasambahay Law (Sec. 21) grants a domestic worker “at least twenty-four (24) consecutive hours of rest in a week.” This corresponds to “four days vacation each month, with pay” under Article 1695 of the Civil Code. The Kasambahay Law allows a day of absence to be offset with a rest day, and a rest day may be waived in return for an equivalent daily rate of pay. Rest days may be accumulated to not more than five days.

Also under the Civil Code, Article 1696, the head of the family shall bear the funeral expenses in case the househelper dies, if the helper has no relatives with sufficient means in the place where the head of the family lives.

If a househelper is put to work in a commercial, industrial or agricultural enterprise, he/she becomes entitled to the wage prescribed by law for that nonhousehold work.1

---

1Article 143, Labor Code.
Chapter IV
EMPLOYMENT OF HOMEWORKERS

Box 20
Overview/Key Questions:
1. Are homeworkers entitled to the right to self-organize? Are they SSS-covered?
2. Who is their employer?

ART. 151 [153]. REGULATION OF INDUSTRIAL HOMEWORKERS
The employment of industrial homeworkers and field personnel shall be regulated by the Government through appropriate regulations issued by the Secretary of Labor to ensure the general welfare and protection of homeworkers and field personnel and the industries employing them.

ART. 152 [154]. REGULATIONS OF SECRETARY OF LABOR
The regulations or orders to be issued pursuant to this Chapter shall be designed to assure the minimum terms and conditions of employment applicable to the industrial homeworkers or field personnel involved.

ART. 153 [155]. DISTRIBUTION OF HOMEWORK
For purposes of this Chapter, the “employer” of homeworkers includes any person, natural or artificial, who for his account or benefit, or on behalf of any person residing outside the country, directly or indirectly or through any employee, agent, contractor, subcontractor or any other person:

1) Delivers, or causes to be delivered, any goods, articles or materials to be processed or fabricated in or about a home and thereafter to be returned or to be disposed of or distributed in accordance with his directions; or

2) Sells any goods, articles or materials to be processed or fabricated in or about a home and then rebuys them after such processing or fabrication either himself or through some other person.

COMMENTS
1. INDUSTRIAL HOMEWORK

Industrial homework is a system of production under which work for an employer or contractor is carried out by a homeworker at his home. Materials may or may not be furnished by the employer or contractor. Unlike regular
factory production, it is a decentralized form of production characterized by little supervision or regulation of methods of work.

Home means any room, house, apartment or other premises used regularly, in whole or in part, as dwelling place, except those situated within the premises or compound of an employer, contractor or sub-contractor, and the work performed therein is under the active or personal supervision by or for the latter.¹

2. **NEW RULE XIV**

Department Order No. 5 dated February 4, 1992 has replaced Rule XIV of the Rules Implementing Book III of the Code.

The new Rule XIV, among other things, authorizes the formation and registration of labor organization of industrial homeworkers. It also makes explicit the employer’s duty to pay and remit SSS, Medicare and ECC premiums. Complaints for violation of labor standards and the terms and conditions of employment involving money claims of homeworkers not exceeding P5,000 per homeworker shall be heard and decided by the Regional Director. Beyond that amount the case falls under the jurisdiction of a Labor Arbiter in the NLRC.

---

**What is “Good Judgment”?**

When we attribute good judgment to a person, we imply more than that he has broad knowledge and a quick intelligence. We mean also to suggest that he shows a certain calmness in his deliberations, together with a balanced sympathy towards the various concerns of which his situation (or the situation of his client) requires that he take account. These are qualities as much of feeling as of thought. They are qualities of character, and the role they play in the trait we call good judgment is an essentially important one. Thus, even today the claim that someone has good judgment is understood to be a claim about his character and not merely the breadth of his learning or the brilliance of his mind.

*Anthony T. Kronman, The Lost Lawyer,*

---

¹See Department Order No. 5 in Book III of the Implementing Rules of the Code.
Chapter V
EMPLOYMENT OF NIGHT WORKERS

ART. 154. COVERAGE

This chapter shall apply to all persons, who shall be employed or permitted or suffered to work at night, except those employed in agriculture, stock raising, fishing, maritime transport and inland navigation, during a period of not less than seven (7) consecutive hours, including the interval from midnight to five o’clock in the morning, to be determined by the Secretary of Labor and Employment, after consulting the workers’ representatives/labor organizations and employers.

‘Night worker’ means any employed person whose work requires performance of a substantial number of hours of night work which exceeds a specified limit. This limit shall be fixed by the Secretary of Labor after consulting the workers’ representatives/labor organizations and employers.

ART. 155. HEALTH ASSESSMENT

At their request, workers shall have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work:

(a) Before taking up an assignment as a night worker;
(b) At regular intervals during such an assignment; and
(c) If they experience health problems during such an assignment which are not caused by factors other than the performance of night work.

With the exception of a finding of unfitness for night work, the findings of such assessments shall not be transmitted to others without the workers’ consent and shall not be used to their detriment.

ART. 156. MANDATORY FACILITIES

Suitable first-aid facilities shall be made available for workers performing night work, including arrangements where such workers, where necessary, can be taken immediately to a place for appropriate treatment. The employers are likewise required to provide safe and healthful working conditions and adequate or reasonable facilities such as sleeping or resting quarters in the establishment and transportation from the work premises to

---

1Added by R.A. No. 10151, approved on June 21, 2011.
the nearest point of their residence subject to exceptions and guidelines to be provided by the DOLE.

ART. 157. TRANSFER

Night workers who are certified as unfit for night work, due to health reasons, shall be transferred, whenever practicable, to a similar job for which they are fit to work.

If such transfer to a similar job is not practicable, these workers shall be granted the same benefits as other workers who are unable to work, or to secure employment during such period.

A night worker certified as temporarily unfit for night work shall be given the same protection against dismissal or notice of dismissal as other workers who are prevented from working for reasons of health.

ART. 158. WOMEN NIGHT WORKERS

Measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work:

(a) Before and after childbirth, for a period of at least sixteen (16) weeks, which shall be divided between the time before and after childbirth;

(b) For additional periods, in respect of which a medical certificate is produced stating that said additional periods are necessary for the health of the mother or child:

(1) During pregnancy;

(2) During a specified time beyond the period, after childbirth is fixed pursuant to subparagraph (a) above, the length of which shall be determined by the DOLE after consulting the labor organizations and employers.

During the periods referred to in this article:

(i) A woman worker shall not be dismissed or given notice of dismissal, except for just or authorized causes provided for in this Code that are not connected with pregnancy, childbirth and childcare responsibilities.

(ii) A woman worker shall not lose the benefits regarding her status, seniority, and access to promotion which may attach to her regular night work position.

Pregnant women and nursing mothers may be allowed to work at night only if a competent physician, other than the company physician, shall certify their fitness to render night work, and specify, in the case of pregnant employees, the period of the pregnancy that they can safely work.

The measures referred to in this article may include transfer to day work where this is possible, the provision of social security benefits or an extension of maternity leave.
The provisions of this article shall not have the effect of reducing the protection and benefits connected with maternity leave under existing laws.

ART. 159. COMPENSATION
The compensation for night workers in the form of working time, pay or similar benefits shall recognize the exceptional nature of night work.

ART. 160. SOCIAL SERVICES
Appropriate social services shall be provided for night workers and, where necessary, for workers performing night work.

ART. 161. NIGHT WORK SCHEDULES
Before introducing work schedules requiring the services of night workers, the employer shall consult the workers’ representatives/labor organizations concerned on the details of such schedules and the forms of organization of night work that are best adapted to the establishment and its personnel, as well as on the occupational health measures and social services which are required. In establishments employing night workers, consultation shall take place regularly.

COMMENTS

1. RATIONALE
In the world of work, one effect of globalization is “24/7” as work goes on in shifts within twenty-four hours everyday of the week. Keeping abreast of the changing times, R.A. No. 10151 (approved on June 21, 2011) abolished the prohibition against night work, considering the operations of international business and the nation’s need for better productivity and competitiveness. But in doing so, the law puts in place certain safeguards to protect workers.

The enterprise management determines what work needs to be done in what hours of the 24-hour day, who will do it and where. But the law protects the workers by requiring (a) the provision of certain facilities such as sleeping or lactation quarters and means of transport; (b) conduct of medical examination to determine fitness for night work; and (c) observance of legal process to decide appropriate action where a worker is found unfit for night work. Such process includes transfer of worker to day work, if practicable, and, only as a last recourse, separation from employment.

The requirements under R.A. No. 10151 supplement and do not supplant the existing labor standards law (e.g., night shift differential, overtime pay, maternity leave, etc.). It also affirms laws on the organizational and tenurial rights of workers.

2. DEFINITIONS
R.A. No. 10151, the law on night work, leaves to the Secretary of Labor, the detailed definition of night work and night worker. Accordingly, D.O. No.
119-12 (dated January 20, 2012) defines a night worker as “any employed person whose work covers the period from ten o’clock in the evening to six o’clock the following morning, provided that the worker performs no less than seven consecutive hours of work.” Night work, therefore, is at least seven consecutive hours of work between 10:00 p.m. and 6:00 a.m.

3. **UNFITNESS**

If a worker is found medically unfit for night work, may he be separated from employment? The answer can be gathered more clearly from the implementing rules (D.O. No. 119-12) than from Article 157. The second and third paragraphs in Sec. 5 of D.O. No. 119-12 state:

“If such transfer is not practicable or the workers are unable to render night work for a continuous period of not less than six (6) months upon the certification of a competent public health authority, these workers shall be granted the same company benefits as other workers who are unable to work due to illness.

A night worker certified as temporarily unfit for night work for a period of less than six (6) months shall be given the same protection against dismissal or notice of dismissal as other workers who are prevented from working for health reasons.”

These provisions of D.O. No. 119-12 therefore allow the application of Article 298 (former 284) to a worker who is found unfit for night work, if his transfer to another (day time) job is not practicable. Article 298 authorizes the separation of an employee suffering from a disease. For an employee found unfit for night work, the employer’s ultimate recourse, therefore, may be employment termination based on an authorized cause.
BOOK FOUR

HEALTH, SAFETY
AND SOCIAL WELFARE
BENEFITS
HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS
WORKERS’ HEALTH AND SAFETY:
A RESPONSIBILITY OF SOCIETY

Because they are convinced that a definite relation exists between the health of the workers and their efficiency in production, employers are beginning to take an interest in preventive medicine, personal and social hygiene, factory sanitation and safety, emergency surgery and first aid, laboratory tests and hospital care, dental prophylaxis, mental hygiene, and other protective measures. Insistent demand for increased output, reduction of labor turnover, and a stabilized employee force is resulting in increasing protection of the worker. Careful husbanding of human resources in industry, however, is likely to characterize periods of industrial prosperity when labor is scarce but not periods of industrial depression when labor is abundant. Society, therefore, cannot leave entirely to the employers the important business of safeguarding the worker’s health and life. Industrial accidents, occupational diseases, old age, child welfare, and ordinary ill health are social problems and not matters of private concern only.

In describing this problem some years ago, John Mitchell stated:

While the bread of the laborer is earned in the sweat of his brow, it is eaten in the peril of his life. Whether he works upon the sea, upon the earth, or in the mines underneath the earth, the laborer constantly faces imminent death; and his danger increases with the progress of his age. With each new invention the number of killed and injured rises.... Many are killed without violence; thousands of wage-earners lose their lives in factories, mills, and mines without the inquest of a coroner. The slow death that comes from working in a vitiated atmosphere, from laboring incessantly in constrained and unnatural postures, from constant contact of the hands and lips with poisonous substances; lastly, the death which comes from prolonged exposure to inclement weather, from over-exertion and undernutrition swells beyond computation the unnumbered victims of restless progress.

GORDON S. WATKINS

Labor Problems (1940)
MACHINE DESIGN AND HUMAN DESIGN

The human design is not a machine and does not work like a machine.

Machines work best if they do only one task, if they do it repetitively, and if they do the simplest possible task. Complex tasks are done best as a step-by-step series of simple tasks in which the work shifts from machine to machine. This may be done either by moving the work itself physically, as on the assembly line, or, as in modern computer-controlled machine tools, by bringing machines and tools in pre-arranged sequence to the work, with the tool changing with each step of the process. Machines work best if they run at a constant speed and rhythm, with a minimum of moving parts.

The human being is engineered quite differently. For any one task and any one operation, the human being is ill-suited. He lacks strength. He lacks stamina. He gets fatigued. Altogether he is a very poorly designed machine tool. The human being excels, however, in coordination. He excels in relating perception to action. He works best if the entire human being, muscles, senses, and mind, is engaged by the work.

If confined to an individual motion or operation, the human being tires fast. The fatigue is not just boredom, which is psychological; it is genuine physiological fatigue as well. Lactic acid builds up in the muscles, vision dims, reaction speed slows and becomes erratic.

There is no one “right” speed and no one “right” rhythm for human beings. Speed, rhythm, and attention span vary greatly among individuals. To be productive the individual has to have a good deal of control over the speed, rhythm, and attention spans with which he is working.

Whereas work is best laid out as uniform, working is best organized with a considerable degree of diversity. Working requires freedom to change speed, rhythm, and attention fairly often. It requires fairly frequent changes in operating routines as well. What is good industrial engineering for work is exceedingly poor human engineering for the worker.

PETER F. DRUCKER

Management (1977)
WELFARE BENEFITS

Promotion of welfare benefits represents a change in point of view and reflects the cost advantages of group provision of such benefits by employers. Both employers and unions have abandoned the code of individualism, which calls for “putting it in the pay envelope.” In a limited sense paternalism has been revived with unions actively seeking added benefits. Along with this, there are the advantages of the “group insurance” approach and the tax advantage to the individual of not receiving directly income that would subsequently be spent for such benefits.

Bargaining today takes place on all three fronts: wages (including premium type benefits), paid leisure (some direct reduction of hours), and welfare benefits. The introduction of paid leisure and other benefits during the last twenty years has been associated with a rising total cost, increasing from a negligible amount to roughly 20 percent or more of payroll.

SUMNER M. SLICHTER, JAMES J. HEALY, and E. ROBERT LIVERNASH

The intention of the Legislature in enacting the Workmen’s Compensation Act was to secure workmen and their dependents against becoming objects of charity, by making a reasonable compensation for such accidental calamities as are incidental to employment. Under such Act, injuries to workmen and employees are to be considered no longer as results of fault or negligence, but as the products of the industry in which the employees are concerned. Compensation for such injuries is, under the theory of such statute, like any other item in the cost of production or transportation, and ultimately charged to the customer. The law substitutes liability for negligence with an entirely new conception, that is, that if the injury arises out of man’s inhumanity to man, the cost of compensation must be one of the elements to be liquidated and balanced in the course of consumption. In other words, the theory of the law is that if the industry produces an injury, the cost of that injury shall be included in the cost of the product of the industry.

THE PHILIPPINE SUPREME COURT
Murillo vs. Mendoza, 66 Phil. 700 (1938)
COMMUNISM: ALIVE AND NEEDED

Communism appears to have run its course philosophically and pragmatically, but the problems that provoked its appeal — poverty, oppression, the rich/poor gap, and so on — remain. Hence, the world continues to require government intervention. The question is: How much? Socialists reject communist totalitarianism and embrace democracy while calling for aggressive government intervention to correct economic and social ills. Historically, socialism has often been associated with democratic governments and peaceful change, whereas communism has been characterized by totalitarianism and violent revolution.

Socialists aim to retain the benefits of industrialism while abolishing the social cost often accompanying the free market. The government is likely to be directly involved in regulating gross inflation, and unemployment. [Austria, Norway, Denmark, Sweden...] are among the nations where socialist principles have retained a significant presence. Those nations have now embraced free markets, but socialist welfare concerns remain influential. A critical distinction between socialists and capitalists is that the former believe a society’s broad direction should be carefully planned rather than left to what some take to be the whimsy of the market.

Furthermore, socialists are convinced that problems of market failures (inadequate information, monopoly, externalities, public goods, and so on) mean that the free market is simply incapable of meeting the needs of all segments of society.

TONY McADAMS, NANCY NESLUND, KIREN DOSANJH ZUCKER

Law, Business, and Society
(McGraw-Hill Unwin, 2009), p. 17
ART. 162 [156]. FIRST-AID TREATMENT

Every employer shall keep in his establishment such first-aid medicines and equipment as the nature and conditions of work may require, in accordance with such regulations as the Department of Labor shall prescribe. The employer shall take steps for the training of a sufficient number of employees in first-aid treatment.

ART. 163 [157]. EMERGENCY MEDICAL AND DENTAL SERVICES

It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:

(a) The services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case the services of a graduate first-aider shall be provided for the protection of the workers, where no registered nurse is available. The Secretary of Labor shall provide by appropriate regulations the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order hazardous workplaces for purposes of this Article;

(b) The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and

(c) The services of a full-time physician, dentist and a full-time registered nurse as well as a dental clinic, and an infirmary or emergency
hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300).

In cases of hazardous work-places, no employer shall engage the services of a physician or dentist who cannot stay in the premises of the establishment for at least two (2) hours, in the case of those engaged on part-time basis, and not less than eight (8) hours in the case of those employed on full-time basis. Where the undertaking is non-hazardous in nature, the physician and dentist may be engaged on retained basis, subject to such regulations as the Secretary of Labor may prescribe to insure immediate availability of medical and dental treatment and attendance in case of emergency.

COMMENTS

PHYSICIAN OR DENTIST NOT NECESSARILY EMPLOYEES

Article 163 clearly allows employers in non-hazardous establishments to engage “on retained basis” the services of a dentist or physician. Nowhere does the law provide that the physician or dentist so engaged thereby becomes a regular employee. The phrase “on retained basis” negates the idea that this engagement necessarily gives rise to an employer-employee relationship.1

ART. 164 [158]. WHEN EMERGENCY HOSPITAL NOT REQUIRED

The requirement for an emergency hospital or dental clinic shall not be applicable in case there is a hospital or dental clinic which is accessible from the employers establishment and he makes arrangement for the reservation therein of the necessary beds and dental facilities for the use of his employees.

COMMENTS

Where the employer is not required to put up an emergency hospital, the existing hospital to be utilized should be within five kilometers from the workplace or is accessible within 25-minute travel. The employer must provide the transport in emergency cases.

The Implementing Rules also explain the workplaces that are considered “hazardous.”

ART. 165 [159]. HEALTH PROGRAM

The physician engaged by an employer shall, in addition to his duties under this Chapter, develop and implement a comprehensive occupational health program for the benefit of the employees of his employer.

---

ART. 166 [160]. QUALIFICATIONS OF HEALTH PERSONNEL

The physicians, dentists and nurses employed by employers pursuant to this Chapter shall have the necessary training in industrial medicine and occupational safety and health. The Secretary of Labor, in consultation with industrial, medical and occupational safety and health associations, shall establish the qualifications, criteria and conditions of employment of such health personnel.

ART. 167 [161]. ASSISTANCE OF EMPLOYER

It shall be the duty of any employer to provide all the necessary assistance to ensure the adequate and immediate medical and dental attendance and treatment to an injured or sick employee in case of emergency.

COMMENTS AND CASES

The Implementing Rules, in Book IV, Rule 1, provide details additional to those in the above codal provisions. Section 2 of Rule 1 states: First-aid treatment means adequate, immediate and necessary medical and dental attention or remedy given in case of injury or sudden illness suffered by a worker during employment, irrespective of whether or not such injury or illness is work-connected before more extensive medical and/or dental treatment can be secured. It does not include continued treatment or follow-up treatment for any injury or illness.

The same Rule I in Sec. 4 requires any covered employer, employing 10 to 50 workers in the workplace, to provide the services of a graduate first-aider who may be one of the workers in the workplace and who has immediate access to the first-aid medicines.

MEANING OF ARTICLE 161: “LEFT TO THE EMPLOYER”?

This requirement in the implementing rules was not complied with by an employer of 27 employees, yet the majority of the Supreme Court’s Third Division declared the employer not liable for the violation and for the death of an employee due to chicken pox complications contracted from a co-worker.

This majority decision is unacceptable to Justice Lucas P. Bersamin who therefore registers a lengthy dissent (13 pages) against the majority’s brief ruling (5 pages)

Ocean Builders Construction Corp. and/or Dennis Hao vs. Spouses Antonio and Anicia Cubacub, G.R. No. 150898, April 13, 2011 —

On April 9, 1995, Vladimir, one of the 27 employees, was afflicted with chicken pox, contracted, according to the employer himself, from a fellow worker at their workplace at Caloocan City. The Manager (Mr. Hao) claimed that he allowed Vladimir to rest from work for three days, but two co-workers testified that this was not true. Hao required Vladimir to remain on the job on April 9 to 12 because Mr. Hao was going to Hongkong during the Holy Week break and he wanted Vladimir to man
the premises in his absence. Co-workers testified that on April 11 and 12 Bladimir worked, cleaning the vehicles and manning the gate. He looked weak and was full of rashes in his body. From April 9 to 12, Bladimir had received no medical attention. He collapsed at his workplace on April 12. Mr. Hao gave P1,000 for the hospital bill. Bladimir was in coma. Transferred to a Quezon City hospital by co-workers (who also fetched Bladimir’s family from Tarlac), Bladimir never recovered. On April 14, the sixth day, he expired.

The regional trial court dismissed the parent’s complaint, holding that Hao was not negligent, but the Court of Appeals held that Hao’s failure to bring Bladimir to a better-equipped hospital violated Article 161 [now 167] of the Labor Code. Majority of the Supreme Court’s Third Division disagreed with the CA. They say that the Implementing Rules “do not enlighten” as to the meaning of “adequate and immediate medical attention,” hence, the determination of what it means “is left to the employer.”

Justice Bersamin, in a strong and spirited dissent, categorically refuted the majority’s conclusion after specifying their errors. “Unlike the majority,” he states, “I find a direct link between the petitioners’ (employers’) act and omission and [the worker’s] death. Contrary to the Majority’s conclusion, Hao [the manager] willfully disregarded Bladimir’s deteriorating condition and prevented him from taking time off to have the much needed rest. Hao’s attitude enabled the complications of chicken pox, like pneumonia, to set in to complicate Bladimir’s condition. Hao did not need a medical background to realize Bladimir’s worsening condition and the concomitant perils, for such condition was not concealed due to Bladimir’s body bearing the signs of his affliction and general debility. By the time Hao acted and had Bladimir brought to the hospital [because he collapsed] the complications of the disease were already irreversible.”

Concluding, Mr. Justice Bersamin decries: “I wonder how and why the [lower court] still held that Bladimir was solely responsible for the fatal consequence of his affliction, and why the Majority agrees with [the lower court] and completely absolves the petitioners from responsibility and liability.”

Despite his carefully studied stand, Mr. Justice Bersamin laments that he stood alone on “the lonely path.”
Chapter II

OCCUPATIONAL HEALTH AND SAFETY

ART. 168 [162]. SAFFETY AND HEALTH STANDARDS
The Secretary of Labor shall, by appropriate orders, set and enforce mandatory occupational safety and health standards to eliminate or reduce occupational safety and health hazards in all workplaces and institute new, and update existing, programs to ensure safe and healthful working conditions in all places of employment.

ART. 169 [163]. RESEARCH
It shall be the responsibility of the Department of Labor to conduct continuing studies and research to develop innovative methods, techniques and approaches for dealing with occupational safety and health problems; to discover latent diseases by establishing causal connections between diseases and work in environmental conditions; and to develop medical criteria which will assure insofar as practicable that no employee will suffer impairment or diminution in health, functional capacity, or life expectancy as a result of his work and working conditions.

ART. 170 [164]. TRAINING PROGRAMS
The Department of Labor shall develop and implement training programs to increase the number and competence of personnel in the field of occupational safety and industrial health.

ART. 171 [165]. ADMINISTRATION OF SAFETY AND HEALTH LAW
(a) The Department of Labor shall be solely responsible for the administration and enforcement of occupational safety and health laws, regulations and standards in all establishments and workplaces wherever they may be located; however, chartered cities may be allowed to conduct industrial safety inspections of establishments within their respective jurisdictions where they have adequate facilities and competent personnel for the purpose as determined by the Department of Labor and subject to national standards established by the latter.

(b) The Secretary of Labor may, through appropriate regulations, collect reasonable fees for the inspection of steam boilers, pressure vessels and pipings and electrical installations, and test and approval for safe use of materials, equipment and other safety devices and the approval of plans
for such materials, equipment and devices. The fee so collected shall be deposited in the national treasury to the credit of the occupational safety and health fund and shall be expended exclusively for the administration and enforcement of safety and other labor laws administered by the Department of Labor.

COMMENTS

The employer is required to observe safety standards and provide safety devices. On the part of the employee, the Implementing Rules require proper use of these safeguards and devices.¹

The Rules also require the setting up of a safety committee. Safety inspections are to be done annually by the Department, specifically the Regional Office.

¹Book IV, Rule II, Sec. 6.
Title II
EMPLOYEES’ COMPENSATION AND STATE INSURANCE FUND

Chapter I
POLICY AND DEFINITIONS

Overview/Key Questions:
1. The Labor Code introduces major changes to the law that awards compensation benefits to employees who sustain work-connected injury a disease. What are those significant changes?
2. Under what circumstances is an injury considered work-connected and therefore compensable?
3. What kinds of diseases are compensable?
4. Explain the theory of increased risk.
5. What is the dual purpose doctrine?
6. If the cause of a disease is unknown, for example, a cancer, must the claimant prove that it is work-related so as to obtain benefits under the S.I.F.?

ART. 172 [166]. POLICY
The State shall promote and develop a tax-exempt employees’ compensation program whereby employees and their dependents, in the event of work-connected disability or death, may promptly secure adequate income benefit, and medical or related benefits.

COMMENTS AND CASES
1. OVERVIEW: WORKMEN’S COMPENSATION PROGRAM AND THE S.I.F.
“Workmen’s compensation” is a general and comprehensive term applied to those laws providing for compensation for loss resulting from the injury, disablement, or death of workmen through industrial accident, casualty, or
disease. While differing in many instances with respect to scope and method, these laws possess the common feature of providing compensation.1

“Compensation,” in relation to work-connected injury or disease, essentially means financial assistance and medical benefits that the Government provides to the worker depending on the kind or degree of disability he suffers.

The amount of compensation is generally determined in accordance with a definite schedule, based upon the loss of earning power, the usual provision being for the payment of a specified amount at regular intervals over a definite period. Provision is also made, in most instances, for the furnishing of medical, surgical, hospital, nursing, and burial services in addition to and independently of the payment of compensation.2

The primary purpose of a workmen’s compensation act is to provide compensation for disability or death resulting from occupational injuries or diseases, or accidental injury to, or death of, employees; the statute is a remedial one enacted primarily for the benefit of the man who works in the pursuits subject to its provisions; it is for the benefit of injured employees and not injured employers.3

Workmen’s compensation is not a charity, but the recognition of a moral duty and the erection of it into a legal obligation of the public, not of the mere employer, to compensate reasonably those who are injured while in the employment of others, as a part of the natural, necessary cost of production.4

Workmen’s compensation legislation has arisen out of conditions produced by modern industrial development. It is based upon the idea that the common-law rule of liability for personal injuries incident to the operation of industrial enterprises, based upon the negligence of the employer, is inapplicable to modern conditions of employment because in the highly organized and hazardous industries of modern times the causes of injury are often so obscure and complex that, usually, it is impossible to ascertain the facts to form an accurate judgment. Further, in most cases, the expense and delay amount to a defeat of justice. The litigation arouses antagonisms between employers and employees, and often entailing undue hardship upon one or both.

Under the compensation acts, the theory of negligence as the basis of liability is discarded, and in general, a right to compensation is given for all injuries incident to the employment, with certain exceptions, the amount of which is limited and determined in accordance with a definite schedule in a summary and informal method of procedure, although the elements of compensability are not uniform in all jurisdiction.5

---

1cf. 81 Am. Jur. 2d, Sec. 1.
281 Am. Jur. 2d, Sec. 3.
4Milwaukee vs. Miller, 154 Wis 652, 144 NW 188.
5cf. 81 Am. Jur. 2d, Sec. 2.
The general purposes of workmen’s compensation legislation, therefore, are:

— to improve the economic status of the workers;
— to obviate the uncertainties, delay, expense, and hardship attendant upon the enforcement of court remedies;
— to transfer from the worker to the industry in which he is employed, and ultimately to the consuming public, a greater proportion of the economic loss due to industrial accidents and injuries;
— to improve the relations between employers and employees by avoiding or reducing the friction incident to litigation;
— to provide, not only for employees a remedy which is both expeditious and independent of proof of fault, but also for employers a liability which is limited and determinate.

Workmen’s compensation laws, as contrasted with court litigations, are generally considered as embodying more advanced ideas of economics and sociology. The right to workmen’s compensation rests upon the statutes alone, which both create and measure the right.1

1.1 Source of Compensation; the S.I.F.

The source of compensation may be divided into two classes — direct payment and insurance statutes. The direct payment statutes provide for the payment of the compensation by the employer directly to the employee; while insurance statutes require the employer to take out insurance either with an insurance bureau operated by the state or with a private company, or to contribute to a compensation fund, and if an employee is injured the compensation is paid by the insurer or from the compensation fund.2

As regards source of compensation, the Labor Code adopts the compensation fund type. All covered employers are required to remit to a common fund a monthly contribution equivalent to one percent of the monthly salary credit of every covered employee. The employee pays no contribution to the fund; in fact, any agreement to collect fund contribution from the employee is prohibited. The employers’ contributions make up the State Insurance Fund from which comes the compensation to be paid to claimant employee or the employee’s dependents in case the employee suffers from a work-connected injury or disease.

1.2 Forms of Compensation

The compensation is in the form of medical supplies and services and/or cash income if the employee is unable to earn because of the injury or disease. Death benefits and funeral benefits are also given.

1cf. 81 Am. Jur. 2d, Sec. 2.
281 Am. Jur. 2d, Sec. 3.
ART. 172
HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS

1.3 Process

A compensation claim starts with a work-related injury or disease that befalls an employee. Within five days, he must notify his employer who, in turn, must enter the notice in a logbook. (In certain cases, notice to the employer is not required.) Within five days after making the entry, the employer reports to the SSS (in private sector) or the GSIS (in public sector) the sickness, injury or death that he deems work-connected. In effect, therefore, the employer decides initially whether the injury or sickness is work-related or not.

The claim goes to the System (SSS or GSIS) which decides on the claim. The two Systems serve as administering agencies of the Employees’ Compensation Commission (ECC) which is the policy-making body. The ECC is also the appeal body. What the System denies may be appealed to the ECC within 30 days.1 The ECC decision, if favorable to the worker, is final and executory; otherwise, it may be brought up to the Court of Appeals for review in very limited cases. The System, if reversed by ECC, ordinarily does not appeal to the CA because it is represented in the ECC itself.

2. P.D. NO. 626 AND ITS EFFECTIVITY DATE

The entire Labor Code was supposed to have taken effect on November 1, 1974, but on December 18, 1974, P.D. No. 608 moved to January 1, 1975 the effectivity of Title II, Book IV of the Code which deals about “Employees’ Compensation and State Insurance Fund” and Title III about “Medicare.” The effectivity date had to be deferred, said the decree, to enable the Department of Labor, the SSS, the GSIS and the Medical Care Commission to perfect the organization of the Employees’ Compensation Commission and the programs that it would implement.

On December 27, 1974, the President issued P.D. No. 626. It amended extensively the Labor Code provisions on Employees’ Compensation and State Insurance Fund. This explains why the present law on Employees Compensation, although part of the Code which is P.D. No. 442, is also known as P.D. No. 626.

P.D. No. 626 applies only prospectively. Because it took effect on January 1, 1975, it applies to illnesses contracted on or after that date. For those contracted before that date, the applicable law is the previous workmen’s compensation act.2

The old Workmen’s Compensation Commission was finally abolished on March 31, 1976.

3. VALIDITY OF P.D. NO. 626; NATURE OF THE STATE INSURANCE FUND
Jose B. Sarmiento vs. Employees’ Compensation Commission, et al., G.R. No. 65680, May 11, 1988 —

1See ECC Suppletory Rule which is part of the ECC Amended Rules included in the Implementing Rules of Book IV.
2Rosales vs. ECC, G.R. No. 46443, June 28, 1988.
The Supreme Court has recognized the validity of the present law and, applying its provisions, has granted or rejected claims. It does not infringe the worker’s constitutional rights. The new law discarded the concepts of “presumption of compensability” and “aggravation” to restore what the law believes is a sensible equilibrium between the employer’s obligation to pay workmen’s compensation and the employees’ right to receive reparation for work-connected death or disability.

The new law establishes a state insurance fund built up by the contribution of employers based on the salaries of their employees. The injured worker does not have to litigate his right to compensation. No employer opposes his claim. There is no notice of injury nor requirement of controversion. The sick worker simply files a claim with a new neutral Employees’ Compensation Commission which then determines on the basis of the employee’s supporting papers and medical evidence whether or not compensation may be paid. The payment of benefits is more prompt. The cost of administration is low. The amount of death benefits has also been doubled.

On the other hand, the employer’s duty is only to pay the regular monthly premiums to the scheme. It does not look for insurance companies to meet sudden demands for compensation payments or set up its own funds to meet those contingencies. It does not have to defend itself from spuriously documented or long past claims.

The new law applies the social security principle in the handling of workmen’s compensation. The Commission administers and settles claims from a fund under its exclusive control. The employer does not intervene in the compensation process and it has no control, as in the past, over payment of benefits. The open-ended Table of Occupational Diseases requires no proof of causation. A covered claimant suffering from an occupational disease is automatically paid benefits.

Since there is no employer opposing or fighting a claim for compensation, the rules on presumption of compensability and controversion cease to have importance. The lopsided situation of an employer versus one employee, which called for equalization through the various rules and concepts favoring the claimant, is now absent.

The wisdom of the present scheme of workmen’s compensation is a matter that should be addressed to the President and Congress, not to the Supreme Court. Whether or not the former workmen’s compensation program with its presumptions, controversions, adversarial procedures, and levels of payment is preferable to the present scheme must be decided by the political department.

The present law was enacted in the belief that it better complies with the mandate on social justice and is more advantageous to the greater number of working men and women. Until Congress and the President decide to improve or amend the law, the court’s duty is to apply it.

The old law was jettisoned and in its place we have employees’ compensation and state insurance fund in the Labor Code.\(^1\)

---

\(^1\)Armena vs. Employees’ Compensation Commission, 122 SCRA 851; De la Rea vs. Employees’ Compensation Commission, G.R. No. 66129, January 17, 1986.
3.1 Trust Fund

There is widespread misconception that the poor employee is still arrayed against the might and power of his rich corporate employer. Hence, he must be given all kinds of favorable presumptions. This is fallacious. It is now the trust fund and not the employer which suffers if benefits are paid to claimants who are not entitled under the law. The employer joins the employee in trying to have their claims approved. The employer is spared the problem of proving a negative proposition that the disease was not caused by employment.\(^1\)

It is a government institution which protects the stability and integrity of the State Insurance Fund against the payment of non-compensable claims. The employee, this time assisted by his employer, is required to prove a positive proposition, that the risk of contracting the disease is increased by working conditions.\(^2\)

3.2 Social Insurance

The social insurance aspect of the present law is the other important feature which distinguishes it from the old and familiar system.\(^3\)

Employees' compensation is based on social security principles. All covered employers throughout the country are required by law to contribute fixed and regular premiums or contributions to a trust fund for their employees. Benefits are paid from this trust fund. In fixing the amount of contributions, actuarial studies were undertaken. The actuarially determined number of workers who would probably file claims within any given year is important in insuring the stability of the trust fund. It also assures that the system can pay benefits when due to all who are entitled to them, even in the increased amounts fixed by law.\(^4\)

The Supreme Court has no actuarial expertise. If diseases not intended by the law to be compensated are inadvertently or recklessly included, the integrity of the State Insurance Fund is endangered. Compassion for the victims of diseases not covered by the law ignores the need to show a greater concern for the trust fund to which the tens of millions of workers and their families look for compensation whenever covered accidents, diseases, and deaths occur.\(^5\)

If increased contributions or premiums must be paid in order to give benefits to those who are now excluded, it is Congress which would amend the law after proper actuarial studies. The Supreme Court cannot engage in judicial legislation on such a complex subject with such far-reaching implications.\(^6\)

\(^1\)Raro vs. Employees’ Compensation Commission, G.R. No. 58445, April 27, 1989.
\(^2\)Ibid.
\(^3\)Ibid.
\(^4\)Ibid.
\(^5\)Ibid.
\(^6\)Ibid.
4. **WORKMEN’S COMPENSATION ACT DISTINGUISHED FROM EMPLOYEES’ COMPENSATION LAW**

Under the former Workmen’s Compensation Law (Act No. 3428, as amended), there was presumption of compensability. Once it was proven that the injury or disease arose in the course of employment, the legal presumption, in the absence of substantial evidence to the contrary, was that the claim for compensation came within the provisions of the compensation law. The burden of proof that the illness did not arise out of employment or at least aggravated by it, fell on the employer’s shoulders. The employee or the claimant had no duty to show causation.

Furthermore, it was the rule under the old law that if the ailment of an employee was aggravated by his work, the employer was liable for compensation.

Finally, under the previous law, the employer should controvert or dispute the claim for compensation within 14 days from the date of the disability or within 10 days after he acquired knowledge thereof; if he fails to do so, he would be considered to have waived the right to question the validity or reasonableness of the claim, and he would be ordered to pay compensation.

Now, all of the above is no longer true.

The present Labor Code, as amended, abolished the presumption of compensability and the rule on aggravation of illness caused by the nature of employment. The purpose of the change “to restore a sensible equilibrium between the employer’s obligation to pay workmen’s compensation and the employee’s right to receive reparation for work-connected death or disability x x x” And because the employee’s claim is directed against the S.I.F., the employer does not have to controvert the claim.

The old law, the Workmen’s Compensation Act, destroyed the parity or balance between the competing interests of employer and employee with respect to workmen’s compensation. The balance was tilted unduly in favor of the workmen since it was possible to stretch the work-related nature of an ailment beyond seemingly rational limits.

Under the present law (Article 173[1], Presidential Decree 442, as amended), in order for the employee to be entitled to sickness or death benefits, the sickness or death resulting therefrom must be, or must have resulted from either (a) any illness definitely accepted as an occupational disease listed by the

---

1Sec. 44.
2Sec. 45.
3Bachrach Motors vs. WCC, G.R. No. L-9589; May 25, 1956; Tan Liu Te vs. WCC, G.R. No. L-12324, August 30, 1958.
5Ibid.
Commission, or (b) any illness caused by employment subject to proof that the risk of contracting the same is increased by working conditions.\(^1\)

4.1 **Presumptive Compensability for AFP Members and Policemen**

In a limited sense, presumption of compensability has been restored. This is the effect of Resolution No. 3906, adopted on July 5, 1988 by the Employees’ Compensation Commission which applies to policemen and members of the Armed Forces of the Philippines. The resolution states:

This board resolves, as it hereby resolves, to approve the adoption of a policy that the moment an AFP member suffers a contingency, the presumption is that it is because of the nature of his work; provided that the evidentiary details of his injury, or death, are clearly established through duly issued medical certifications on his injury or injuries, or death, by the attending physician or duly authorized representatives of the hospital where he is brought for medical treatment.

This ECC policy is applied in the case of *Quebec vs. GSIS*\(^2\) and other similar cases.

5. **LIBERAL INTERPRETATION**

While the presumption of compensability and theory of aggravation under the Workmen’s Compensation Act may have been abandoned under the new Labor Code, the liberality of the law in general in favor of the working man still subsists. As an agency charged by the law to implement social justice guaranteed and secured by the Constitution, the Employees’ Compensation Commission should adopt a liberal attitude in favor of the employee in deciding claims for compensability, especially where there is some basis in the facts for inferring a work-connection to the accident.

This kind of interpretation gives meaning and substance to the compassionate spirit of the law as embodied in Article 4 of the New Labor Code which states that “all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations shall be resolved in favor of labor.”

The policy is to extend the applicability of the decree (Presidential Decree No. 626) to as many employees who can avail of the benefits thereunder. This is in consonance with the avowed policy of the State to give maximum aid and protection to labor.\(^3\)

Nonetheless, while the Workmen’s Compensation Act is a social legislation designed to give relief to the workman who has been the victim of work-connected

\(^1\)Dabatian vs. Government Service Insurance System, G.R. No. 47294, April 8, 1987. The list of occupational diseases is Annex “A” of the ECC Rules. See Appendix of this Volume.

\(^2\)See comments under Art. 167, Topic 18.

\(^3\)Lazo vs. Employees’ Compensation Commission, G.R. No. 78617, June 18, 1990.
accident and should be liberally construed in favor of the workman, it cannot be reconstructed to fit particular cases.

It is not the intention of the legislature to make the employer an insurer against all accidental injuries which might happen to an employee while in the course of the employment, but only for such injuries arising from, or growing out of, the risks peculiar to the nature of the work in the scope of the workmen’s employment or incidental to such employment, and accidents in which it is possible to trace the injury to some risk or hazard to which the employee is exposed in a special degree by reason of such employment. Risks to which all persons similarly situated are equally exposed and not traceable in some special degree to the particular employment are excluded.¹

A workmen’s compensation case should be decided not from a sympathetic point of view which the working class well deserves, but in accordance with the proven facts and the law applicable thereto. Where there is doubt, that the deceased was an employee or laborer, and there is not even a contractual or judicial relation between the parties, the claim for compensation should be denied.²

ART. 173 [167]. DEFINITION OF TERMS

As used in this Title, unless the context indicates otherwise:

(a) “Code” means the Labor Code of the Philippines instituted under Presidential Decree numbered four hundred forty-two, as amended.

(b) “Commission” means the Employees’ Compensation Commission created under this Title.

(c) “SSS” means the Social Security System created under Republic Act numbered eleven hundred sixty-one, as amended.

(d) “GSIS” means the Government Service Insurance System created under Commonwealth Act numbered one hundred eighty-six, as amended.

(e) “System” means the SSS or GSIS, as the case may be.

(f) “Employer” means any person, natural or juridical, employing the services of the employee.

(g) “Employee” means any persons compulsorily covered by the GSIS under Commonwealth Act numbered one hundred eighty-six, as amended, including members of the Armed Forces of the Philippines, and any person employed as casual, emergency, temporary, substitute or contractual, or any person compulsorily covered by SSS under Republic Act numbered eleven hundred sixty-one as amended.

(h) “Person” means any individual, partnership, firm, association, trust, corporation or legal representative thereof.


ART. 173 HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS

(i) “Dependents” means the legitimate, legitimated, legally adopted or acknowledged natural child who is unmarried, not gainfully employed, and not over twenty-one years of age or over twenty-one years of age provided he is incapacitated and incapable of self-support due to a physical or mental defect which is congenital or acquired during minority; the legitimate spouse living with the employee; and the parents of said employee wholly dependent upon him for regular support.” (As amended by Sec. 1, P.D. No. 1921.)

(j) “Beneficiaries” means the dependent spouse until he/she remarries and dependent children, who are the primary beneficiaries. In their absence, the dependent parents and subject to the restrictions imposed on dependent children, the illegitimate children and legitimate descendants, who are the secondary beneficiaries; Provided, That the dependent acknowledged natural child shall be considered as a primary beneficiary when there are no other dependent children who are qualified and eligible for monthly income benefit. (As amended by Sec. 1, P.D. No. 1921.)

(k) “Injury” means any harmful change in the human organism from any accident arising out of and in the course of the employment. (As amended by Sec. 1, P.D. No. 1921.)

(l) “Sickness” means any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment, subject to proof that the risk of contracting the same is increased by working conditions. For this purpose, the Commission is empowered to determine and approve occupational diseases and work-related illnesses that may be considered compensable based on peculiar hazards of employment. (As amended by Sec. 1, P.D. No. 1368.)

(m) “Death” means loss of life resulting from injury or sickness.

(n) “Disability” means loss or impairment of a physical or mental function resulting from injury or sickness.

(o) “Compensation” means all payments made under this Title for income benefits and medical or related benefits.

(p) “Income benefit” means all payments made under this Title to the employee or his dependents.

(q) “Medical benefit” means all payments made under this Title to the providers of medical care, rehabilitation services and hospital care.

(r) “Related benefit” means all payments made under this Title for appliances and supplies.

(s) “Appliances” means crutches, artificial aids and other similar devices.

(t) “Supplies” means medicine and other medical, dental or surgical items.
(u) “Hospital” means any medical facility, government or private, authorized by law, an active member in good standing of the Philippine Hospital Association and accredited by the Commission.

(v) “Physician” means any doctor of medicine duly licensed to practice in the Philippines, an active member in good standing of the Philippine Medical Association and accredited by the Commission.

(w) “Wages” or “Salary,” insofar as they refer to the computation of benefits, means the monthly remuneration as defined in Republic Act No. 1161, as amended, for SSS and Presidential Decree No. 1146, as amended, for GSIS, respectively, except that part in excess of Three Thousand Pesos. (As amended by Sec. 1, E.O. No. 179.)

(x) “Monthly salary credit” means the wage or salary base for contributions as provided in Republic Act numbered eleven hundred sixty-one, as amended, or the wages or salary.

(y) “Average monthly salary credit” in the case of the SSS means the result obtained by dividing the sum of the monthly salary credits in the sixty-month period immediately preceding the semester of death or permanent disability by sixty (60), except where the month of death or permanent disability, falls within eighteen (18) calendar months from the month of coverage, in which case, it is the result obtained by dividing the sum of all monthly salary credits paid prior to the month of the contingency by the total number of calendar months of coverage in the same period. (As amended by Sec. 1, P.D. No. 1368.)

(z) “Average daily salary credit” in the case of the SSS means the result obtained by dividing the sum of the six (6) highest monthly salary credits in the twelve-month period immediately preceding the semester of sickness or injury by one hundred eighty (180), except where the month of injury falls within twelve (12) calendar months from the first month of coverage, in which case it is the result obtained by dividing the sum of all monthly salary credits by thirty (30) times the number of calendar months of coverage in the same period.

In the case of the GSIS, the average daily salary credit shall be the actual daily salary or wage or the monthly salary or wage divided by the actual number of working days of the month of contingency. (As amended by Sec. 1, P.D. No. 891.)

(aa) “Quarter” means a period of three consecutive months ending on the last day of March, June, September, and December.

(bb) “Semester” means a period of two consecutive quarters ending in the quarter of death, permanent disability, injury or sickness. (As amended by Sec. 1, P.D. No. 891.)
(cc) “Replacement ratio” — The sum of twenty percent and the quotient obtained by dividing three hundred by the sum of three hundred forty and the average monthly salary credit. (As amended by Sec. 1, P.D. No. 1641.)

(dd) “Credit years of service” — For a member covered prior to January 1975, nineteen hundred seventy-five minus the calendar year of coverage, plus the number of calendar years in which six or more contributions have been paid from January 1975 up to the calendar year containing the semester prior to the contingency. For a member covered in or after January 1975, the number of calendar years in which six or more contributions have been paid from the year of coverage up to the calendar year containing the semester prior to the contingency. (As amended by Sec. 1, P.D. No. 164.)

(ee) “Monthly income benefit” means the amount equivalent to one hundred fifteen percent of the sum of: The average monthly salary credit multiplied by the replacement ratio; and

One and a half percent of the average monthly salary credit for each credited year of service in excess of ten years; Provided, That the monthly income benefit shall in no case be less than two hundred fifty pesos. (As amended by Sec. 1, P.D. No. 1921.)

COMMENTS AND CASES

1. COMPENSABLE WORK-RELATED INJURY DEFINED

What gives rise to a compensation claim is either injury or disease. But what is compensated is not the injury or disease itself but the attendant loss or impairment of earning capacity. Injury is here discussed first, sickness later.

Article 173(k) of the Labor Code, as amended, defines “injury” as “any harmful change in the human organism from any accident arising out of and in the course of the employment.” The amended (implementing) Rules have elaborated on the statutory provision. Rule III, Sec. 1(a) reads:

(a) For the injury and the resulting disability or death to be compensable, the injury must be the result of an employment accident satisfying all of the following grounds:

1. the employee must have been injured at the place where his work requires him to be;
2. the employee must have been performing his official functions; and
3. if the injury is sustained elsewhere, the employee must have been executing an order for the employer.

2. MEANING OF “ ARISING OUT OF” AND “ IN THE COURSE OF” THE EMPLOYMENT

The two components of the coverage formula — “arising out of” and “in the course of employment” — are said to be separate tests which must
be independently satisfied; however, it should not be forgotten that the basic concept of compensation coverage is unitary, not dual, and is best expressed in the word, “work-connection.” An uncompromising insistence on an independent application of each of the two portions of the test can, in certain cases, exclude clearly work-connected injuries.\(^1\)

The words “arising out of” refer to the origin or cause of the accident and are descriptive of its character, while the words “in the course of” refer to the time, place, and circumstances under which the accident takes place.\(^2\)

There is general agreement upon the proposition that the accident need not have been actually foreseen or expected; that it is sufficient if after the event it appears to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.

There is, however, some division of judicial opinion as to the nature and degree of the relation of the injury to the employment. The more conservative view is that the causative risk or danger must be inherent in or essentially connected with the employment itself, while, according to what may be characterized as the more liberal view, an injury may be regarded as arising out of the employment if it results from a risk or danger to which the workman is exposed by reason of being engaged in the performance of his duties, although such danger is not inherent in and has no necessary or essential connection with the particular employment. It has been stated that an accident arises out of the employment if it ensues from a risk reasonably incident to the employment, and if it is in some sense due to the employment. Again, the view has been taken that an injury arises out of the employment if the employment is one of the contributing causes without which the accident which actually happened would not have happened.\(^3\)

It may be stated as a very general proposition that an injury occurs “in the course of” the employment when it takes place within the period of the employment, at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto, or, as sometimes stated, where he is engaged in the furtherance of the employer’s business.\(^4\)

Conversely, a workman not engaged in performing the particular duties for which he was employed, or in something incidental thereto, is not in the course of his employment, even though he may be in the general sphere of it. It is not essential, however, to the support of an award of compensation that the injured workman must actually have been manipulating the tools of his calling at the time of the occurrence of the accident. The position has been taken that

---

\(^1\)Iloilo Dock and Eng’g. Co. vs. WCC, et al., G.R. No. L-26341, November 27, 1968.
\(^2\)Ibid.
\(^3\)82 Am. Jur. 2d, Sec. 2.
\(^4\)Ibid.
an accident arises in the course of employment if it had its origin there in the sense that it was the end-product of a force or cause set in motion in the course of employment.\(^1\)

The compensability of an injury, as arising out of and in the course of the employment, is to be determined in many instances by reference to the time and place of, and the circumstances surrounding, its occurrence. No precise formula can be laid down which will automatically solve every case insofar as these factors are determinative, since the “sphere of the employment” is variable in extent, depending upon the nature of the particular work and also upon the nature and terms of the hiring contract, and each case therefore must be determined in view of its peculiar facts and circumstances.\(^2\)

Certain general rules and principles have, however, become more or less definitely established in this connection. Thus, it is generally held that it is not necessary, in order for an injury to be regarded as having arisen out of or in the course of the employment, that it should have occurred during hours of active labor, or on premises within the control of the employer; that “the employment” includes not only the actual doing of the work, but also a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done, where the latter is expressly or impliedly included in the terms of the employment.\(^3\)

3. **PROXIMATE CAUSE**

The proximate cause does not imply the nearest in point of time or relation, but rather, is the sufficient cause, which may be the most remote of an operation chain. It must be that which sets the others in motion. It is to be distinguished from a mere preexisting condition upon which the effective cause operates, and must have been adequate to produce the resultant damage without the intervention of an independent cause.\(^4\)

The proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion. They constitute a natural and continuous chain of events, each having a close causal connection with its immediate predecessor. The final event in the chain immediately effecting the injury is a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.\(^5\)

\(^1\)82 Am. Jur. 2d, Sec. 2.
\(^2\)Ibid.
\(^3\)82 Am. Jur. 2d, Sec. 242.
\(^5\)Ibid.
POLICY AND DEFINITIONS

ART. 173

The right to compensation extends to disability due to disease supervening upon and proximately and naturally resulting from a compensable injury. Where the primary injury is shown to have arisen in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant’s own negligence or misconduct. Simply stated, all the medical consequences and sequels that flow from the primary injury are compensable.1

3.1 Illustrative Case: Proximate Cause

Belarmino vs. Employees’ Compensation Commission, G.R. No. 90104, May 11, 1990 —

Facts: Oanis Belarmino was a classroom teacher for eleven years. While performing her duties as a classroom teacher, Mrs. Belarmino who was in her 8th month of pregnancy, accidentally slipped and fell on the classroom floor. Moments later, she complained of abdominal pain and stomach cramps. For several days, she continued to suffer from recurrent abdominal pain and a feeling of heaviness in her stomach, but heedless of the advice of her female co-teachers to take a leave of absence, she continued working. Eleven days after the accident she prematurely delivered a baby girl.

Her abdominal pain persisted even after delivery, accompanied by high fever and headache. The doctor found that she was suffering from septicemia post partum due to infected lacerations of the vagina. Seven days later, she died. The cause of death was septicemia post partum.

The GSIS denied the husband’s claim for death benefits. It held that septicemia post partum was not an occupational disease, and neither was there any showing that the ailment was contracted by reason of her employment. The alleged accident could not have precipitated the death but rather the death resulted from the infection of her lacerated wounds as a result of her delivery at home.

The Employees’ Compensation Commission agreed with the decision of the GSIS.

Ruling: The Supreme Court ordered the GSIS to pay death benefits to the husband of Oanis with legal interest plus attorney’s fees equivalent to 10% of the award.

The condition of the classroom floor caused Mrs. Belarmino to slip and fall and suffer injury as a result. The fall precipitated the onset of recurrent abdominal pains which culminated in the premature termination of her pregnancy with tragic consequences to her. Her fall on the classroom floor brought about her premature delivery which caused the development of septicemia post partum which resulted in death. Her fall was the proximate or responsible cause that set in motion an unbroken chain of events, leading to her demise.

1See Belarmino vs. Employees’ Compensation Commission, G.R. No. 90104, May 11, 1990.
Mrs. Belarmino’s fall was the primary injury that arose in the course of her employment as a classroom teacher; hence, all the medical consequences flowing from it, her recurrent abdominal pains, the premature delivery of her baby, her *septicemia post partum*, and death, are compensable.

It is true that if she had delivered her baby under sterile conditions in a hospital operating room instead of an unsterile environment of her house, and if she had been attended by specially trained doctors and nurses, she probably would not have suffered lacerations of the vagina and would not have contracted the fatal infection. But who is to blame for her inability to afford a hospital delivery and the services of trained doctors and nurses? The court may take judicial notice of the meager salaries that government pays its school teachers. Forced to live on the margin of poverty, they are unable to afford expensive hospital care. Penury compelled the deceased to scrimp by delivering her baby at home instead of in a hospital.

The Government is not entirely blameless for her death for it is not entirely blameless for her poverty. Government has yet to perform its declared policy “to free the people from poverty, provide adequate social services, attend to them a decent standard of living, and improve the quality of life for all.” Social justice for the lowly and underpaid public school teachers will only be an empty shibboleth until Government adopts measures to ameliorate their economic condition and provides them with adequate medical care or the means to afford it.

Compassion for the poor is an imperative of every humane society. By their denial of the petitioner’s claim for benefits arising from the death of his wife, the public respondents ignored this imperative of Government and thereby committed a grave abuse of discretion.

### 3.2 Arising Out/In the Course of Employment

*Hinoguin vs. Employees’ Compensation Commission, G.R. No. 8430, April 17, 1989* —

**Facts:** Sgt. Hinoguin was a detachment non-commissioned officer at Carranglan, Nueva Ecija. On August 1, 1985, he and two members of his detachment sought permission from the Company Commander to go on overnight pass to Aritao, Nueva Vizcaya “to settle an important matter thereat.” The Company Commander orally granted them permission and allowed them to take their firearms with them because Aritao was a “critical place.” In Aritao Poblacion, one of Hinoguin’s companions dismounted, walked towards and in front of the tricycle cab, holding his M-16 rifle in his right hand, not noticing that the rifle’s safety lever was on “semi-automatic” (and not on “safety”). He accidentally touched the trigger, firing a singleshot in the process and hitting Sgt. Hinoguin, causing the latter’s death. The shooting was purely accidental. The Line of Duty Board declared Sgt. Hinoguin’s death to have been “in line of duty,” and recommended that all benefits due Sgt. Hinoguin’s dependents be given.

Sgt. Hinoguin’s claim for compensation benefits under P.D. No. 626 (as amended) was denied by the GSIS because the former was not at his workplace nor performing his duty as a soldier of the Philippine Army when he died.
Issue: Is the death of Sgt. Hinoguin compensable under the applicable statute and regulations?

Ruling: The death of Sgt. Hinoguin that resulted from his being hit by an accidental discharge of his companion’s rifle arose out of and in the course of his employment as a soldier on active duty status in the Armed Forces of the Philippines and, hence, compensable.

The concept of a “workplace” cannot always be literally applied to a soldier on active duty status. A soldier must go where his company is stationed. Sgt. Hinoguin and his companions had permission to proceed to Aritao. A place which soldiers have secured lawful permission to be at cannot be very different from a place where they are required to go by their commanding officer. Hinoguin and his companions were not on vacation leave. They are authorized to carry their firearms with which they were to defend themselves if NPA elements happen to attack them.

The Line of Duty Board of Officers had already determined that Hinoguin’s death occurred “in line of duty.” A soldier on active duty status is really on duty 24 hours a day. He is subject to call and to orders of his superior at all times, except when he is on vacation leave status (which Hinoguin was not). The work-connected character of his injury and death was not precluded by the simple circumstance that he was on an overnight pass. He did not effectively cease performing “official functions” because he was granted a pass. While going to a fellow soldier’s home for a few hours for a meal and some drinks was not a specific military duty, he was, nonetheless, in the course of performance of official functions.

A soldier should be presumed to be on official duty unless he is shown to have clearly and unequivocally put aside that status or condition temporarily by, e.g., going on an approved vacation leave. Even vacation leave may be preterminated by superior officers.

A soldier in the Armed Forces must accept certain risks, e.g., that he will be fired upon by forces hostile to the State or the Government. That is not, of course, the only risk that he is compelled to accept by the very nature of his occupation or profession as a soldier. Most of the persons around him are necessarily also members of the Armed Forces who carry firearms, too. A soldier must also assume the risk of being accidentally fired upon by his fellow soldiers. This is reasonably regarded as a hazard inherent in his employment as a soldier.

3.3 The 24-Hour Duty Doctrine and Its Qualifications; Moonlighting Policemen

For the purpose of determining compensability of injury or death, soldiers and policemen and even firemen by the nature of their work may be considered on duty round-the-clock. But this doctrine, while it relaxes the workplace factor, does not dispense with the work-connection requisite. This conclusion Justice Romero meticulously clarifies in the landmark Alegre case. Her decision opens with the question: May a moonlighting policeman’s death be considered compensable?
HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS

**ART. 173**

*GSIS vs. CA and F. Alegre, G.R. No. 128524, April 20, 1999 —*

**Facts:** SPO2 Alegre, a police officer was driving his tricycle and ferrying passengers within the vicinity of a commercial Complex when SPO4 A. Tenorio, Jr., Team/Desk Officer, confronted him regarding his tour of duty. Alegre allegedly snubbed Tenorio and even directed curse words upon the latter. A verbal tussle ensued between the two which led to the fatal shooting of SPO2 Alegre.

The widow filed a claim for death benefits with GSIS which denied the claim on the ground that at the time of his death, Alegre was performing a personal activity which was not work-connected. The Employees’ Compensation Commission (ECC) affirmed the ruling of the GSIS.

But the Court of Appeals reversed the ECC’s decision and ruled that Alegre’s death was work-connected, hence, compensable. Citing *Nitura vs. Employees’ Compensation Commission* and *Employees’ Compensation Commission vs. Court of Appeals*, the appellate court explained its conclusion, thus:

“[T]he Supreme Court held that the concept of a ‘workplace’ cannot always be literally applied to a person in active duty status, as if he were a machine operator or a worker in an assembly line in a factory or a clerk in a particular fixed office.

It is our considered view that, as applied to a peace officer, his work place is not confined to the police precinct or station but to any place where his services, as lawman, to maintain peace and security, are required.

At the time of his death, Alegre was driving a tricycle at the northeastern part of the Imelda Commercial Complex where the police assistance center is located. There can be dispute therefore that he met his death literally in his place of work.

It is true that the deceased was driving his tricycle, with passengers aboard, when he was accosted by another police officer. This would lend some semblance of viability to the argument that he was not in the performance of official duty at the time.

However, the argument, though initially plausible, overlooks the fact that policemen, by the nature of their function, are deemed to be on a round-the-clock duty.”

GSIS goes to the SC on petition for review on *certiorari* reiterating its position that SPO2 Alegre’s death lacks the requisite element of compensability which is, that the activity being performed at the time of death must be work-connected.

**Ruling:** We grant the petition.

Under the pertinent guidelines of the ECC on compensability, for the injury and the resulting disability or death to be compensable, the injury must be the result of an employment accident satisfying all of the following conditions:

(1) The employee must have been injured at the place where his work requires him to be;
(2) The employee must have been performing his official functions; and
(3) If the injury is sustained elsewhere, the employee must have been executing an order for the employer.

Owing to the similarity of functions, that is, to keep peace and order, and the risks assumed, the Court has treated police officers similar to members of the Armed Forces of the Philippines with regard to the compensability of their deaths. Thus, echoing *Hinoguin vs. Employees’ Compensation Commission*, a case involving a soldier who was accidentally fired at by a fellow soldier, we held in *Employees’ Compensation Commission vs. Court of Appeals*, that “members of the national police are by the nature of their functions technically on duty 24 hours a day” because “policemen are subject to call at any time and may be asked by their superiors or by any distressed citizen to assist in maintaining the peace and security of the community.”

Upon examination of the Court of Appeals’ reasoning, we believe that the appellate court committed reversible error in applying the precepts enunciated in the cited cases. While we agree that policemen, like soldiers, are at the beck and call of public duty as peace officers and technically on duty round-the-clock, the same does not justify the grant of compensation benefits for the death of SPO2 Alegre based on the facts disclosed by the records. For clarity, a review of the cases relevant to the matter at hand is in order.

In *Hinoguin*, the deceased Philippine Army soldier, Sgt. Limec Hinoguin, together with two other members of his detachment, sought and were orally granted permission by the commanding officer of their company to leave their station in Carranglan, Nueva Ecija to go on overnight pass to Aritao, Nueva Vizcaya. As they were returning to their headquarters, one of his companions, not knowing that his M-16 rifle was on “semi-automatic” mode, accidentally pulled the trigger and shot Sgt. Hinoguin who then died as a result thereof. Ruling for the grant of death compensation benefits this Court held:

“The concept of a ‘workplace’ referred to in Ground 1, for instance, cannot always be literally applied to a soldier on active duty status, as if he were a machine operator or a worker in assembly line in a factory or a clerk in a particular fixed office. Obviously, a soldier must go where his company is stationed. In the instant case, Aritao, Nueva Vizcaya was not of course, Carranglan, Nueva Ecija, Aritao, being approximately 1-1/2 hours away from the latter by public transportation. But Sgt. Hinoguin, Cpl. Clavo and Dft. Alibuyog had permission from their Commanding Officer to proceed to Aritao, and it appears to us that a place which soldiers have secured lawful permission to be at cannot be very different, legally speaking, from a place where they are required to go by their commanding officer. We note that the three (3) soldiers were on an overnight pass which, notably, they did not utilize in full. They were not on vacation leave. Moreover, they were required or authorized to carry their firearms with which presumably they were to defend themselves if NPA elements happened to attack them while en route to and from Aritao or with which to attack and seek to capture such NPA elements as they might encounter. Indeed, if the three (3) soldiers had in fact encountered NPAs
while on their way to or from Aritao and been fired upon by them and if Sgt. Hinoguin had been killed by an NPA bullet, we do not believe that respondent GSIS would have had any difficulty in holding the death a compensable one.”

Then came the case of Nitura, likewise involving a member of the Philippine Army, Pfc. R.S. Nitura, who was assigned at Basagan, Katipunan, Zamboanga del Norte. At the time he met his death, he was instructed by his battalion commander to check on several personnel of his command post who were then attending a dance party in Barangay San Jose, Dipolog City. But on his way back to the camp, he passed, crossed and fell from a hanging wooden bridge which accident caused his death. Reversing the ECC which earlier denied death benefits to the deceased’s widow, the Court ruled:

“A soldier must go where his company is stationed. In the case at bar, Pfc. Nitura’s station was at Basagan, Katipunan, Zamboanga del Norte. But then his presence at the site of the accident was with the permission of his superior officer...

As to the question of whether or not he was performing an official function at the time of the incident, it has been held that a soldier on active duty status is really on a 24 hours a day official duty status and is subject to military discipline and military law 24 hours a day. He is subject to call and to the orders of his superior officers at all times, seven (7) days a week, except, of course, when he is on vacation leave status.”

The more recent case which was cited by the appellate court in support of its decision is Employees’ Compensation Commission vs. Court of Appeals. This time, the claim for death compensation benefits was made in behalf of a deceased police officer, P/Sgt. W. Alvaran, who, at the time of his death, was a member of the Mandaluyong Police Station but assigned to the Pasig Provincial Jail. Findings showed that the deceased brought his son to the Mandaluyong Police Station for interview because the latter was involved in a stabbing incident. While in front of the said station, the deceased was approached by another policeman [who] shot him to death. Both the GSIS and the ECC denied the claim by the deceased’s widow on the ground that Sgt. Alvaran was plainly acting as a father to his son and that he was in a place where he was not required to be. The Court of Appeals reversed said denial which decision was affirmed by this Court, declaring that:

“But for clarity’s sake and as a guide for future cases, we hereby hold that members of the national police, like P/Sgt. Alvaran, are by the nature of their functions technically on duty 24 hours a day. Except when they are on vacation leave, policemen are subject to call all anytime and may be asked by their superiors or by any distressed citizen to assist in maintaining the peace and security of the community.

xxx xxx xxx

We hold that by analogy and for purposes of granting compensation under P.D. No. 626, as amended, policemen should be treated in the same manner as soldiers.
While it is true that, “geographically” speaking, P/Sgt. Alvaran was not actually at his assigned post at the Pasig Provincial Jail when he was attacked and killed, it could not also be denied that in bringing his son — as a suspect in a case — to the police station for questioning to shed light on a stabbing incident, he was not merely acting as father but as a peace officer.”

From the foregoing cases, it can be gleaned that the Court did not justify its grant of death benefits merely on account of the rule that soldiers or policemen, as the case may be, are virtually working round-the-clock. Note that the Court likewise attempted in each case to find a reasonable nexus between the absence of the deceased from his assigned place of work and the incident that led to his death.

Taking together jurisprudence and the pertinent guidelines of the ECC, with respect to claims for death benefits, namely (a) that the employee must be at the place where his work requires him to be; (b) that the employee must have been performing his official functions; and (c) that if the injury is sustained elsewhere, the employee must have been executing an order for the employer, it is not difficult to understand then why SPO2 Alegre’s widow should be denied the claims otherwise due her. Obviously, the matter SPO2 Alegre was attending to at the time he met his death, that of ferrying passengers for a fee, was intrinsically private and unofficial in nature proceeding as it did from no particular directive or permission of his superior officer. In the absence of such prior authority as in the cases of Hinoguin and Nitura, or peacekeeping nature of the act attended to by the policeman at the time he died even without the explicit permission or directive of a superior officer, as in the case of P/Sgt. Alvaran, there is no justification for holding that SPO2 Alegre met the requisites set forth in the ECC guidelines. That he may be called upon at any time to render police work as he is considered to be on a round-the-clock duty and was not on an approved vacation leave will not change the conclusion arrived at considering that he was not placed in a situation where he was required to exercise his authority and duty as a policeman. In fact, he was refusing to render one, pointing out that he already complied with duty detail. At any rate, the 24-hour duty doctrine, as applied to policemen and soldiers, serves more as an after-the-fact validation of their acts to place them within the scope of the guidelines rather than a blanket license to benefit them in all situations that may give rise to their deaths. In other words, the 24-hour duty doctrine should not be sweepingly applied to all acts and circumstances causing the death of a police officer but only to those which, although not on official line of duty, are nonetheless, basically police service in character.

3.4 The “24-Hour Duty” Doctrine Requires Work-Connection; “Police Service” Activities

Valeriano vs. Employees’ Compensation Commission and Government Service Insurance System, G.R. No. 136200, June 8, 2000 —

Facts: C.S. Valeriano was employed as a fire truck driver assigned at the San Juan Fire Station. On the evening of July 3, 1985, he was standing along Santolan Road, Quezon City, when he met a friend. They decided to proceed to Bonanza
Restaurant in EDSA, Quezon City, for dinner. On their way home at around 9:30 PM, the owner-type jeepney they were riding in figured in a head-on collision with another vehicle at the intersection of N. Domingo and Broadway streets in Quezon City. Valeriano, thrown out of the vehicle, was severely injured. Pursuing his EC claim, Valeriano argued that the exigency of his job as a fireman requires a constant observance of his duties as such; thus, he should be considered to have been “on call” when he met the accident. He underscored the applicability of *Hinoguin vs. ECC* and *Nitura vs. ECC* to his case.

**Ruling:** Petitioner Valeriano was not able to demonstrate solidly how his job as a firetruck driver was related to the injuries he had suffered. That he sustained the injuries after pursuing a purely personal and social function — having dinner with some friends — is clear from the records of the case. His injuries were not acquired at his work place; nor were they sustained while he was performing an act within the scope of his employment or in pursuit of an order of his superior. Thus his injuries and consequent disability were not work-connected and thus not compensable.

The circumstances in the present case do not call for the application of *Hinoguin* and *Nitura*. Following the rationalization in *GSIS vs. Alegre* the 24-hour-duty doctrine cannot be applied to petitioner’s case, because he was neither at his assigned work place nor in pursuit of the orders of his superiors when he met an accident. But the more important justification for the Court’s stance is that he was not doing an act within his duty and authority as a firetruck driver, or any other act of such nature, at the time he sustained his injuries. There is no any reasonable connection between his injuries and his work as a firetruck driver.

Similarly, the Supreme Court failed to find connection between the work and the death of SPO1 Tancinco who was shot dead by five unidentified men while he was repairing a private vehicle in front of his house in Lemery, Batangas. SPO1 Tancinco was a member of the NCR Security Protection Group of the PNP and assigned as part of the close-in security detail of the Vice-President. At the time of his death he was off-duty as the Vice-President was in the US for medical treatment. Applying *GSIS vs. Alegre*, the Court reiterated that:

...[T]he 24-hour duty doctrine should not be sweepingly applied to all acts and circumstances causing the death of a police officer but only to those which, although not on official line of duty, are nonetheless basically police service in character. In this case, SPO1 Tancinco was not performing acts that are “basically police service in character.” (*Tancinco vs. Government Service Insurance System and Employees’ Compensation Commission, G.R. No. 132916, November 16, 2001*)

4. **INGRESS-EGRESS/PROXIMITY RULE**

*Iloilo Dock & Eng’g. Co. vs. WCC, et al., L-26341, November 27, 1978 —*

**Facts:** At about 5:02 in the afternoon of January 29, 1960, Pablo, who was employed as a mechanic of the IDECO, while walking on his way home, was shot to death in front of, and about 20 meters away from, the main IDECO gate, on a
The slayer, Martin Cordero, was not heard to say anything before or after the killing. The motive for the crime was and still is unknown as Cordero was himself killed before he could be tried for Pablo’s death. At the time of the killing, Pablo’s companion was Rodolfo Galopez, another employee, who, like Pablo, had finished overtime work at 5:00 p.m. and was going home. From the main IDECO gate to the spot where Pablo was killed, there were four “carinderias” on the left side of the road and two “carinderias” and a residential house on the right side. The entire length of the road is nowhere stated in the record.

The principal issue is whether Pablo’s death comes within the meaning and intendment of that “deceptively simple and litigiously prolific” phrase “arising out of and in the course of employment.”

The general rule in workmen’s compensation law known as the “going and coming rule,” simply stated, is that “in the absence of special circumstances, an employee injured in, going to, or coming from, his place of work is excluded from the benefits of workmen’s compensation acts.” This rule, however, admits four well-recognized exceptions, to wit: (1) where the employee is proceeding to or from his work on the premises of his employer; (2) where the employee is about to enter or about to leave the premises of his employer by way of the exclusive or customary means of ingress and egress; (3) where the employee is charged, while on his way to or from his place of employment or at his home, or during his employment, with some duty or special errand connected with his employment; and (4) where the employer, as an incident of the employment, provides the means of transportation to and from the place of employment.

We address ourselves particularly to an examination and consideration of the second exception, i.e., injuries sustained off the premises of the employer, but while using a customary means of ingress and egress.

This exception, known as the “proximity rule,” was applied in Philippine Fiber Processing Co., Inc. vs. Ampil. There, the employee, at about 5:15 a.m., while proceeding to his place of work and running to avoid the rain, slipped and fell into a ditch fronting the main gate of employer’s factory, as a result of which he died the next day. The sole question was whether or not the accident which caused the employee’s death arose out of and in the course of his employment. The Court ruled in favor of the claimant.

The point where Pablo was shot was barely twenty meters away from the main IDECO gate, certainly nearer than a stone’s throw therefrom. The spot is immediately proximate to the IDECO’s premises. Considering this fact, and the further facts that Pablo has just finished overtime work at the time, and was killed barely two minutes after dismissal from work, the Ampil case is squarely applicable here. We may say, as we did in Ampil, that the place where the employee was injured being “immediately proximate to his place of work, the accident in question must be deemed to have occurred within the zone of his employment and therefore arose out of and in the course thereof.” Our principal question is whether the injury was sustained in the course of employment. We find that it was, and so conclude that the assault arose out of the employment, even though the said assault is unexplained.
American jurisprudence supports this view.

In Bountiful Brick Company vs. Giles, the U.S. Supreme Court ruled:

Employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer’s premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer’s premises, the injury is one arising out and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. In other words, the employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached. Probably, as a general rule, employment may be said to begin when the employee reaches the entrance to the employer’s premises where the work is to be done; but it is clear that in some cases the rule extends to include adjacent premises used by the employee as a means of ingress and egress with the express or implied consent of the employer.

5. “GOING TO OR COMING FROM WORK” RULE

With the ruling of the Supreme Court on off-premises injury,\(^1\) the ECC passed Resolution No. 3914-A on July 5, 1988, extending the compensable coverage of off-premises injury from near the premises up to the residence of the employee. The resolution provides that an injury or death of a covered member in an accident while he is going to, or coming from, the workplace, shall henceforth be duly considered compensable provided the following conditions are established definitively:

1. The act of the employee of going to, or coming from, the workplace, must have been a continuing act, that is, he had not been diverted therefrom by any other activity, and he had not departed from his usual route to, or from, his workplace; and

2. Re: an employee on an special errand, the special errand must have been official and in connection with his work.

The compensability is sometimes called the “street peril” principle.

5.1 Accident on the Way to Work

Alano vs. ECC, G.R. No. L-48594, March 16, 1988 —

Facts: Dedication was a school principal whose tour of duty was from 7:30 a.m. to 5:30 p.m. While waiting for a ride at a public plaza on her way to school, she was bumped and run over by a speeding bus which caused her death. The Employees’ Compensation Commission denied the claim filed by her heirs on the ground that the injury was not an employment accident satisfying all the conditions prescribed by law.

\(^1\)See Alano vs. ECC, et al., G.R. No. L-48594, March 16, 1988.
**Ruling:** The deceased died while going to her place of work. She was at the place where her job necessarily required her to be if she was to reach her place of work on time. There was nothing private or personal about her being at the place of the accident. She was there because her employment required her to be there. The GSIS, as the ultimate implementing agency of the Employees’ Compensation Commission, is ordered to pay the claimants.1

In a similar case, Filomeno, a letter carrier of the Bureau of Posts, was driving his motorcycle with his son as backrider on his way to his station for his work the following day, Monday. As they were approaching a bridge, the motorcycle skidded, causing its passengers to be thrown overboard. Filomeno’s head hit the bridge’s railing which rendered him unconscious, causing his death. The Government Service Insurance System contends that the present provision of law on employment injury is different from that provided in the old Workmen’s Compensation Act and is “categorical that the injury must have been sustained at work while at the workplace or elsewhere while executing an order from the employer.”

The Supreme Court set aside the decision of the Government Service Insurance System and directed the latter to pay Filomeno’s widow the sum of P12,000 as death benefit and the sum of P1,200 as attorney’s fees.

The Court sees no reason to deviate from the rulings of the court. Filomeno was on his way to his place of work when he met the accident. His death, therefore, is compensable under the law as an employment accident.2

---

### 5.2 Accident on the Way Home

**Lazo vs. Employees’ Compensation Commission, G.R. No. 78617, June 18, 1990** —

**Facts:** Lazo is a security guard of the Central Bank assigned to its main office. His regular tour of duty is from 2 o’clock in the afternoon to 10 o’clock in the evening. On June 18, 1986, he rendered duty from 2 o’clock in the afternoon to 10 o’clock in the evening. But as the security guard who was to relieve him failed to arrive, he rendered overtime duty up to 5 o’clock in the morning of June 19. On his way home, at about 6 o’clock that morning, the passenger jeepney the petitioner was riding on turned turtle due to slippery road. As a result, he sustained injuries and was taken to the hospital for treatment.

**Ruling:** The claim is compensable. Here, Lazo left his station at the Central Bank several hours after his regular time off, because the reliever did not arrive,

---

and so he was asked to go on overtime. After permission to leave was given, he went home. There is no evidence that he deviated from his usual, regular homeward route or that interruptions occurred in the journey.

Employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer’s premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer’s premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance.

There is no reason, in principle, why employees should not be protected for a reasonable period of time prior to or after working hours and for a reasonable distance before reaching or after leaving the employer’s premises. The court is constrained not to consider the defense of the street peril doctrine and instead interpret the law liberally in favor of the employee because the Employees’ Compensation Act, like the Workmen’s Compensation Act, is basically a social legislation designed to afford relief to the working men and women in our society.

6. INJURY AT PLACE OF EMPLOYMENT NOT NECESSARY ELEMENT OF COMPENSABILITY

For an injury to be compensable, it is not necessary that the cause therefor shall take place within the place of employment. If a workman is acting within the scope of his employment, his protection “in the course of” employment usually continues, regardless of the place of injury.¹

Where an employee is constantly or occasionally on the street in connection with his work, accidents thereon befalling him are compensable as “arising out of” the employment. The fact that street perils are common to all mankind is immaterial.²

The use of the streets by the workman merely to get to or from his work, of course, stands on a different footing altogether, but as soon as it is established that the work itself involves exposure to the perils of the streets, the workman can recover for any injury so occasioned. The fact that the risk may be common to all mankind does not disentitle a workman to compensation if in the particular case it arises out of the employment.

Thus, an injury received by a caminero hit by a truck while at work on the road is held compensable.³

²Horovitz, 41 Neb. L.R. 20.
³Balajadia vs. Province of Iloilo, G.R. No. 41979, October 15, 1934.
In fine, the general rule is that the accident should have occurred at the place of work and this is known as the “direct premises rule.” But there are exceptions. The coming-and-going rule and the ingress-egress/proximity rule are just two of the exceptions. The following pages discuss more exceptions.

7. INCIDENTS OF EMPLOYMENT

It is settled that injuries sustained in connection with acts which are reasonably incidental to the employment are deemed as arising out of such employment. Generally, such incidents of work include: (1) acts of personal ministration for the comfort or convenience of the employee; (2) acts for the benefit of the employer; (3) acts done to further the goodwill of the business; (4) slight deviations from work, from curiosity or otherwise; and (5) acts in emergencies.\(^1\)

8. ACTS OF MINISTRATION

The course of employment is not broken because of acts of ministration done by an employee to himself. Acts of ministration are those done by a person for the purpose of satisfying the call of nature, such as: quenching his thirst, relieving himself by way of urination or excretion, etc. They are deemed to be incidents of employment, so that injuries sustained thereby are held compensable.

Such acts as are reasonably necessary to the health and comfort of an employee while at work, such as satisfaction of his thirst, hunger, or other physical demands, or protecting himself from excessive cold, are incidental to the employment, and injuries sustained in the performance of such acts are generally held to be compensable as arising out and in the course of the employment.

For instance, an employee went to the house of the employer across the warehouse where he worked to get a drink of water; there, while trying to drive away a puppy that he saw eating fish in the employer’s kitchen, he was bitten in the hand, as a result of which he later died of hydrophobia. The death of the employee was held compensable on the ground that his trip to the kitchen was occasioned by the employer’s fault in not providing adequate drinking water at the warehouse.\(^2\)

A sailor, required to stay aboard a barge by the nature of his duties, who met death by drowning while swimming in the vicinity of the barge, was deemed to have met death by accident out of and in the course of employment, for the reason that by performing his absolutions through swimming, the deceased was engaged in an act necessary to his physical well-being, hence, incidental to his employment.\(^3\)

A laborer, who left the ship where he was to work overtime in order to answer a call of nature in a nearby barge and who was killed while so engaged when the barge lurched and pinned him against the ship, was deemed injured in the course of his employment.\(^4\)

---

\(^1\)Horovitz, 3 NACCA L.J. 28-30.

\(^2\)Chua Yeng vs. Roma, L-14827, October 31, 1960.

\(^3\)Luzon Stevedoring Co. vs. WCC, L-1974, January 31, 1964.

Injury received while crossing the street by street workman after act of personal ministration arose out of the employment.¹

8.1 Rest or Refreshment

The general rule is that injuries occurring to an employee during an intermission or break for rest or refreshment arise in the course of the employment and are compensable. Such rule is not affected by the fact that the employee is paid by the hour and receives no pay for the period covered by such intermission. Whether an employee, by resting during working hours, departs from, abandons, or breaks his employment so as to deprive himself of the right to compensation for an injury sustained while so resting generally depends upon whether such resting, in view of all the circumstances, is reasonably incident to the employment. The fact that an employee unintentionally falls asleep while he is resting at a proper time and place does not necessarily deprive him of the right to compensation for an injury received while so sleeping, upon the ground that he has thereby departed from the course of his employment, except, perhaps, where his duties are of such a nature as to require him to remain awake, as in the case of a watchman.²

8.2 Lunch Period

In a number of cases, it has been held that an injured workman is entitled to compensation for injuries received on the employer’s premises, although the accident occurred during lunch period when work was not actively in progress, where the eating of the lunch on the premises was with the employer’s knowledge and consent, express or implied. According to some authorities, however, an injury to an employee during meal hours is not compensable if it results from an independent act of the employee having no connection with his work or his meal, or if the employee at the time was in a place where he had no right to be. Ordinarily, an employee is not under the protection of the statute while away from the employer’s premises during an intermission for lunch, although there may be exceptional circumstances entitling the employee to compensation in such a case. Thus, while generally an accidental injury to an employee is not covered by workmen’s compensation as being one arising out of and in the course of employment if it occurs off the employer’s premises while the employee is going to or coming from lunch on unpaid time, there are exceptions.³

8.2a Union Meeting

It has been held that an injury received at a union meeting held during a lunch period at the plant for the purpose of electing a shop steward, the shop

¹Bellocillo vs. City of Manila, No. 34522, November 9, 1931.
²82 Am. Jur. 2d, Sec. 271.
³82 Am. Jur. 2d, Sec. 272.
steward system being recognized by the employer in its contract with the union, was not an injury arising out of and in the course of his employment.¹

9. **ACTS FOR THE BENEFIT OF EMPLOYER**

Broadly defined, it may be taken as authoritatively settled that acts arising out of and in the course of his employment covers those accidents which befall an employee while he is discharging some duty he is authorized or directed to perform for the furtherance, directly or indirectly, of his employer’s business.²

For the purpose of workmen’s compensation, the relation of master and servant is ordinarily suspended during the period that the employee is off duty and, therefore, the general rule is that injuries occurring before or after regular working hours are not within the course of employment. However, an injury sustained by an employee outside his regular working hours or during a temporary stoppage or cessation of work may, nevertheless, under some circumstances, be compensable as arising out of and in the course of the employment, and is generally held to be so where the employee was at the time engaged in the performance of some service for the benefit of the employer in connection with his usual duties. Moreover, workers in a factory or other place of employment do not necessarily depart from the course of their employment by engaging in social intercourse, or visiting in other parts of the building or premises, while not actually employed in the performance of their duties, so as to hereby deprive themselves of the right to compensation for injuries received while so engaged.³

It has been held that the act of saving the employer’s property from an apparent danger is compensable.⁴

Where an employee of a bus firm, while undertaking to retrieve personal belongings of a passenger, meets with an accident outside his assigned territory, such an accident arises out of and in the course of his employment because his act enhances the prestige of the employer and results in increased patronage of the services of his employer’s common carrier.⁵

Repair of truck used by business associate of the employer, which is used in operations directly beneficial to the latter, was held within the scope of the employment.⁶

The drowning of an employee following his voluntary assistance to a fellow employee was deemed to have arisen out of the employment, since the assistance was for the benefit of the employer.⁷

¹82 Am. Jur. 2d, Sec. 272.
³82 Am. Jur. 2d, Sec. 264.
⁴In re: Brightmen, Lo 7 N.E. 527; cited in 72 C.J. 670.
⁵Verzosa vs. Vda. de Cruz, L-7305, December 1953.
⁷Paez vs. WCC, L-18438, March 30, 1963.
9.1 While Working at Home

Injuries sustained by an employee at his own home or upon his own premises, in connection with the performance of the duties of his employment, are generally held to be compensable where such work is done there pursuant to the terms of the contract, express or implied, or pursuant to the direction or request of the employer, but not where it is there performed voluntarily by the employee for his own convenience or benefit.\(^1\)

10. Acts During Emergency

When in case of emergencies rescue work is called for, injuries sustained by an employee in the attempt or in the course of a rescue are deemed to arise out of the employment.\(^2\)

Death of an employee in an attempt to rescue a co-employee arose out of the employment.\(^3\)

An injury suffered by an employee while voluntarily performing some service for his employer entirely outside of and unrelated to his regular employment is ordinarily not compensable as arising out of and in the course of such regular employment. According to many authorities, however, the employee is entitled to compensation for an injury arising out of and in the course of his employment when such injury was received in the performance of work for his employer outside the scope of his usual duty, but which the employee had been expressly ordered to do by someone authorized to direct him as to his work; and even in the absence of orders, the employee has in many cases been held entitled to compensation for an injury sustained while doing an act outside the scope of his usual duties where such act was reasonably necessary or incidental to his regular work, particularly if an emergency existed, and although no emergency or reasonable necessity existed calling for the performance of an act outside of the employee’s usual duty, a workman is sometimes allowed compensation for an injury received in the performance of such an act, if it was done in the furtherance of the employer’s business or in pursuance of a habit or custom.\(^4\)

11. Extra-Premises Rule

The extra-premises rule is otherwise called the “Shuttle bus” rule. This rule is the same as that in the old workmen’s compensation jurisprudence, where the company which provides the means of transportation in going to and coming from the place of work is liable for the injury sustained by employees while on board said means of transportation. This is because the company vehicle is an extension of its premises.\(^5\)

\(^1\)82 Am. Jur. 2d, Sec. 247.
\(^2\)Horovitz, 4 NACCA, L.J. 23-25.
\(^3\)Estandarte vs. Phil. Motor Corp., No. L-39724, November 1, 1933.
\(^4\)82 Am. Jur. 2d, Sec. 275.
12. **SPECIAL ERRAND RULE**

An injury sustained by an employee outside the company premises is compensable if his being out is covered by an office order or a locator slip or a pass for official business.

While travelling to buy school supplies, the employee was ambushed along the way. It was ruled that where claimant was performing official functions, it hardly matters that she was injured outside regular working hours and beyond her place of work.¹

13. **WHILE LIVING, BOARDING, OR LODGING ON PREMISES OF EMPLOYER, OR AT WORKING PLACE**

It may be stated, as a general rule, that an injury to an employee living, boarding, or lodging on the employer’s premises, or at the place where the work is being done, pursuant to an express or implied requirement of the contract of hiring, if reasonably attributable or incidental to the nature of the employment, or to the conditions under which he lives in the performance of his duties, is to be regarded as having arisen out of and in the course of such employment. On the other hand, the mere fact that an employee was living on the employer’s premises at the time of injury does not ordinarily, of itself, render such injury compensable as arising out of or in the course of the employment where such residence on the employer’s premises is merely permissive and not required, or where the injury results from a risk or danger which is not reasonably incidental to the employment.²

14. **WHILE TRAVELING**

With respect to the compensability of injuries to employees, the performance of whose duties necessitates their traveling from place to place away from the premises of the employer, sustained while so traveling, as arising out of and in the course of the employment, the right to compensation depends, as in other cases generally, upon whether the injury results from a risk which is inherent in the nature of the employment, or which is reasonably incidental thereto, or to which the employee is specially exposed, and upon whether the employee, at the time of the occurrence of the accident, was engaged in the exercise of some functions or duties reasonably necessary or incidental to the performance of the contract of employment, or, if not actively engaged, whether he was at a place where he was authorized or required by such contract to be. It has been said that an employee who is away from home on a business trip for his employer is in most circumstances under continuous workmen’s compensation coverage from the time he leaves until he returns home, although there are exceptions to this rule. The course of the employment of a traveling salesman, for the purposes of workmen’s compensation, covers both the time and place of the traveling as well as of the selling of goods.³

---

¹Enao vs. Employees’ Compensation Commission, 135 SCRA 660 [1985].
²82 Am. Jur. 2d, Sec. 248.
³82 Am. Jur. 2d, Sec. 250.
14.1 Where Employee Uses Own Vehicle Which He Also Uses in Performance of Duties

In some cases in which it appeared that an employee was using his own vehicle at the time he was injured in an accident while going to or from work, and that he used such vehicle in the performance of his duties to his employer, it was held that his injuries arose out of and in the course of the employment. This result has been reached where the employee was injured in a train or streetcar accident.¹

14.2 Effect of Deviation from Route, Schedule, or Mode of Travel

Whether a deviation by a traveling employee from his usual or prescribed route, schedule, or mode of travel constitutes such a departure from the scope or course of his employment as to deprive him of the right to compensation for an injury sustained during or as the result of such deviation depends ordinarily upon the extent, purpose or effect thereof. An unauthorized deviation may preclude recovery of compensation for an injury caused by an added peril to which the employee is thereby exposed during the period of the deviation, but the compensability of an injury occurring after the deviation has ended and the employee is again in the course of his employment is not ordinarily affected thereby.²

14.3 Effect of Mingling of Purposes of Employer and Employee; Dual Purpose Doctrine

An employee’s status of acting in the course of his employment is not destroyed by the fact that he may be pursuing a dual purpose. The dual purpose doctrine allowing compensation applies where a special trip would have had to be made for the employer if the employee had not combined the service for the employer with his own going or coming trip.³

Stated briefly, the “dual purpose” doctrine, considers as compensable an injury that an employee sustains while on a trip undertaken for the benefit of the employer even if in the course thereof the employee pursues also a personal purpose. This doctrine, of American origin, has been adopted by the ECC in its Resolution No. 99-08-0469 dated August 31, 1999. This means that the doctrine may be applied in the adjudication of employees’ compensation claims. The application, however, is subject to the following guidelines:

“1. A contingency or injury an employee suffers during a trip that serves both business and personal purposes is deemed within the course of employment, that is, if the trip involves the performance of a service for the employer, which would have caused the trip to be done by someone else, even if such a trip had not coincided with a personal purpose.

¹82 Am. Jur. 2d, Sec. 259.
²82 Am. Jur. 2d, Sec. 252.
³82 Am. Jur. 2d, Sec. 288.
“This guideline applies to out-of-town trips, field trips, trips to, and from work, and to miscellaneous errands motivated to an extent by an intention of the employee to transact official business during such trips;

2. When an employee’s trip tends to serve both business and personal purposes, it is considered a personal trip, if the employee would have made such a trip, in spite of the failure or absence of the business or official purpose; and if the employee would not have made the trip because of the failure of the private purpose thereof, and the nonfulfillment of the business purpose.

“On the other hand, the trip is held a business trip, if the employee would have made the trip nonetheless, despite the failure or absence of the private purpose thereof. The reason is that the service the employee intends to do for the employer would have caused the trip to be done by someone else. This is even if it would not have coincided with the contingency of the employee; and

“3. Whether a trip to be taken by an employee in the interest of both the employee and his or her employer is to be regarded as the latter’s, so as to warrant allowance or compensation for injuries the employee may suffer in the course thereof; or the employee’s interest, is in a sense a question of fact. Such a question must be determined by the application of some legal tests or standards.

The same Resolution concludes by providing the “test” in the applicability of the dual purpose doctrine. It states:

“The test that is ordinarily employed for determining liability in such a case is that if the work of the employee tends to create necessity for travel, he or she is deemed in the course of employment, albeit the employee serves at the same time some personal purpose. The requirement is that the service of the employer is at least a concurrent cause of the trip of the employee.

15. EMPLOYER-SPONSORED ACTIVITIES

In determining whether an injury suffered by an employee in the course of recreation is compensable, the test is whether the recreation was for the employee’s exclusive benefit, or whether the employer had some interest in the activity. Where an employee is injured while at recreation during a temporary cessation of work, the injury is compensable as arising out of and in the course of employment where the recreation indulged in was fostered and encouraged by the employer to the end of efficiency of their service.\(^1\)

An employee given a fishing trip as a bonus or prize for his work has been awarded compensation for an injury in the course thereof.\(^2\)

\(^{1}\) 99 C.J.S. 737.

\(^{2}\) 99 C.J.S. 740.
Where an employee is injured on his way to or while at a picnic or outing given for the employees by the employer and which the employees were required to attend, the injury arises out of and in the course of the employment.1

Where the employer, for business reasons, arranges and pays for an employee to join and participate in a social club or organization, the employee’s activities therein are an incident of his employment.2

Compensation has been awarded for an injury suffered by an employee while engaged in a recreational activity where such activity, by its consistency and regularity, has become an incident of the employment, as in the case of ball games regularly played on the employer’s premises during lunch or other nonworking periods.3

Recreational activities fall under the so-called “special engagement rule” which is one of the exceptions to the “direct premises rule.” This exception covers field trips, intramurals, outings, and picnics when initiated or sanctioned by the employer. Accidents befalling employees on those occasions are compensable.4

16. ACTS OF GOD OR FORCE MAJEURE

The generally accepted doctrine is that the employer is not responsible for accidents arising from force majeure or an act of God, as it is usually called, when the employee has not been exposed to a greater danger than usual. However, this general rule recognizes an exception in the so-called “positional and local risks” doctrine so that if an employee, by reason of his duties, is exposed to a special or peculiar danger from the elements, that is, one greater than that to which other persons in the community are exposed, and an unexpected injury is sustained by reason of the elements, the injury constitutes an accident arising out of and in the course of the employment within the meaning of the workmen’s compensation acts. Stated otherwise, when one in the course of his employment is reasonably required to be at a particular place at a particular time and there meets an accident, although one which any other person then and there present would have met irrespective of his employment, that accident is one “arising out of the employment” of the person so injured.5

The death of a farmhand who was struck by lightning while driving a team of horses across a hill near a wire fence, or whose employment required him to be in a position where lightning struck him, was held compensable as an accident which arose out of his employment.6

---

199 C.J.S. 740.
2Ibid.
399 C.J.S. 738.
5Matthews, Employment and the Law, p. 249; Larson, Workmen’s Compensation Law, Sec. 10.
The death of a ship officer when his vessel sank in a marine disaster arose out of the employment. The theory that death has not arisen out of one’s employment even if it was met in the course of his employment and while performing his official duties cannot be adhered to nor upheld on the ground that it is contrary to the liberal interpretation of the law and to the spirit underlying the same. Investigating whether or not the death of an employee arose out of his employment, all of the circumstances present in the case should be taken into consideration in order to be able to determine whether or not a causal connection exists between his death and the conditions under which he necessarily had to fulfill his duties.

Where the deceased was contracted and employed to direct and render services in the vessel, he knew that when he accepted the employment he was duty bound to render services in good weather as well as when the vessel encountered a storm or typhoon. It may be stated that he must have been aware that in case of a typhoon his services had to be rendered in a higher degree, because in such event it was part of his duties to save the vessel. Taking into consideration all these circumstances, it is clear that his death is compensable under the law on the ground that a causal relation existed between such death and the conditions under which he had to perform his employment. It is obvious that the typhoon was the immediate cause of the sinking of the vessel and that there existed no causal relation between it and the employment of the deceased. It is evident, however, that between the conditions and circumstances under which the deceased discharged his employment and his death, there existed the causal connection which made the accident compensable.¹

17. ASSAULT

If an employee is assaulted or killed, is that an “accident”? An “assault,” although resulting from a deliberate act of the slayer, is considered an “accident” within the meaning of the Workmen’s Compensation Act, since the word “accident” is intended to indicate that “the act causing the injury shall be casual or unforeseen, an act for which the injured party is not legally responsible.”²

In the leading case of Iloilo Dock, already cited, the Court explained:

We now direct our attention to the cause of the employee’s death assault. As heretofore stated, the assault on Pablo is unexplained. The murderer was himself killed before he could be brought to trial. It is true there is authority for the statement that before the “proximity” rule may be applied it must first be shown that there is a causal connection between the employment and the hazard which resulted in the injury. The following more modern view was expressed in Lewis Wood Preserving Company vs. Jones.

²Taller Vda. de Nava vs. Ynchausti Steamship Co., 57 Phil. 751.
While some earlier cases seem to indicate that the causative danger must be peculiar to the work and not common to the neighborhood for the injuries to arise out of and in the course of the employment (see *Maryland Casualty Co. vs. Peek*, 36 Ga. App. 557 [137 SE. 121]; *Hartford Accident and Indemnity Co. vs. Cox*, 61 Ca. App. 420, [6 S.E. 121]; *Hartford Accident and Indemnity Co. vs. Cox*, 61 Ca. App. 420, 6 S.E. 2d 189), later cases have been somewhat more liberal, saying that, ‘to be compensable, injuries do not have to arise from something peculiar to the employment, (*Fidelity & Casualty Co. of N.Y. vs. Bardon*, 79 Ga. App. 260, 262, 54 S.E. 2d 443,444)

Where the duties of an employee entail his presence (at a place and a time) the claim for an injury there occurring is not to be barred because it results from a risk common to all others... unless it is also common to the general public without regard to such conditions, and independently of place, employment, or pursuit. (*New Amsterdam Casualty Co. vs. Sumrell*, 30 Ga. App. 682, 118 S.E. 786, cited in *Globe Indemnity Co. vs. MacKendree*, 39 Ga. App. 58, 146 S.E. 46, 47; *McKinley vs. Reynolds & Manley Lumber Co.*, 79 Ga. App. 326, 829, 54 S.E. 2d 471, 473)

But even without the foregoing pronouncement, the employer should still be held liable in view of our conclusion that that portion of the road where Pablo was killed, because of its proximity, should be considered part of the IDECO’s premises. Hence, the injury was in the course of employment, and there automatically arises the presumption — invoked in *Rivera* — that the injury by assault arose out of the employment, *i.e.*, there is a causal relation between the assault and the employment.

Jurisprudence is to the effect that injuries sustained by an employee while in the course of his employment, as the result of an assault upon his person by another employee, or by a third person, no question of the injured employee’s own culpability being involved, is compensable where, from the evidence presented, a rational mind is able to trace the injury to a cause set in motion by the nature of the employment, or some condition, obligation or incident therein, and not by some other agency. (*Morgan vs. Hoage*, 63 App. D.D. 335, 72 F. [2d]727)

Assault arising from quarrel over work assignment has been held compensable.\(^1\)

Assault resulting from resentment, having its origin in the work, arose out of the employment.\(^2\)

Where a superintendent was injured on the sidewalk by a workman with whom he had quarreled in the mill, the late Justice Cardozo (then of the New York

\(^1\) *Galicia vs. Dy Pac & Co., Inc.*, [CA] No. 7402, March 25, 1941.

\(^2\) *Bohol Land Trans. Co. vs. Madanguit, et al.*, L-47360, November 28, 1940; 70 Phil. 685.
Supreme Court) declared the injury compensable, reasoning that the quarrel outside of the mill was merely a continuation or extension of the quarrel begun within; that continuity of the case had been so combined with continuity in time and space “that the quarrel from origin to ending must be taken to be one.”

In a similar Philippine case, Rosano was assaulted upon alighting from a jeepney near his house in Tondo by a man (a co-laborer) with whom he had quarreled in connection with the possession of the platform to be used in unloading cargo, a half hour after leaving the place of work in Pier 9, without any independent agency or cause for the assault being shown. In holding Rosano’s death compensable, the Supreme Court, speaking through Justice Reyes, took note of the ultimate test used by Justice Cardozo of the New York Supreme Court to the effect that “the quarrel from origin to ending must be taken to be one” and that “it should make no difference how widely separated the assault was from the employment in time and space if it remained an inherent part of an employment incident.”

In Batangas Transportation Company vs. Vda. de Rivera, L-7658, May 8, 1956, while the employee-driver was driving the bus, a passenger boarded it and sat directly behind the driver. After about thirty minutes, during which the passenger and the driver never so much as exchanged a word, the passenger shot the driver to death and then fled. There was no competent proof as to the cause of the assault, although there were intimations that the incident arose from a personal grudge.

The majority decision ruled the death compensable. The bases: (1) once it is proved that the employee died in the course of the employment, the legal presumption [under the former compensation law], in the absence of substantial evidence to the contrary, is that the claim “comes within the provisions of the compensation law” (Sec. 43), in other words, that the incident arose out of the workman’s employment; (2) doubts as to rights to compensation are resolved in favor of the employee and his dependents; (3) the Commissioner’s declaration on the work connection might be binding on the Court; (4) there are employments, which increase the risk of assault on the person of the employee and it is that sense that an injury or harm sustained by the assaulted worker arises out of the employment, because the increased risk to assault supplies the link or connection between the injury and the employment.

17.1 “Increased Risk” Jobs

Among the jobs enumerated as increasing the risk of assault are (a) jobs having to do with keeping the peace or guarding property; (b) jobs having to do with keeping or carrying of money which subject the employee to the risk of assault because of the increased temptation to robbery; (c) jobs which expose the employee to direct contact with lawless and irresponsible members of the

---

1Field vs. Charmette Knitted Fabric Co., 245 N.Y. 138.
2Luzon Stevedoring Corp. vs. WCC and Rosano, L-27588, April 25, 1969.
community, like that of a bartender; and (d) work as bus driver, taxi driver, or street car conductor.  

The employment itself may be the subject-matter of a dispute leading to the assault as where a supervisor is assaulted by a workman he has fired, or where the argument was over the performance of work or possession of tools or the like, or where the violence was due to labor disputes.

18. “ACCIDENT” AND “INJURY”

**NFD International Manning Agents, Inc./Barber Ship Management Ltd. vs. Illescas, G.R. No. 183054, September 29, 2010**

**Facts:** Illescas was employed as Third Officer of M/V Shinrei through a POEA-approved employment contract for nine months with US$854.00 monthly salary. On May 16, 2003, in the seventh month of Illescas’ employment, the vessel officers ordered Illescas to carry 25 fire hydrant caps from the deck to the engine workshop. The next day, while doing the same kind of work, he felt a sudden snap on his back, with pain that radiated down to the left side of his hips. Repatriated to the Philippines, he underwent operations, but his condition did not improve, causing an orthopedic specialist to declare him “unfit to work at sea in any capacity as seaman.” He claimed disability benefit under the contract that grants as much as US$90,000.00 to the seafarer who suffers permanent disability “as a result of an accident.” The employer denied the claim, insisting that the disability was not due to an “accident.”

**Ruling:** Black’s Law Dictionary defines “accident” as “[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated, x x x [a]n unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct.”

The Philippine Law Dictionary defines the word “accident” as “[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen.”

"Accident," in its commonly accepted meaning, or in its ordinary sense, has been defined as:

[A] fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens x x x.

The word may be employed as denoting a calamity, casualty, catastrophe, disaster, an undesirably or unfortunate happening; any unexpected personal injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events.

The Court holds that the snap on the back of respondent was not an accident, but an injury sustained by respondent from carrying the heavy basketful of fire hydrant caps.

---

1Batangas Transportation Co. vs. Vda. de Rivera, L-7658, May 8, 1956.
2Iloilo Dock & Eng’g Co. vs. WCC, et al., L-26341, November 27, 1968.
caps, which injury resulted in his disability. The injury cannot be said to be the result of an accident, that is, an unlooked for mishap, occurrence, or fortuitous event, because the injury resulted from the performance of a duty. Although respondent may not have expected the injury, yet, it is common knowledge that carrying heavy objects can cause back injury, as what happened in this case. Hence, the injury cannot be viewed as unusual under the circumstances, and is not synonymous with the term “accident” as defined above.

Although the disability of respondent was not caused by an accident, his disability is still compensable under Article 13 of the CBA under the following provision:

A seafarer/officer who is disabled as a result of any injury, and who is assessed as less than 50% permanently disabled, but permanently unfit for further service at sea in any capacity, shall also be entitled to a 100% compensation.

Respondent [Illescas] is, therefore, entitled to disability benefit in the amount US$90,000.00 under the CBA.

19. **NPA VICTIMS; PRESUMPTIVE COMPENSABILITY**

Quebec vs. GSIS, ECC Case No. 4310, promulgated on November 9, 1988 —

**Facts:** The investigation report shows that on or about 9:45 a.m. on February 22, 1986, P/Lt. E. L. Quebec, INP, entered Ramil Billiard Center at Pambujan, Northern Samar, and read komiks while other persons were playing billiard on three tables. When the players and some onlookers started leaving the center, two (2) unidentified persons were noticed standing behind the door just at the back of P/Lt. Quebec, and another unidentified person was seen standing by the sidewalk at the opposite of the street looking toward the billiard center. When almost all the players had left, these unidentified persons were the only ones left close to the door posing as observers. Suddenly, a gunshot was heard and witnesses saw P/Lt Quebec falling from the bench and as he lay prostrate, one of the unidentified persons got inside and again shot P/Lt. Quebec twice, and sensing that the latter was already dead, took the service firearm of P/Lt. Quebec and went out. The killer was then joined by the two other unidentified persons outside the billiard center and walked away hurriedly.

The deceased was survived by seven (7) minor children. In behalf of the minor children, Guillermo Quebec, the father of the deceased, filed a claim for income benefits under P.D. No. 626, as amended.

In its letter dated November 3, 1986, the GSIS denied the claim of Guillermo Quebec “on the ground that it failed to satisfy the condition for compensability.”

**Ruling:** We find merit for the claimant. The death of the deceased P/Lt. Quebec was a result of an accident arising out of and in the course of employment. Police officers, like any other military men are targets of the New People’s Army (NPA) hitmen and Agaw Armas Gang. It has been observed lately that policemen and military personnel were killed for no other reason than the fact that they are military personnel and policemen.
“Recently, the Board of this Commission has approved the adoption of a policy that the moment an AFP member suffers a contingency, the presumption is that it is because of the nature of his work x x x.” This policy is “adopted because of certain serious peace and order problems of the country, more particularly the insurgency problem, it has become generally perceptible that on account of the nature of their work, members of the Armed Forces of the Philippines (AFP) have become ‘marked men’ insofar as insurgents and other lawless elements are concerned and are, therefore, killed by such insurgents at every opportunity.” (ECC Resolution No. 3906, dated July 5, 1988) Same problem is true to the members of the police force. Police officers are also targets of the insurgents and other lawless elements.

“P/Lt. Quebec was gunned down because he was a police officer and the killers were after his service firearm. The fact that he was reading komiks at that time was merely incidental. The death of P/Lt. Quebec, is clearly the result of an accident arising out of and in the course of employment.”

---

19.1 “Presumptive Compensability” Not Applicable

**Jahuran vs. GSIS, ECC Case No. 3551, promulgated on March 29, 1989 —**

**Facts:** Abduljan J. Jahuran was a captain of the Philippine Constabulary. On March 1, 1984, at around 12:30 p.m., Jahuran, after taking lunch at his residence, was shot to death by a certain Wilson Bili with an M-16 rifle. Eyewitnesses said that assailant appeared on the doorstep of the residence wearing a fatigue uniform, and upon being asked about the purpose of his visit, suddenly opened fire on Jahuran.

The claim for death benefit filed by the widow was denied by the respondent System, which said that the contingency was not compensable because Jahuran was not performing his official functions when shot.

**Ruling:** We find no error in the respondent System’s denial of the claim. The circumstances surrounding Jahuran’s death give no indication that he was exercising his official duties. Indeed, they reveal that the incident was brought about by personal conflicts.

Although in such cases as this, this Commission usually adopts a presumption that the death is compensable (ECC Resolution 3908), the same cannot be applied to the instant case because of the absence of qualifying circumstances.

The resolution states that:

Whereas, because of the country’s insurgency problem and certain serious peace and order problems, conditions and situations, it has become generally perceptible that on account of the nature and conditions of work peculiar to members of the Armed Forces of the Republic of the Philippines (AFP), AFP members have become “marked men” insofar as insurgents and other lawless elements are concerned and, therefore, such insurgents attempt to injure or slay soldiers and other members of the military at every opportunity.

As can be discerned from the above resolution, it covers a situation where members of the AFP are killed by insurgents or lawless elements because of the mere fact that they are soldiers.
In the case at bar, the deceased was not killed by insurgents but by another member of the Philippine Constabulary. Clearly, the presumption will not lie.

20. **EFFECTS OF VIOLATION OF RULES**

Acts within the sphere of employment but carried out in violation of some employer-promulgated rules are compensable —

(a) Where the violation of the rule itself did not bring about the cause of the accident. *Example:* The fact that the driver of a truck took his family along on an official trip, in violation of a standing company regulation, did not defeat compensation.¹

(b) Where there was serious doubt that the prohibition was known to the employees injured. *Example:* Where there was doubt that employees knew of the prohibition, violation thereof did not defeat compensation, especially if the violation did not cause the accident.²

(c) Where the violation was not intentional but due to carelessness or negligence. *Example:* Where the employee violated a policy of the employer, on orders of the manager under whom he worked, the resulting injury was compensable.³

If the injury or death was the result of horseplay or larking among employees, the courts have declared the same as a compensable accident. There can be no question that horseplay or larking is unfortunately too common in factory life. That the employees are placed in such an environment where it is a natural tendency for normal people to indulge in occasional foolery cannot be denied. Considering therefore that risks of association and conditions inseparable from factory life are risks of the employment, the injury or death of an employee through a joke played on him which proved fatal should be considered as having arisen out of and in the course of his employment.⁴

Thus, where the claimant was hit in the eye by an apple thrown by one boy at another, it was held that he was an innocent victim injured not merely while he was in a factory, but because he was in touch with associations and conditions inseparable from factory life. The risks of such associations and conditions were risks of the employment. Whatever men and boys will do, when gathered together in such surroundings, at all events if it is something reasonably to be expected, the incident of an apple thrown by one co-employee hitting claimant in the eye was of the perils of his service.⁵

---

¹Davao Gulf Lumber Co. vs. Del Rosario, L-15978, December 29, 1960.
²Marinduque Iron Mines vs. WCC, L-8110, June 30, 1956.
⁵Leonbruno vs. Champlin Silk Mills, 229 N.Y. 470.
ART. 173
HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS

20.1 When Not Compensable

Although violation of company rules does not necessarily defeat compensability, it will be a different matter, however, if the injury results from intoxication whether or not a company rule is violated. It will be seen under Article 172 that the disability or death is not compensable if it is caused by the employee’s intoxication, willful intention to injure or kill himself or another, notorious negligence, or if otherwise excluded from coverage of law.

21. SICKNESS, DEFINED; OCCUPATIONAL OR COMPENSABLE DISEASE

Next to injury or accident, we now discuss sickness, the other cause that gives rise to a compensation claim. Article 173(1) of the Labor Code defines compensable “sickness” as “any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by working conditions. For this purpose, the Commission is empowered to determine and approve occupational diseases and work-related illnesses that may be considered compensable based on peculiar hazards of employment.”

Section 1(b), Rule III of the Amended Rules on Employees’ Compensation further amplifies “sickness,” thus: “For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex ‘A’ of these Rules with the conditions set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions.”

If the illnesses are not occupational diseases, the claimant must present proof that he contracted them in the course of his employment. He who alleges a fact has the burden of proving it and a mere allegation is not evidence.

21.1 Occupational Disease

Meñez vs. Employees’ Compensation Commission, et al., G.R. No. L-48488, April 25, 1980 —

Facts: Petitioner, G.D. Meñez, was employed by the Department (now Ministry) of Education and Culture as a school teacher. She retired on August 31, 1975 under the disability retirement plan at the age of 54 after 32 years of teaching, due to rheumatoid arthritis and pneumonitis. Before her retirement, she was assigned at Raja Soliman High School in Tondo-Binondo, Manila, near a dirty creek.

---

2Vda. de Inguillo vs. Employees’ Compensation Commission, G.R. No. 51543, June 6, 1989. Note: The ECC rules are appended to this Book IV.
On October 21, 1976, petitioner filed a claim for disability benefits under P.D. No. 626, as amended, with respondent Government Service Insurance System which denied the claim on October 25, 1976 on the ground that petitioner’s ailments were not occupational diseases, taking into consideration the nature of her particular work. Requests for reconsideration were also denied by the System; hence, the case was elevated to the Employees’ Compensation Commission for review. On March 1, 1978, the Commission en banc affirmed the decision of respondent GSIS.

In her petition for review on certiorari, petitioner claims that she contracted pneumonitis and/or bronchiectasis with hemoptysis and rheumatoid arthritis on January 27, 1975 after wetting and chilling during the course of employment. She claimed these diseases are permanent and recurring in nature and work-connected.

**Ruling:** An occupational disease is one ‘which results from the nature of the employment, and by nature is meant conditions to which all employees of a class are subject and which produce the disease as a natural incident of a particular occupation, and attach to that occupation a hazard which distinguishes it from the usual run of occupations and is in excess of the hazard attending the employment in general.’

To be occupational, the disease must be one due wholly to causes and conditions which are normal and constantly present and characteristic of the particular occupation; that is, those things which science and industry have not yet learned how to eliminate. Every worker in every plant of the same industry is alike constantly exposed to the danger of contracting a particular occupational disease.

An occupational disease is one which develops as a result of hazards peculiar to certain occupations, due to toxic substances (as in the organic solvents industry), radiation (as in television repairment), repeated mechanical injury, emotional strain, etc.

From the foregoing definitions of occupational disease of ailments, rheumatoid arthritis and pneumonitis can be considered as such occupational diseases. All public high school teachers, like herein petitioner, admittedly are the most underpaid but overworked employees of the government, and are subject to emotional strains and stresses, dealing as they do with intractable teenagers, especially young boys, and harassed as they are by various extra-curricular or nonacademic assignments, aside from preparing lesson plans until late at night, if they are not badgered by very demanding superiors.

In the case of the petitioner, her emotional tension is heightened by the fact that the high school in which she teaches is situated in a tough area — Binondo District, which is inhabited by thugs and other criminal elements and further aggravated by the heavy pollution and congestion therein as well as the stinking smell of the dirty Estero de la Reina nearby. Women, like herein petitioner, are most vulnerable to such unhealthy conditions. The pitiful situation of all public school teachers is further accentuated by poor diet, for they can ill-afford nutritious food.

---

3. Schmidt’s Attorneys’ Dictionary of Medicine, p. 561.
But even if rheumatoid arthritis and pneumonitis are not occupational diseases, there is ample proof that petitioner contracted such ailments by reason of her occupation as a public high school teacher due to her exposure to the adverse working conditions above-mentioned.

Indisputably, petitioner contracted pneumonitis and/or bronchiectasis with hemoptysis and rheumatoid arthritis on January 27, 1975 after being drenched and the consequent ‘chilling during the course of employment which are permanent and recurring in nature and work-connected.’ Undoubtedly, petitioner’s ailments thus become compensable under the New Labor Code since under Rule III, Section 1 (c) of its Implementing Rules, ‘only sickness or injury which occurred on or after January 1975 and the resulting disability or death shall be compensable under these Rules.’

The ECC’s decision was set aside and the Ministry of Education and Culture is ordered (1) to pay petitioner the sum of P6,000.00 as disability income benefits and (2) to reimburse petitioner’s medical and hospital expenses duly supported by receipts.1

21.2 Duties of Employer Regarding Occupational Diseases

Under Rule III, Sec. 2 of the Amended ECC Rules, the employer is bound to require preemployment examination of all prospective employees and to provide periodic medical examination of employees exposed to occupational diseases.

22. THEORY OF INCREASED RISK

If an ailment is not included in the list of occupational diseases as drawn up by the Commission, the claimant has the burden of proving that the nature of the work increased the risk of contracting the disease.2

To establish compensability under the increased risk theory, the claimant must show proof of reasonable work-connection, not necessarily direct causal relation. The degree of proof required is merely substantial evidence which means such relevant evidence as will support a decision, or clear and convincing evidence. Strict rules of evidence are not applicable. To require proof of actual causes or factors which lead to an ailment would not be consistent with the liberal interpretation of the Labor Code and the social justice guarantee in favor of the workers. Although strict rules of evidence are not applicable, yet the basic rules that mere allegation is not evidence cannot be disregarded.3

22.1 Illustrative Case: Increased Risk Shown


Facts: The husband of claimant worked in a skin clinic. As janitor of the clinic, he was exposed to different carriers of viral and bacterial diseases. He had to clean

1Justice Felix V. Makasiar wrote the decision.
the clinic itself where patients with different illnesses come and go. He had to put in order the hospital equipment that had been used. He had to dispose of garbage and wastes that accumulated in the course of each working day. He was the employee most exposed to the dangerous concentration of infected materials, and, not being a medical practitioner, least likely to know how to avoid infection.

**Ruling:** The working conditions of claimant’s husband increased the risk of his contracting the ailments, *i.e.*, nephritis, leprosy, etc.

_Narazo vs. Employees’ Compensation Commission, G.R. No. 80157, February 6, 1990 —_

**Facts:** The death of petitioner’s husband was caused by “Uremia due to obstructive nephropathy and benign prostatic hypertrophy,” which is admittedly not among those listed as occupational diseases. As per finding of the ECC, “Uremia is a toxic clinical condition characterized by restlessness, muscular twitching, mental disturbance, nausea, and vomiting associated with utenal insufficiency brought about by the retention in blood of nitrogenous urinary waste products.” One of its causes is the obstruction in the flow of urinary waste products.

The nature of the work of the deceased as Budget Examiner in the Office of the Governor dealt with the detailed preparation of the budget, financial reports and review and/or examination of the budget of other provincial and municipal offices. Full concentration and thorough study of the entries of accounts in the budget and/or financial reports were necessary, such that the deceased had to sit for hours, and more often than not, delay and even forego urination in order not to interrupt the flow of concentration. In addition, tension and pressure must have aggravated the situation.

**Ruling:** Under the foregoing circumstances, the cause of death of petitioner’s husband is work-connected, *i.e.*, the risk of contracting the illness was aggravated by the nature of the work, so much so that petitioner is entitled to receive compensation benefits for the death of her husband.

From human experience, prolonged sitting down and putting off urination result in stagnation of the urine. This encourages the growth of bacteria in the urine, and affects the delicate balance between bacterial multiplication rates and the host defense mechanisms. Delayed excretion may permit the retention and survival of microorganisms which multiply rapidly, and infect the urinary tract. These are predisposing factors to pylonephritis and uremia. Thus, while we may concede that these illnesses are not directly caused by the nature of the duties of a teacher, the risk of contracting the same is aggravated by their working habits necessitated by demands of job efficiency.

---

**22.2 Illustrative Cases: Increased Risk Not Shown**

Ten years later, in another case of uremia, the Court denied the claim of a widow because she failed to show that her husband’s uremia was aggravated or caused by the job. Her husband was a stevedore whose duties included handling of steel cargoes, and loading and unloading of lumber products. In denying the widow’s claim the court said:
“Petitioner did not adduce any proof of a responsible connection between the work of the deceased and the cause of his death. There was no showing that the progression of the disease was brought about largely by the conditions in the job. Indeed, she presented no medical history, or record of physician’s report in order to substantiate her claim that the working conditions at the Port Area increased the risk of uremia, renal failure or glomerulonephritis.”

The court advised that the quantum of evidence to prove the cause of the ailment or the increased risk from the job “can obviously be determined only on a case-to-case basis.”¹

The case-to-case determination of compensability of uremia is exemplified further in Limbo vs. ECC, decided two years after Riño, where, this time, uremia is again held compensable.

**Limbo vs. Employees’ Compensation Commission and Social Security System, G.R. No. 146891, July 30, 2002** —

**Facts:** Petitioner R. Limbo was employed at Nestle Philippines since 1966 as a salesman and was later promoted as Areas Sales Supervisor in 1977. In December 1994, he was confined for one week at the Philippine General Hospital for joint pains. It was revealed that he had elevated BUN, creatinine and anemia, and that he had chronic renal disease. He underwent a renal transplant and was discharged on January 13, 1995. He claimed compensation benefits under the SSS-ECC invoking P.D. 626; however, his claim was denied on the ground that his illness had no causal relationship to his job as Area Sales Supervisor. He appealed to the Employees’ Compensation Commission which affirmed the decision of the SSS. The Court of Appeals likewise dismissed his petition.

**Issue:** Whether or not “end-stage renal disease secondary to uric acid nephropathy” is compensable under P.D. 626 as amended.

**Ruling:** The Court considered the workload and areas of responsibility of petitioner and found that it was not unlikely for him to develop hypertension leading to uremia. In determining whether a disease is compensable, it is enough that there exists a reasonable work connection as the workmen’s claim is based on probability and not certainty.

Under the Amended Rules on Employees’ Compensation, “(f)or the sickness and the resulting disability to be compensable, the sickness must be the result of an occupational disease listed under Annex “A” of these Rules with the conditions set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions.” Concededly, “end-stage renal disease secondary to uric acid nephropathy” is not among the Occupational Diseases under Annex “A” of the Amended Rules on Employees’ Compensation. This, however, would not automatically bar petitioner’s claim for as long as he could prove that the risk of contracting the illness was increased by his working conditions.

¹Riño vs. ECC and SSS, G.R. No. 132558, May 9, 2000.
Petitioner’s job description showed that he was responsible for the following:

1. Territory’s collection, merchandising, market hygiene and promotion goals;
2. Nestle’s principal satisfaction provider to the company’s customers and business partners, government and other significant entities;
3. Principal Liaison of the territory with the National Sales Manager, Areas Sales Manager and other Nestle units;
4. Leads and manages territory sales force and 3rd party support.

Considering the workload and areas of responsibility of petitioner in this case, it is not unlikely for him to develop hypertension, which in turn led to uremia. It should be stressed that in determining whether a disease is compensable, it is enough that there exists a reasonable work connection. It is sufficient that the hypothesis on which the workmen’s claim is based is probable since probability, not certainty, is the touchstone.

_Dabatian vs. GSIS, G.R. No. 47294, April 8, 1987 —_

_Facts:_ The widow of SAD filed a claim for death benefits with the GSIS. At the time of his death, SAD was a garbage truck driver in the General Services Department of a city government. He was assigned mostly in the night shift. SAD was a heavy coffee drinker, which was his way of warding off sleepiness. Shortly before he died, his co-employees observed that he became paler and weaker while at work until the time he collapsed and became unconscious while on his tour of duty and was brought home by his companions. He died two weeks thereafter, _i.e.,_ on July 3, 1976, when the old compensation law had already been abrogated.

Is SAD’s death compensable?

_Ruling:_ Since peptic ulcer is not included in the list of occupational diseases as drawn up by the Commission, the claimant (widow) has the burden of proving that the nature of her deceased husband’s work increased the risk of contracting the disease. Aside from the undisputed fact that deceased is a heavy coffee drinker, which was his way of warding off sleepiness, no evidence was ever adduced by claimant to bolster the theory that her husband’s work increased the risk of contracting the ailment.

Being a heavy coffee drinker may have aggravated his peptic ulcer, but aggravation of an illness is no longer a ground for compensation under the present law.

The Supreme Court takes notice of the fact that the conditions in this case are not peculiar to the work mentioned herein. Many, if not most, employees are equally exposed to similar conditions but have not been victims of peptic ulcer.

_Sarmiento vs. ECC, et al., G.R. No. 65680, May 11, 1988 —_

_Facts:_ The late Flordeliza, spouse of the petitioner [claimant], was employed at the time of her death, as manager of the budget division at the National Power Corporation. History of the illness showed that symptoms manifested as early as April 1980 as a small wound over the external auditory canal and mass over the mastoid
region. Biopsy of the mass revealed cancer known as “differentiated squamous cell carcinoma.” In March 1981, a soft tissue mass emerged on her left upper cheek as a result of which her lips became deformed and she was unable to close her left eye. She was treated at the Capitol Medical Center due to her difficulty in swallowing food and her general debility. On August 12, 1981, she succumbed to cardiorespiratory arrest due to parotid carcinoma.

GSIS denied the claim for death benefits under P.D. No. 626, on the ground that parotid carcinoma which is a “Malignant tumor of the parotid gland (salivary gland)” is not caused by employment conditions of the deceased. ECC affirmed the decision of the GSIS.

**Ruling:** The Supreme Court affirmed the ECC decision.

Parotid carcinoma or cancer of the salivary glands is not an occupational disease considering the deceased’s employment as accounting clerk and later as manager of the budget division. The petitioner must, therefore, prove that his wife’s ailment was caused by her employment or that her working conditions increased the risk of her contracting the fatal illness.

The petitioner alleges that as budget manager, the deceased visited regional and field operations and was, naturally, exposed to the elements. According to the petitioner, the deceased’s field trips necessitated her to take frequent plane travels which caused deafening and numb sensations in her ears. This, he says, caused her “differentiated carcinoma” which, according to the certificate of Dr. Bautista, “apparently started on external auditory canal.”

We find these allegations as mere conjectures. As with other kinds of cancer, the cause and nature of parotid carcinoma are still not known.

*Casumpang vs. Employees’ Compensation Commission, G.R. No. 48664, May 20, 1987 —*

**Facts:** JC contracted his disease or ailment (cancer of the stomach) before January 1, 1975. There were no medical findings, reports, affidavits or any indication that he suffered from any pain prior to the effectivity of the Labor Code. His ailment (ruptured duodenal ulcer with generalized peritonitis) was officially diagnosed on June 28, 1976. This was traced to hematemesis and melena which began in November 1975. As prison guard, JC escorted inmates to work in the hinterlands of San Ramon Penal Colony. At times he was overtaken by rain. He had to work at night in case of prison escapes. He missed his meals owing to the nature of his duties.

**Ruling:** The claimant, JC’s widow, failed to establish that JC’s ailment was the direct result of his occupation or employment as prison guard. The doctrine of presumptive compensability which was then expressly provided under the old Workmen’s Compensation Act (Act 3428) is not recognized under Presidential Decree No. 626.

*Rodriguez vs. Employees’ Compensation Commission, G.R. No. 46454, September 28, 1989 —*

**Facts:** Claimant does not dispute the fact that the principal duties of the deceased as a classroom teacher alone would not have any connection with his disease.
However, she claims that the deceased’s auxiliary activities as a classroom teacher directly affected his physical constitution and indubitably caused him to have sustained some trauma in his abdominal cavity and other parts of the body. The deceased was a member of the basketball team of the public school teachers in their school for the last five years prior to his death and had served as a coach in basketball for three years. He was also an active member of the Boy Scouts of the Philippines.

**Ruling:** The circumstances alleged by claimant and the evidence she presented are not enough to discharge the required quantum of proof. There is no clear evidence as to when the disease (intestinal lipomatosis of the large colon with obstruction of the ascending colon) supervened. The tumors which developed in the deceased’s colon may have been growing for many years even before he was employed as a teacher. Neither was there any indication as to what really caused the disease; in fact, the nature of the disease as described militate against a finding of causal nexus.

The trauma that was supposed to have caused or contributed to the disease was neither satisfactorily clarified nor adequately proved. The activities relied upon by claimant being outside the regular or primary functions of a teacher, could not have been done every working day. The deceased’s work as a teacher did not expose him to hazards different or greater from those involved in ordinary or normal lifestyles. There is no showing that he did not engage in other extraneous activities aside from playing basketball or being a member of the boy scouts. Exposure to the co-curricular activities was on the voluntary choice of the deceased. The decision to engage therein was at his option since, not forming part of his work as teacher, there was no compulsion on him to participate in said activities.

**23. SPECIFIC DISEASES/AILMENTS**

**23.1 Adenocarcinoma of the Ileocaecal Junction**

Adenocarcinoma of the ileocaecal junction is a malignancy affecting a certain portion of the small intestines. It is not listed in Annex “A” as an occupational disease. Despite scientific advances on the matter, even professional experts have not as yet determined its cause. Since its cause is not known, there is no duty on the part of claimant to present proof, since proof is required only when the cause of the disease is known.\(^1\)

Adenocarcinoma of the rectum comprises about 7% of all malignant tumors of the body.\(^2\)

**23.2 Asbestosis**

Asbestosis is added to the list of compensable diseases but the following guidelines should be observed: (1) the employee must have been exposed to

---

\(^1\)Mora, Jr. vs. Employees’ Compensation Commission, G.R. No. 62157, December 2, 1987. Note: This ruling is reversed in Raro vs. ECC, see below.

asbestos dust in the workplace, as duly certified to by the employer, or by a medical institution, or competent medical practitioner acceptable to, or accredited by the System; (2) the chest X-ray report of the employee must show findings of asbestos, or asbestos-related disease, e.g., pleural plaques, pleural thickening, effusion, neoplasm and interstitial fibrosis; and (3) in case the ailment is discovered after the employees’ retirement/separation from the service, the claim therefor must be filed with the System within three (3) years from discovery.¹

23.3 Bangungot
The real cause of bangungot has remained a mystery up to the present. No medical explanation has so far been established to unravel this phenomenon. There are several theories submitted in an attempt to explain the reason or cause for the death of reported victims of “bangungot.” However, the exact cause of death is still unknown.

But even if the deceased died of “bangungot,” still, where the cause of an ailment is unknown and undetermined even by medical science, the requirement of proof of causal link between the ailment and the working conditions should be liberalized.²

23.4 Bells Palsy, Anxiety Neurosis, Peripheral Neuritis
Bells Palsy, Anxiety Neurosis, Peripheral Neuritis are not among those listed as occupational diseases under Annex “A” of P.D. No. 626. Since said illnesses are not occupational diseases, the claimant must prove that he contracted them in the course of his employment.³

23.5 Cancer of the Pancreas
As a general rule, cancer is a disease of still unknown origin which strikes people in all walks of life, employed or unemployed. Unless it be shown that a particular form of cancer is caused by specific working conditions or environment, one cannot conclude that it was the employment which increased the risk of contracting the disease.⁴

Carcinoma of the pancreas is now the fourth most common cancer causing death in the United States. Only cancer of the lungs, colon and breast occur more frequently. The disease is more common in males than females. The disease incidence is between the ages 60 to 70. Although the etiological factors in most cases are not known, incidence of carcinoma of the pancreas is 2 to 2.5 times

¹ECC Board Resolution, August 1, 1996.
greater in smokers than in nonsmokers, and about 2 times greater in patients with diabetes mellitus.\(^1\)

Pancreatic carcinoma is a malignant new growth of the said organ, characterized by loss of weight, pain, and yellowish discoloration of the skin. It affects predominantly patients over forty-five (45) years of age. Predisposing factors are age, sex, genetic influence, and presence of diabetes mellitus. Diabetic patients have increased susceptibility to the disease.\(^2\)

23.6 Cancer of the Stomach

Under the Labor Code, cancer of the stomach is not an occupational disease considering the decedent’s employment as a prison guard.\(^3\)

In Employees’ Compensation Commission Resolution No. 247-A, dated April 13, 1977, cancer of the stomach and other lymphatic and blood forming vessels is considered occupational only among wood-workers, loggers, carpenters and employees in plywood, pulp and paper mills.\(^4\)

23.7 Carcinoma of the Breast with Metastases to the Gastrointestinal Tract

Carcinoma of the breast with metastases to the gastrointestinal tract and lungs is not listed by the Commission as an occupational disease. Metastases to the gastrointestinal tract and lungs is listed as occupational disease only among workers in pulp and paper mills and plywood mills, and in vinyl chloride and plastic factories.

Since carcinoma of the breast is not an occupational disease among teachers or in their particular employment, it becomes incumbent upon such claimants to prove that their working conditions increased the risk of their contracting the fatal illness.\(^5\)

23.8 Cardiovascular Failure

The deceased was found to have died of acute cardiovascular failure during his sleep, commonly known as “heart failure” and not “bangungot” as claimed by the employer. While the claimants failed to prove the causal link between the cause of the death of the deceased to the nature of his work, yet, the Court cannot discount the probability that his work, as a set-up man, caused or aggravated his illness that led to his death. The strenuous physical activity required in the

\(^1\) Navalta vs. GSIS, G.R. No. 46684, April 27, 1988.
\(^2\) Ibid.
\(^4\) Ibid.
performance of the employee’s duties could have caused a heavy strain on his heart, which ultimately resulted in death.1

Under the restrictive provisions of the Labor Code, which cast aside the presumption of compensability provided in the Workmen’s Compensation Act, cardiovascular disease, which includes myocardial infarction, is listed as a work-related disease.2

23.9 Chronic Glomerulonephritis

Since Chronic Glomerulonephritis is not among the listed compensable illnesses in Annex “A” of the Amended Rules, the claimant must adduce persuasive proof that her deceased husband’s death was caused not only by said disease but also and additionally by renal hypertension. Hypertension is only a manifestation of the chronic glomerulonephritis; it is simply a complication, and not brought about by employment factors.3

23.10 Chronic Osteomyelitis

Chronic Osteomyelitis is not an occupational disease. Hence, claimant must show a reasonable connection between his ailment and the nature of his employment, or a direct causal relation between his employment and the illness he suffered.4

23.11 Chronic Pylonephritis, Diabetes Mellitus, Anemia, Pulmonary Metastases (Cancer)

The ailments of the claimant’s deceased wife who was employed as a telephone operator, which illnesses were diagnosed as chronic pylonephritis, diabetes mellitus, anemia and modular pulmonary metastases, also known as cancer, and which caused the wife’s death, are not occupational diseases under the New Labor Code. Therefore, the GSIS and the Employees’ Compensation Commission correctly denied the claim.5

23.12 Gallstone

Cholecystolithiasis or gallstone has been excluded as a compensable illness under the applicable standard contract that binds the Filipino seafarer and the vessel’s foreign owner. The standard contract precisely did not consider gallstone

as compensable illness because the parties agreed, presumably based on medical science, that such affliction is not caused by working on board ocean-going vessels.

*Cholecystolithiasis* or gallstone does not develop overnight. It is caused by stone formation in the gallbladder that blocks the tube leading out of the gallbladder, causing bile to build up, resulting in gallbladder inflammation. These gallstones are solid accumulations of the components of bile, particularly cholesterol, bile pigments, and calcium. The formation of gallbladder stones take months, if not years, to build up.

The claimant seafarer has not proved by some evidence that the nature of his work on board a ship aggravated his illness. By the nature of this illness, it is highly probable that he already had it when he boarded his assigned ship although it went undiagnosed because he had yet to experience its symptoms.

He himself was unaware that he had gallstone until excruciating pains manifested its presence for the first time when his vessel was sailing the seas.

It was error for the Court of Appeals to treat the seaman’s gallstone as “work-related.”

23.13 Incomplete Abortion

*Carvajal vs. ECC, et al., G.R. No. L-46654, August 9, 1988 —*

**Facts:** The late N.P. Carvajal was employed as campaign clerk in the Municipal Treasurer’s Office of San Julian, Eastern Samar. On February 2, 1976, while typing tax declarations and making entries in their books, she suffered from bleeding due to incomplete abortion. Her month-long confinement at the Bagacay Mines Hospital due to hemorrhage was of no avail, for on March 8, 1976, she died.

Petitioner filed his claim for death benefits with the respondent Government Service Insurance System (GSIS) under P.D. No. 626, as amended.

The GSIS denied petitioner’s claim stating that the ailment of his wife was not occupational.

The ECC affirmed the decision of the GSIS.

The ECC asserted that there was not any proof that the abortion suffered by petitioner’s wife was caused by her employment and that petitioner failed to establish that the risk of his wife’s contracting it had been increased by her employment’s working conditions.

Petitioner contended that the decision of the ECC overlooked the nature and conditions of employment of his late wife. He claimed that the risk of contracting the disease was aggravated/increased by the working conditions as evidenced by the report of injury/sickness death made by the Municipal Mayor of San Julian, Eastern Samar; the medical certificate issued by the two attending physicians of the deceased; and the affidavit of the municipal treasurer of the aforementioned town, which confirmed that the illness was connected with her work as campaign clerk in the Municipal Treasurer’s Office.

Further, petitioner cited the travels of his wife and the lifting of heavy tax declaration books in connection with her work, thereby causing her to suffer “two attacks of vaginal bleeding and hypogastric pain.”

**Ruling:** Claimant’s contention is meritorious.

Under Article 1167(I), P.D. No. 626, as amended, a compensable sickness means (1) any illness definitely accepted as an occupational disease listed by the ECC; or (2) any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by working conditions.

Records reveal that petitioner’s wife, while working as campaign clerk in the Treasurer’s Office of San Julian, Eastern Samar, suffered ‘two attacks of vaginal bleeding and hypogastric pain’ attributing said ailment to the lifting of heavy tax declaration books, due to incomplete abortion.

The opinion of the decedent’s physicians is in accord with the findings/analyses of medical authorities, which read as follows:

Pregnant women become tired more readily; therefore, the prevention of fatigue must be stressed very emphatically. The body is made up of various types of cells, each type with a specific function. Depletion of nerve-cell energy results in fatigue, and fatigue causes certain reactions in the body that are injurious.¹

It is not considered desirable for pregnant women to be employed in the following types of occupation and they should, if possible, be transferred to lighter and more sedentary works;

(a) occupation that involves heavy lifting or other heavy work;
(b) occupation involving continuous standing and moving about.

Moreover, spontaneous abortion may result from the influence of periodicity as the uterine muscle reaches a certain state of distention; or in various accidents as a fall, strain or over-muscular exertion when the uterus reacts and expels its load.²

Therefore, the opinion of the ECC Medical Officer that there was no relation between the ailment of petitioner’s spouse and the nature and/or conditions of his wife’s employment cannot overcome the substantial evidence submitted by petitioner.³

Additionally, medical opinion to the contrary can be disregarded especially when there is some basis in the facts for inferring a work-connection.⁴

---

³See Galvero vs. ECC, et al., 117 SCRA 461 [1982], cited in Parages vs. ECC, 134 SCRA 73; Ovenson vs. ECC, GSIS, G.R. No. 65216, December 1, 1987.
⁴Delegente vs. ECC, 188 SCRA 67; San Valentin vs. ECC, 188 SCRA 160, cited in Sarmiento vs. ECC, September 24, 1986, 144 SCRA 421.
23.14 Intestinal Obstruction Partial

Intestinal obstruction is a condition in which the passage of intestinal contents is arrested or seriously impaired. This is due to causes which are either mechanical, vascular or neurogenic. Mechanical causes are intrinsic factors as adhesions and tumors, and hernia and such factors as impacted foreign body or feces, parasites, and gallstones. Vascular causes include embolism or thrombosis of a large blood vessel. The neurogenic causes consist of those seen in pneumonia and peritonitis and following abdominal surgery or injuries to the spinal cord. There is no clear evidence as to when the disease commenced and supervened. Neither was there any indication as to what really caused the disease; in fact, the nature of the disease as described militates against a finding of causal nexus.1

23.15 Leprosy

The source of infection of leprosy is the discharge from lesions of persons with active cases. The bacillus enters the body through the skin or through the mucous membrane of the nose and throat. The deceased worked as janitor at the Ilocos Norte Skin Clinic. It is not unreasonable to conclude that his working conditions definitely increased the risk of his contracting the aforementioned ailment.2

23.16 Parotid Carcinoma

Parotid Carcinoma or cancer of the salivary glands is not an occupational disease considering the deceased’s employment as accounting clerk and later as manager of the budget division. The claimant must, therefore, prove that his wife’s ailment was caused by her employment or that her working conditions increased the risk of her contracting the fatal illness.3

Painless swelling of the parotid glands is often noted in hepatic cirrhosis, in sarcoidis, in mumps, following abdominal surgery, or associated with neoplasm or infection. The common factors may be dehydration and inattention to oral hygiene. The latter promotes the growth of large numbers of bacteria which, in the absence of sufficient salivary flow, ascend from the mouth into the duct of the gland. Another cause of a painful salivary gland is sialolithiasis (salivary duct stone). The submandibular glands are most commonly affected.4

The allegation that the deceased’s field trips necessitated her to take frequent plane travels which caused deafening and numb sensations in her

---

4Ibid.
ears, which caused her “differentiated carcinoma” which “apparently started on external auditory canal,” is mere conjecture. As with other kinds of cancer, the cause and nature of parotid carcinoma is still not known.¹

23.17 Peptic Ulcer
Peptic ulcer is not included in the list of occupational diseases as drawn up by the Commission.²

23.18 Rheumatoid Arthritis
Under P.D. No. 626, which took effect on January 1, 1975, the disease must be one definitely accepted as an occupational disease listed by the Commission, or an illness caused by employment subject to proof by the employee that the risk of contracting it was increased by working conditions.

Rheumatoid arthritis is not an occupational disease. Hence, the compensation claim will be denied if the claimant fails to show proof that the risk of contracting the disease was increased by his working conditions.³

Mirasol vs. Employees’ Compensation Commission, et al., G.R. No. L-45910, April 28, 1980 —

Facts: The petitioner, E.P. Mirasol, while in good health, was appointed as classroom teacher on August 1, 1945 in the public school in Libmanan, Camarines Sur. In 1960, he was appointed as district food production coordinator and attendant teacher in the same school. He became a district green revolution coordinator and attendant teacher in 1972. In 1974, the petitioner was given additional assignment as district vocational coordinator.

The district was composed of forty-eight central-barrio schools, eighteen of which were in the mountains which could be reached only on foot. Eight schools were 30 kilometers away and the nearest was 10 kilometers from the petitioner’s headquarters in the town proper of Libmanan. It was petitioner’s duty to visit monthly all the district schools. On August 25, 1973, he experienced for the first time symptoms of malignant hypertension and rheumatoid arthritis. The ailments of the petitioner persisted. He was under continuous medical treatment until he retired on February 28, 1976 after being in the government service for thirty-one years, more or less. His retirement was brought about by ailments diagnosed as high-blood pressure and rheumatoid arthritis, both knees.

Petitioner applied for compensation benefits under P.D. No. 626, as amended; the Government Service Insurance System denied the claim. The Employees’ Compensation Commission subsequently affirmed the denial; hence, this petition.

Ruling: It is a fact that part of the duties of the petitioner was to make monthly visits to various schools which were not accessible by road. To reach these mountainous schools, the petitioner had to hike through muddy ricefields and climb slippery mountains during sunny and rainy days. During these monthly visits, the petitioner fell down many times while hiking in muddy ricefields and on slippery mountain trails under all kinds of weather conditions on his way to the barrio schools not accessible by road.

There is sufficient substantial evidence of record to show that the ailments of the petitioner were caused by the duties of his employment and that the risk of contracting said ailments was increased by the working conditions. He is entitled to permanent total disability compensation.

23.19 Schistosomiasis
A teacher who works under a hazardous condition in far-flung town and has to hike daily to his place of work, is liable to contract schistosomiasis.¹

23.20 Senile Cataract
Senile cataract is not a listed occupational disease. Neither does it have any causal connection with the complainant’s work as district engineer. It is due to degenerative changes accompanying the aging process. It is not generated by strain on the eyes. Nor was the risk of contracting it aggravated by the nature of his duties or of his working conditions. It is a psychologic process occurring after the decade of life and to which everyone is exposed whether employed or not. The claim for disability benefits was correctly denied.²

23.21 Tuberculosis
Tuberculosis is an occupational disease or work-connected in such occupations as that of a teacher, laborer, driver, land inspector and other similar occupations; hence compensable.³

Villones vs. Employees’ Compensation Commission, et al., G.R. No. L-46200, July 30, 1980 —

Facts: The late R.M. Villones was employed as a secondary school teacher in the then Department of Education and Culture assigned at Dayhagan Barrio High School in Bongabon, Oriental Mindoro, from July 3, 1972 up to the time of his death on September 2, 1975. He died of pulmonary tuberculosis.

²Zozobrado vs. Employees’ Compensation Commission, G.R. No. 65856, January 17, 1986.
On December 23, 1975, the deceased’s father and herein petitioner filed with the GSIS a claim for income benefits for the death of his son, under the provisions of P.D. No. 626, as amended. On March 9, 1976, the GSIS denied the claim on the ground that the cause of decedent’s death, pulmonary tuberculosis, although listed as an occupational disease, had failed to satisfy other conditions in order to be compensable.

On February 17, 1977, the ECC (en banc) rendered its decision affirming the earlier denial made by the GSIS of petitioner’s claim for income benefits.

**Ruling:** Considering, therefore, the undisputed nature of the deceased’s employment as certified by the principal of Bongabon (South District), and, in addition, the fact that he had plenty of homework to do after his regular working hours, such as preparing the lesson plans for the next day’s classes, correcting test papers and making various school reports and in doing all these, he would usually stay up late at night; that with a meager monthly pay of P397.60, with his parents, a sister, and two brothers depending on him for support, he could barely afford to buy and eat good food; and that as such teacher, it became inevitable for him to be in constant contact with students and other types of people who might have been afflicted with PTB, which is a highly communicable disease, it is not surprising that he should contract tuberculosis, so that from December 4 to 20, 1972, only five months after he was employed as a teacher, he was forced to go on sick leave by reason of the aforesaid illness. When he was able to resume work, he was again exposed to the same working conditions, thus aggravating his illness until he suddenly died on September 2, 1975 of severe hemoptysis due to PTB as certified by Dr. Fernando B. Vilaria.

Consequently, in the instant case, the cause of action accrued as early as December 4, 1972 when the late R. Villones contracted his illness and continued to run until September 2, 1975 when he died by reason thereof.

**23.22 Varicose Veins**

The 2000 POEA-SEC defines “work-related injury” as “injury[ies] resulting in disability or death arising out of and in the course of employment” and “work-related illness” as “any sickness resulting to disability or deaths as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.”

Unfortunately for petitioner [a seaman], he failed to prove that his varicose veins arose out of his employment with respondent company. Except for his bare allegation that it was work-related, he did not narrate in detail the nature of his work as a messman aboard Denklav’s vessels. He likewise failed to particularly describe his working conditions while on sea duty. He also failed to specifically state how he contracted or developed varicose veins while on sea duty and how and why his working conditions aggravated it. Neither did he present any expert medical opinion regarding the cause of his varicose veins.1

---

1 Quisora vs. Denholm Crew Management, G.R. No. 185412, November 16, 2011.
24. EVIDENCE; DEGREE OF PROOF

If the disease is listed in the Table of Occupational Diseases embodied in Annex “A” of the rules on Employees’ Compensation, no proof of causation is required. However, if it is not so listed, the employee, this time assisted by his employer, is required to prove a positive proposition, that is, that the risk of contracting the disease is increased by the working conditions. The fact that the cause of the disease was not positively identified does not dispense with the burden of proof.1

Proof of direct causal relation is not, however, indispensably required. It is enough that the claimant adduces proof of reasonable work connection, whereby the development of the disease was brought about largely by the conditions present in the nature of the job. Strict rules of evidence are not demanded. The degree of proof required is merely substantial evidence, which has been held to be such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion.2

The Labor Code does not only confine compensable disease to those enumerated therein as occupational. It also contemplates illness caused by employment where the risk of contracting it is increased by the working conditions hereof. Cancer of the liver, though not an occupational disease, may be deemed work-connected. Under the law, it is not required that the employment be the sole factor in the growth, development or acceleration of claimant’s illness to entitle him to the benefits provided for. It is enough that his employment had contributed even in a small degree.3

25. CANCER: OLD DOCTRINE: PROOF IS REQUIRED ONLY IF CAUSE IS KNOWN

The cause of the decedent’s death (adenocarcinoma of the ileocaecal junction) is not listed in Annex “A” of the Rules as an occupational disease. To be compensable thereby, the law requires that the risk of contracting the disease is increased by the employment of the deceased. But this requisite proof can be given only if the cause of the disease — cancer — can itself be known.4

The necessity of proof is present only when the cause of the disease is known. If not known, there is no duty to present proof, for the law does not demand an impossibility. Thus, the requirement that the disease was caused or

---


2Ibid.


aggravated by the employment or work applies only to an illness where the cause can be determined or proved.¹

Where the causes of an ailment are unknown to and/or undetermined even by medical science, the requirement of proof of any causal link between the ailment and the working conditions should be liberalized so that those who have less in life will have more in law.²

Cancer of the rectum is not listed by the Employees’ Compensation Commission as one of the compensable diseases. Although the true cause of cancer is yet unknown, certain lesions may be considered premalignant in the rectum and may be aggravated during the course of the employment if there is sufficient proof presented by the claimant. But this duty to prove exists only when the cause of the disease is known. If even medical experts have not determined its cause, the duty to prove does not exist.³

Cancer being a disease which is often discovered when it is too late, the possibility that its onset was even before the effectivity of the New Labor Code cannot be discounted. As a consequence, the presumption of compensability and the theory of aggravation under the Workmen’s Compensation Act cannot be discounted.⁴

26. CANCER: NEW DOCTRINE: PROOF IS REQUIRED

Raro vs. Employees’ Compensation Commission, G.R. No. 58445, April 27, 1989 —

Cancer is a disease that strikes people in general. The nature of a person’s employment appears to have no relevance. Cancer can strike a lowly paid laborer or a highly paid executive or one who works on land, in water, or in the bowels of the earth. It makes no difference whether the victim is employed or unemployed, a white collar employee or a blue collar worker, a housekeeper, an urban dweller or a resident of a rural area.

Jurisprudence on the compensability of cancer ailments has of late become a source of confusion among the claimants and the government agencies enforcing the employees’ compensation law. The strongly lingering influence of the principles of “presumption of compensability” and “aggravation” found in the defunct Workmen’s Compensation Act but expressly discarded under the present compensation scheme has led to conflict and inconsistency in employees’ compensation decisions.

The problem is attributable to the inherent difficulty in applying the new principle of “proof of increased risk.” There are two approaches to a solution in

²Ibid.

498
cases where it cannot be proved that the risk of contracting an illness not listed as an occupational disease was increased by the claimant’s working conditions. One approach is that if a claimant cannot prove the necessary work connection because the causes of the disease are still unknown, it must be presumed that working conditions increased the risk of contracting the ailment. The other approach is that if there is no proof of the required work connection, the disease is not compensable because the law says so.

It is not correct to say that all cancers are not compensable. The list of occupational diseases prepared by the Employees’ Compensation Commission includes some cancers as compensable. There is no arbitrariness in the Commission’s allowing vinyl chloride workers or plastic workers to be compensated for brain cancer. There are certain cancers which are reasonably considered as strongly induced by specific causes. Heavy doses of radiation as in Chernobyl, USSR, cigarette smoke over a long period for lung cancer, certain chemicals for specific cancers, and asbestos dust, among others, are generally accepted as increasing the risks of contracting specific cancers. What the law requires for others is proof.

Cancer is a disease of still unknown origin which strikes people in all walks of life, employed or unemployed. Unless it be shown that a particular form of cancer is caused by specific working conditions (e.g., chemical fumes, nuclear radiation, asbestos dust, etc.), the Court cannot conclude that it was the employment which increased the risk of contracting the disease.

For the guidance of the administrative agencies and practicing lawyers concerned, the decision of the Supreme Court in Raro vs. Employees’ Compensation Commission, G.R. No. 58445, April 27, 1989, en banc, Gutierrez, Jr., J., supersedes the decisions in Panotes vs. Employees’ Compensation Commission (128 SCRA 473 [1984]); Mercado vs. Employees’ Compensation Commission (127 SCRA 664 [1984]); Ovenson vs. Employees’ Compensation Commission (156 SCRA 2 [1987]); Nemaria vs. Employees’ Compensation Commission (155 SCRA 166 [1987]) and other cases with conclusions different from those stated in Raro vs. Employees’ Compensation Commission.

Orate vs. CA, et al., G.R. No. 132761, March 26, 2003 —

In the case at bar, petitioner argued before the SSS and the ECC that her job as machine operator, which required lifting of heavy objects increased the risk of her contracting breast carcinoma. In addition, she contended that her job in the winding department exposed her to cancer-causing dyes used in coloring threads. In support thereof, she cited the following:

Some industrial chemicals create a cancer hazard for people who work with them. Such chemicals include aniline dyes, arsenic, asbestos, chromium and iron compounds, lead, nickel, vinyl chloride, and certain products of coal, lignite, oil shale, and petroleum. Unless industrial plants carefully control the use of such chemicals, excessive amounts may escape or be released into the environment. The chemicals then create a cancer hazard for people in surrounding areas. (World Book Encyclopedia, Vol. 3, 1992 ed., p. 119)

Regrettably, however, said bare allegations and vague excerpts on cancer do not constitute such evidence that a reasonable mind might accept as adequate to support the conclusion that there is a causal relationship between her illness and her working
conditions. Awards of compensation cannot rest on speculations and presumptions. The claimant must prove a positive proposition. A perusal of the records reveals that there is no evidence that she was indeed exposed to dyes. Even assuming that she was dealing directly with chemicals, there is no proof that the company where she worked did not implement measures to control the hazards occasioned by the use of such chemicals.

Indeed, cancer is a disease that strikes people in general. The nature of a person’s employment appears to have no relevance. Cancer can strike a lowly paid laborer or a highly paid executive or one who works on land, in water, or in the deep bowels of the earth. It makes no difference whether the victim is employed or unemployed, a white collar employee or a blue collar worker, a housekeeper, an urban dweller or a resident of a rural area.

It is not also correct to say that all disability or death resulting from all kinds of cancer are not compensable. There are certain cancers which are reasonably considered as strongly induced by specific causes. Heavy doses of radiation as in Chernobyl, USSR, cigarette smoke over a long period for lung cancer, certain chemicals for specific cancers, and asbestos dust, among others, are generally accepted as increasing the risks of contracting specific cancers. What the law requires for others is proof. This was not satisfied in the instant case.

Hence, while we sustain petitioner’s claim that it is the Labor Code that applies to her case, we are nonetheless constrained to rule that under the same code, her disability is not compensable. Much as we commiserate with her, our sympathy cannot justify an award not authorized by law. It is well to remember that if diseases not intended by the law to be compensated are inadvertently or recklessly included, the integrity of the State Insurance Fund is endangered. Compassion for the victims of diseases not covered by law ignores the need to show a greater concern for the trust fund to which the tens of millions of workers and their families look to for compensation whenever covered accidents, diseases and deaths occur. This stems from the development in the law that no longer is the poor employee still arrayed against the might and power of his rich corporate employer, hence the necessity of affording all kinds of favorable presumptions to the employee. This reasoning is no longer good policy. It is now the trust fund and not the employer which suffers if benefits are paid to claimants who are not entitled under the law.
Chapter II

COVERAGE AND LIABILITY

Overview/Key Questions:

1. Who are the employees and employers compulsorily covered by the employees’ compensation program?
2. What is notorious negligence that can cause denial of compensation claim?
3. What benefits are claimable under the EC program and under the SS law because of an injury or disease?

ART. 174 [168]. COMPULSORY COVERAGE

Coverage in the State Insurance Fund shall be compulsory upon all employers and their employees not over sixty (60) years of age; Provided, That an employee who is over sixty (60) years of age and paying contributions to qualify for the retirement or life insurance benefit administered by the System shall be subject to compulsory coverage. (As amended by Sec. 16, P.D. No. 850).

ART. 175 [169]. FOREIGN EMPLOYMENT

The Commission shall ensure adequate coverage of Filipino employees employed abroad, subject to regulations as it may prescribe.

ART. 176 [170]. EFFECTIVE DATE OF COVERAGE

Compulsory coverage of the employer during the effectivity of this Title shall take effect on the first day of his operation, and that of the employee, on the date of his employment.

ART. 177 [171]. REGISTRATION

Each employer and his employees shall register with the System in accordance with its regulations.

COMMENTS

1. COVERAGE

The employees’ compensation law applies to all employers, public or private, and to all employees, public or private, including casual, emergency, temporary or substitute employees. Moreover, under Article 173(g) of the Labor Code as amended and Section 4(b)(1) of Rule 1 of the amended (implementing)
HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS

ART. 178

rules on employees’ compensation, the term “employee” includes a “member of the Armed Forces of the Philippines.”

The employer is covered compulsorily from first day of operation and the employee from first day of employment.1

Under the Amended Rules on Employees’ Compensation (see Appendix), every employee is covered who is not over 60 years of age, or over 60 if he had been paying contributions to the System (GSIS or SSS) prior to age 60 and has not been compulsorily retired.

Also under the ECC rules, the employer may belong to either the public sector (covered by GSIS) or the private sector (covered by SSS).

2. FOREIGN EMPLOYMENT

Filipinos working abroad for employers doing business in the Philippines are covered by the employees’ compensation law. They are entitled to same benefits as for those working in the Philippines.2 Considering their situation, the application of the rule on accreditation of hospitals and physicians and the rule requiring notice to employer,3 is relaxed.

ART. 178 [172]. LIMITATIONS OF LIABILITY

The State Insurance Fund shall be liable for compensation to the employee or his dependents, except when the disability or death was occasioned by the employee’s intoxication, willful intention to injure or kill himself or another, notorious negligence, or otherwise provided under this Title.

COMMENTS AND CASES

1. EXCLUSIONS

The employees’ compensation law is intended to assist innocent victims of employment accident or work-related illness but not self-inflicted or self-courted contingencies. Cases of this kind are, by Article 178, excluded from the coverage of the law.

1.1 Intoxication or Drunkenness

In Article 178, the first specification of injuries not covered by the State Insurance Fund refers to those which result from the intoxication or drunkenness of the employee.

The “intoxication” which will preclude compensation for injury resulting therefrom consists in being under the influence of intoxicating liquor to the extent that one is not entirely himself or so that his judgment is impaired and his act, words, or conduct is visibly impaired.4

---

1Article 170.
2ECC Rules, Rule I, Sec. 5.
3Article 206.
499 C.J.S. 908.
1.2 Self-inflicted Injuries

Statutes generally preclude compensation when the injury is self-inflicted or due to willful intent on the part of the employee to injure himself. Within the concept of such a statute, the injury must be intentionally self-inflicted, which contemplates a deliberate intent on the part of the employee, not a failure on his part to realize the probable consequences to himself of his foolish act.\(^1\)

1.2a Suicide or Provoked Death Not Compensable

*Mabuhay Shipping Services, Inc. and Skippers Maritime Co., Ltd. vs. Hon. National Labor Relations Commission (First Division) and C. Sentina, G.R. No. 94167, January 21, 1991 —*

The employer is exempted from liability for burial expenses for a seaman who commits suicide. How about in a case of one who ran amuck or who in a state of intoxication provoked a fight as a result of which he was killed? Is the employer similarly exempt from liability?

The mere death of the seaman during the term of his employment does not automatically give rise to compensation. The circumstances which led to the death as well as the provisions of the contract, and the right and obligation of the employer and seaman, must be taken into consideration, in consonance with the due process and equal protection clauses of the Constitution. There are limitations to the liability to pay death benefits.

When the death of the seaman resulted from a *deliberate or willful act on his own life, and it is directly attributable to the seaman*, such death is not compensable. No doubt a case of suicide is covered by this provision.

By the same token, when as in this case the seaman, in a state of intoxication, ran amuck, or committed an unlawful aggression against another, inflicting injury on the latter, so that in his own defense the latter fought back and in the process killed the seaman, the circumstances of the death of the seaman could be categorized as a deliberate and willful act on his own life directly attributable to him. First, he challenged everyone to a fight with an axe. Thereafter, he returned to the mess hall, picked up and broke a cup and hurled it at an oiler Ero who suffered injury. Thus provoked, the oiler fought back. The death of seaman Sentina is attributable to his unlawful aggression and thus is not compensable.

---

1.2b Death Not the Result of Worker’s Willful Act

In *Mabuhay Shipping* above the employee’s death was held not compensable. But the conclusion was different in the case of another seaman who, his job contract in Dubai having ended, was returning to the Philippines but, during a stopover, wandered on the streets of Bangkok. He brandished a knife at people, including a policeman who reacted by shooting him dead.

\(^{199}\) C.J.S. 910.
The POEA Administrator ruled, and the Supreme Court agreed, that since the worker, J. Pineda, attacked the Thai policeman when he was no longer in complete control of his mental faculties, the provision of the Standard Format Contract of Employment exempting the employer from liability (if death resulted from employee’s own willful act on his life) should not apply in the instant case. Firstly, the fact that the deceased suffered from mental disorder at the time of his repatriation means that he must have been deprived of the full use of his reason, and that thereby, his will must have been impaired, at the very least. Thus, his attack on the policeman can in no wise be characterized as a deliberate, willful or voluntary act on his part. Secondly, and apart from that, we also agree that in light of the deceased’s mental condition, petitioners “should have observed some precautionary measures and should not have allowed said seaman to travel home alone,” and their failure to do so rendered them liable for the death of Pineda. Indeed, “the obligations and liabilities of the (herein employer petitioners) do not end upon the expiration of the contracted period as (petitioners are) duty bound to repatriate the seaman to the point of hire to effectively terminate the contract of employment.”

The instant case should be distinguished from the case of Mabuhay, where the deceased, R. Sentina, had been in a state of intoxication, then ran amuck and inflicted injury upon another person, so that the latter in his own defense fought back and in the process killed Sentina. Previous to said incident, there was no proof of mental disorder on the part of Sentina. The cause of Sentina’s death is categorized as a deliberate and willful act on his own life directly attributable to him. But seaman Pineda was not similarly situated.

1.2c Suicide, When Compensable

NAESS Shipping Phil. vs. NLRC, G.R. No. 73441, September 4, 1987 —

Facts: While plying the seas from Brazil to Egypt, the vessel’s chief steward, named Dublin, fatally stabbed Fernandez, the second cook, during a quarrel. Dublin then ran to the deck from which he jumped or fell overboard. The body was never recovered.

For the death of Dublin, his widow Zenaida collected the amount of P75,000 under the ITF Collective Bargaining Agreement. She also filed with the Philippine Overseas Employment Administration (POEA) a complaint against NAESS for payment of death benefits totalling US$74,512, under both the Special Agreement and what she claimed to be also the applicable Singapore Workmen’s Compensation Ordinance. Under the special agreement, a crewman of the vessel is entitled to compensation for “loss of life.” The POEA rendered judgment for complainant, holding Dublin’s death compensable under the Special Agreement.

NAESS went to the Supreme Court charging grave abuse of discretion by POEA and raised the issue whether “death caused by suicide” (jumping overboard) is compensable.
**Ruling:** No law or rule would make it illegal for an employer to assume the obligation to pay death benefits in favor of his employee in their contract of employment. Since NAESS freely bound itself to a contract which on its face makes it unqualifiedly liable to pay compensation benefits for Dublin’s death while in its service, regardless of whether or not it intended to make itself the insurer, in the legal sense, of Dublin’s life, NAESS cannot escape liability.

Contracts which are the private laws of the contracting parties should be fulfilled according to the literal sense of their stipulation, if their terms are clear and leave no room for doubt as to the intention of the contracting parties, for contracts are obligatory, no matter what their form may be, whenever the essential requisites for their validity are present.

The argument — that to compel payment of death benefits would amount not only to rewarding the act of murder or homicide, but also inequitably places on NAESS the twin burdens of compensating both the killer and his victim, who allegedly had also been employed under a contract with a similar death benefits clause — confuses the legal implications and effects of two distinct and independent agreements. It carries within itself the seeds of its own refutation. Entitlement of Dublin to death benefits resulted from his death while serving out his contract of employment. It was not a consequence of his killing of Fernandez. If the latter’s death is also compensable, that is due to the solitary fact of his death while covered by a similar contract, not precisely to the fact that he met death at the hands of Dublin. That both deaths may be related by abuse and effect and NAESS is the single obligor liable for compensation in both cases must, insofar as factual and legal basis of such liability is concerned, be regarded as purely accidental circumstances.

According to American authorities, suicide is compensable in the following cases:

(a) When it results from insanity resulting from compensable work injury or disease;

(b) When it occurs during a delirium resulting from compensable disease.¹

Self-destruction is not presumed. In cases where compensation is sought for a violent death due to accident, our courts have refused so far to impute to the victim an intention to end his life. The laborer is presumed to take the necessary precautions to avoid injury to himself, unless an intention is attributed to him to end his life. That presumption is based on the instinct of self-preservation.²

The court, in short, declares NAESS liable under the contract which covers “loss of life” during the employment regardless of the cause of death.

### 1.3 Notorious Negligence

The degree of negligence of the employee that exempts the State Insurance Fund from liability is *notorious negligence.*

Notorious negligence is something more than simple or contributory

---

¹Horovitz, 41 Neb. L.R. 36.

²Ramos vs. Poblete, et al., G.R. No. 47829, October 8, 1941, 73 Phil. 241.
negligence. It signifies a deliberate act of the employee to disregard his own personal safety. Disobedience to rules and/or prohibition does not in itself constitute notorious negligence, if no intention can be attributed to the injured to end his life.\(^1\)

In most cases where the defense of notorious negligence had been raised, the primary consideration for not finding notorious negligence is usually (1) lack of knowledge or awareness of the peril or the seriousness of the existing danger; or (2) the unexpectedness, under the circumstances, of the accident.

Failure to avoid a known danger by a laborer engrossed in his work who momentarily forgets it is not negligence; neither is his failure to exercise incessant vigilance in avoiding a known danger.\(^2\)

The employee’s disregard of warning that the *banca* was overloaded did not constitute notorious negligence.\(^3\)

On the other hand, a driver, injured by collision while overspeeding on a descending slope approaching a curve with the front view obstructed by vegetation, was held notoriously negligent.\(^4\)

A laborer injured while boarding rear platform of train as it was moving backwards was held notoriously negligent.\(^5\)

**Illustrative Cases: Notorious Negligence**

*Solidum vs. GSIS, ECC Case No. 4061, promulgated on November 23, 1988 —*

**Facts:** Solidum was an enlisted man of the Philippine Marines, assigned to the 10th Marine Battalion, stationed at Zamboanga City.

One morning in March 1987, Solidum, who was then resting after a patrol mission, jokingly challenged his comrades to a duel, but they all ignored him. Pointing the muzzle of his loaded rifle at his temple and, saying “Bahala na,” Solidum squeezed the trigger. He died instantly.

His father filed a claim for death benefits under P.D. No. 626. The GSIS denied his claim because the contingency did not arise out of and in the course of employment. The System pointed out that the deceased was not performing his duties as a soldier when the accident occurred. Moreover, it said, the deceased’s death was caused by his notorious negligence and not by an accident or by “an act of God.”

After his request for reconsideration failed, the appellant elevated the case to the Employees’ Compensation Commission.

**Ruling:** The ECC sustained the System’s decision. The ECC noted that the deceased pointed the muzzle of his rifle to himself and squeezed its trigger causing his death.

“Such an act, we believe, constitutes notorious negligence. The employees’

\(^1\)Paez vs. CWW, *et al.*, L-18438, March 30, 1963.

\(^2\)Ramos vs. Poblete, *et al.*, G.R. No. 47829, October 8, 1941, 73 Phil. 241.

\(^3\)St. Thomas Aquinas Academy vs. WCC, G.R. No. 9268, November 28, 1959.

\(^4\)De la Cruz vs. Hijos de la Rama, 62 Phil. 653.

\(^5\)Jabara vs. Mindanao Lumber Co., 57 Phil. 853.
compensation program under which the appellant seeks relief is designed to compensate only the working men who are victims of work-connected injuries and other contingencies. In the case before us, the contingency did not arise out of and in the course of employment, and therefore is not compensable.”

Illustrative Case: Not Notorious Negligence

*Quizon vs. GSIS, ECC Case No. 3015, promulgated on October 26, 1987 —*

**Facts:** A Philippine Army soldier died in December 1980 due to dynamite blast at Tumalutab detachment in Ipil, Zamboanga City.

Investigation showed that after lunch that day, he asked permission from his unit to test the dynamite they had earlier confiscated. He took a civilian pumpboat and proceeded towards nearby Sinonog Island. Along the way, however, he accidentally ignited the fuse of the dynamite, causing it to explode prematurely. The soldier died on the spot.

For his death, his father filed a claim for compensation benefits but the GSIS denied it because the deceased at the time of accident was not performing his duties aside from being notoriously negligent.

Appellant sought a reconsideration of the ruling. He averred that his son belonged to the Ranger Training Group whose primary mission is to develop selected soldiers in the field of specialized small unit tactics, particularly on weapons, explosives, and hand-to-hand combat, among others. Thus, testing a dynamite was part of the deceased’s training as a ranger. “In fact,” appellant said, “no less than the Minister of National Defense through his legal chief, Brig. Gen. Samuel Soriano, supported the line of duty status of his son’s death.”

“Moreover,” appellant added, “it was not the commanding officer of the deceased as alleged in respondent’s adverse decision who advised him not to test the dynamite, but merely a colleague of the same rank as the deceased.”

**Ruling:** We [the ECC] believe that there was indeed negligence on the part of the deceased soldier. However, his negligence was not notorious as perceived by the respondent. Notorious negligence is something more than simple or contributory negligence. It signifies a deliberate act of the employee to disregard his own personal safety. Disobedience to rules does not in itself constitute notorious negligence, if no intention can be attributed to the injured to end his life.

Considering the soldier’s training on explosives as a ranger, his desire to test the confiscated dynamite is but a natural reaction on his part to the extent that he even ignored the advice of his colleague against his plan. Unfortunately, the dynamite exploded prematurely causing his instant death.
The ECC reversed the respondent System’s decision and ordered payment of the claim.

**ART. 179 [173]. EXTENT OF LIABILITY**

Unless otherwise provided, the liability of the State Insurance Fund under this Title shall be exclusive and in place of all other liabilities of the employer to the employee, his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents. The payment of compensation under this Title shall not bar the recovery of benefits as provided for in Section 699 of the Revised Administrative Code, Republic Act numbered eleven hundred sixty-one, as amended, Commonwealth Act numbered one hundred eighty-six, as amended, Republic Act numbered six hundred ten, as amended, and other laws whose benefits are administered by the System, or by other agencies of the government. (As amended by Sec. 2, P.D. No. 1921.)

**COMMENTS AND CASES**

1. OPTIONS AVAILABLE: BENEFITS UNDER THE COMPENSATION LAW OR UNDER THE CIVIL CODE

Does the compensation remedy under the Workmen’s Compensation Act (now under the Labor Code) for work-connected death or injuries exclude other remedies under the Civil Code?

**Ysmael Maritime Corporation vs. Avelino, G.R. No. 43674, June 30, 1987 —**

**Facts:** RGL, a licensed second mate, on board a vessel owned by YMC, perished when the vessel ran aground and sank. His parents FL and CG sued YMC for damages.

YMC alleged that claimants had already been compensated by the Workmen’s Compensation Commission for the same incident, for which reason they are now precluded from seeking other remedies against the same employer under the Civil Code. The trial judge denied YMC’s motion to dismiss.

YMC invokes the rule (in Robles vs. Yap Wing, 41 SCRA 267) that all claims for death or injuries by employees against employers are exclusively cognizable by the WCA regardless of the causes of said death or injuries.

**Ruling:** (1) The Robles vs. Yap Wing rule no longer controls. In Floresca vs. Philex, 136 SCRA 141, involving a complaint for damages for the death of five miners in a cave-in, the Supreme Court was confronted with three divergent opinions on the exclusivity rule.

One view is that the injured employee or his heirs, in case of death, may initiate an action to recover damages [not compensation under the Workmen’s Compensation Act] with the regular courts on the basis of negligence of the employer pursuant to the Civil Code.

Another view, enunciated in the Robles case, is that the remedy of an employee for work-connected injury or accident is exclusive in accordance with Section 5 of the WCA [now EC law].
A third view is that the action is selective and the employee or his heirs have a choice of availing themselves of the benefits under the WCA or of suing in the regular courts under the Civil Code for higher damages from the employer by reason of his negligence. But once the election has been exercised, the employee or his heirs are no longer free to opt for the other remedy, i.e., the employee cannot pursue both actions simultaneously.

The majority adopted the latter view, reiterating as main authority its earlier decision in Pacana vs. Cebu Autobus Company, 32 SCRA 442. It rejected the doctrine of exclusivity of the rights and remedies granted by the WCA as laid down in the Robles case.

(2) RGL’s parents cannot be allowed to maintain their present action to recover additional damages under the Civil Code. They had previously filed and had received the compensation payable to them under the Workmen’s Compensation Act. They not only had opted to recover under this Act but had also been duly paid. A sense of fair play demands that if a person entitled to a choice of remedies made a first selection and accepted the benefits thereof, he should no longer be allowed to exercise the second option.

(3) After one had staked his fortunes on a particular remedy, he is precluded from pursuing the alternate course, at least until the prior claim is rejected by the Compensation Commission.

2. RECOVERY UNDER THE LABOR CODE AND THE SOCIAL SECURITY LAW

Simultaneous recovery of benefits under the employees’ compensation program of the Labor Code and under the Social Security law is allowed. This is the advisory opinion given by the Secretary of Justice to the SSS in Opinion dated May 23, 1989 and January 12, 1990. Secretary Franklin M. Drilon explained:

It is true that the SSS law (R.A. No. 1161, as amended) is “distinct and different” from the Labor Code. It should be pointed out, however, that the provisions of Section 15 of the SSS law and Article 173 of the Labor Code are in pari materia insofar also as both provisions barred the simultaneous recovery of benefits under both the SSS law and the Labor Code, until Article 173 was amended by P.D. No. 1921 in 1984. The amendment introduced by P.D. No. 1921 to Article 173 lifted the ban against the simultaneous recovery of benefits under the Labor Code and the SSS, and is deemed to have repealed by necessary implication the provision of Section 15 of the SSS law which bars such simultaneous recovery of benefits. Since P.D. No. 1921 is the latest expression of the legislative will, it will prevail over Section 15 which has become irreconcilably inconsistent with the said amendatory law.

We wish to emphasize, however, that P.D. No. 1921 which lifted the ban against double recovery of benefits took effect in 1984 and is deemed to be prospective in operation, in the absence of an express provision giving it retroactive effect.
ART. 180 [174]. LIABILITY OF THIRD PARTIES

(a) When the disability or death is caused by circumstances creating a legal liability against a third party, the disabled employee or the dependents in case of his death shall be paid by the System under this Title. In case benefit is paid under this Title, the system shall be subrogated to the rights of the disabled employee or the dependents in case of his death, in accordance with the general law.

(b) Where the System recovers from such third party damages in excess of those paid or allowed under this Title, such excess shall be delivered to the disabled employee or other persons entitled hereto, after deducting the cost of proceedings and expenses of the System. (As amended by Sec. 17, P.D. No. 850).

ART. 181 [175]. DEPRIVATION OF BENEFITS

Except as otherwise provided under this Title, no contract, regulation, or device whatsoever shall operate to deprive the employee or his dependents of any part of the income benefits, and medical or related services granted under this Title. Existing medical services being provided by the employer shall be maintained and continued to be enjoyed by their employees.
Chapter III
ADMINISTRATION

Overview/Key Questions:

1. Who administers the State Insurance Fund? What is the role of the SSS?
2. Does the EC Commission decide on compensation claims? Are their decisions appealable?

ART. 182 [176]. EMPLOYEES’ COMPENSATION COMMISSION

(a) To initiate, rationalize and coordinate the policies of the employees’ compensation program, the Employees’ Compensation Commission is hereby created to be composed of five ex-officio members, namely: the Secretary of Labor and Employment as Chairman, the GSIS General Manager, the SSS Administrator, the Chairman of the Philippine Medical Care Commission, and the Executive Director of the ECC Secretariat, and two appointive members, one of whom shall represent the employees and the other, the employers, to be appointed by the President of the Philippines for a term of six years. The appointive member shall have at least five years experience in workmen’s compensation or social security programs. All vacancies shall be filled for the unexpired term only. (As amended by Sec. 19[c], E.O. 126).

(b) The Vice Chairman of the Commission shall be alternated each year between the GSIS General Manager and the SSS Administrator. The presence of four Members shall constitute a quorum. Each Member shall receive a per diem of two hundred pesos for every meeting that is actually attended by him, exclusive of actual, ordinary and necessary travel and representation expenses. In his absence, any Member may designate an official of the institution he serves on full-time basis as his representative to act in his behalf. (As amended by Sec. 2, P.D. No. 1368).

(c) The general conduct of the operations and management functions of the GSIS or SSS under this Title shall be vested in its respective chief executive officer, who shall be immediately responsible for carrying out the policies of the Commission.
ART. 183 [177]. **POWERS AND DUTIES**

The Commission shall have the following powers and duties:

(a) To assess and fix a rate of contribution from all employers;

(b) To determine the rate of contribution payable by an employer whose records show a high frequency of work accidents or occupational diseases due to failure by the said employer to observe adequate safety measures;

(c) To approve rules and regulations governing the processing of claims and the settlement of disputes arising therefrom as prescribed by the System;

(d) To initiate policies and programs toward adequate occupational health and safety and accident prevention in the working environment, rehabilitation other than those provided for under Article 190 hereof, and other related programs and activities, and to appropriate funds therefor. (As amended by Sec. 3, P.D. No. 1368);

(e) To make the necessary actuarial studies and calculations concerning the grant of constant help and income benefits for permanent disability or death, and the rationalization of the benefits for permanent disability and death under the Title with benefits payable by the System for similar contingencies; *Provided;* That the Commission may upgrade benefits and add new ones subject to approval of the President; and *Provided, further,* That the actuarial stability of the State Insurance Fund shall be guaranteed; *Provided, finally,* That such increases in benefits shall not require any increases in contribution, except as provided for in paragraph (b) hereof. (As amended by Sec. 3, P.D. No. 1641);

(f) To appoint the personnel of its staff, subject to civil service law and rules, but exempt from WAPCO law and regulations;

(g) To adopt annually a budget of expenditures of the Commission and its staff chargeable against the State Insurance Fund: *Provided,* That the SSS and GSIS shall advance on a quarterly basis the remittances of allotment of the loading fund for this Commission’s operational expenses based on its annual budget as duly approved by the Ministry of the Budget and Management. (As amended by Sec. 3, P.D. No. 1921);

(h) To have the power to administer oath and affirmation, and to issue subpoena and subpoena *duces tecum* in connection with any question or issue arising from appealed cases under this Title;
(i) To sue and be sued in court;
(j) To acquire property, real or personal, which may be necessary or expedient for the attainment of the purposes of this Title;
(k) To enter into agreements or contracts for such services and aid as may be needed for the proper, efficient and stable administration of the program;
(l) To perform such other acts as it may deem appropriate for the attainment of the purposes of the Commission and proper enforcement of the provisions of this Title. (As amended by Sec. 18, P.D. No. 850).

ART. 184 [178]. MANAGEMENT OF FUNDS
All revenues collected by the System under this Title shall be deposited, invested, administered and disbursed in the same manner and under the same conditions, requirements and safeguards as provided by Republic Act numbered eleven hundred sixty-one, as amended, and Commonwealth Act numbered one hundred eighty-six, as amended, with regard to such other funds as are thereunder being paid to or collected by the SSS and GSIS, respectively: Provided, That the Commission, SSS and GSIS may disburse each year not more than twelve percent of the contributions and investment earnings collected for operational expenses, including occupational health and safety programs, incidental to the carrying out of this Title.

ART. 185 [179]. INVESTMENT OF FUNDS
Provisions of existing laws to the contrary notwithstanding, all revenues as are not needed to meet current operational expenses under this Title shall be accumulated in a fund to be known as the State Insurance Fund, which shall be used exclusively for payment of the benefits under this Title, and no amount thereof shall be used for any other purpose. All amounts accruing to the State Insurance Fund, which is hereby established in the SSS and GSIS, respectively, shall be deposited with any authorized depository bank approved by the Commission, or invested with due and prudent regard for the liquidity needs of the System. (As amended by Sec. 4, P.D. No. 1368).

ART. 186 [180]. SETTLEMENT OF CLAIMS
The System shall have original and exclusive jurisdiction to settle any dispute arising from this Title with respect to coverage, entitlement to benefits, collection and payment of contributions and penalties thereon, or any other matter related thereto, subject to appeal to the Commission, which shall decide appealed cases within twenty working days from the submission of the evidence.
ART. 187 [181]. REVIEW

Decisions, orders or resolutions of the Commission may be reviewed on certiorari by the Supreme Court on questions of law upon petition of an aggrieved party within ten days from notice thereof.

ART. 188 [182]. ENFORCEMENT OF DECISIONS

(a) Any decision, order or resolution of the Commission shall become final and executory if no appeal is taken therefrom within ten days from notice thereof. All awards granted by the Commission in cases appealed from decisions of the System shall be effected within fifteen days from receipt of notice.

(b) In all other cases, decisions, orders and resolutions of the Commission which have become final and executory shall be enforced and executed in the same manner as decisions of the Court of First Instance, and the Commission shall have the power to issue to the city or provincial sheriff or to the sheriff whom it may appoint such writs of execution as may be necessary for the enforcement of such decisions, orders or resolutions, and any person who shall fail or refuse to comply therewith shall, upon application by the Commission, be punished by the proper court for contempt.

COMMENTS

1. STRUCTURE AND FUNCTIONS

The Chairman of the Employees’ Compensation Commission is the Secretary of Labor and Employment.

The Commission has four (4) **ex-officio** members, namely: the SSS Administrator, the GSIS President and General Manager, the ECC Executive Director, and the Medicare Chairman. It has two (2) appointive members for a term of six years each, namely: one representing the employers and another representing the employees.

The ECC is the policy-making body of the Employees’ Compensation Program and also the appeal body.

As earlier explained, the decisions of either SSS or GSIS, if unfavorable to the claimant, are appealable to the ECC. Upon appeal, the system elevates the record of the case to the ECC for review.

The ECC program has three thrusts or components:

1. Preventive Thrust. The mission is to minimize and control hazards in the working environment. Two agencies are involved in this program — the Bureau of Working Conditions (BWC) of the Department of Labor and Employment and the Occupational Safety and Health Center (OSHC). While the BWC inspects work premises, the OSHC trains safety engineers, tests safety equipment and undertakes research work.
To force the observance of the legal requirement on occupational health and safety, the law provides that establishments having high rate of incidents caused by hazards of their working environment will be liable to 25% of benefits due the claimants.

2. **Compensative Thrust.** Compensative thrust is the heart of the Employees' Compensation Program. The ECC through the GSIS or SSS pays benefits to government and private sector workers who suffer work-connected contingencies. In case of death, the benefits are given to the beneficiaries.

3. **Curative Thrust.** The Employees' Compensation Commission does not only take the responsibility for the benefits due the workers, but also the treatment of sickness or injury that a worker may suffer in line of duty as well as the rehabilitation of those who are disabled.

For medical services, the ECC conducts accreditation of qualified physicians, clinics and hospitals where Employees' Compensation patients may be referred to for admission and treatment.

Rehabilitation services consist of medical, surgical or hospital treatment, including appliance.1

2. **TWO SEPARATE FUNDS**

By mid-1990, the State Insurance Fund under the SSS stood at more than P5 billion while that in the GSIS was only about P0.4 billion; thus, the SSS could implement increased benefits (e.g., from P3,000 to P6,000 funeral benefit effective May 1, 1988), but the GSIS could not. The question thus arose whether the ECC may augment the SIF in the GSIS with funds from the SIF in the SSS.

In Opinion No. 45, s. 1990 dated March 13, 1990, the Secretary of Justice answered in the negative. He explained that there are two State Insurance Funds (SIFs) and that the two are separate.

The legislative intent to constitute two separate SIFs, one for employees in the private sector, and another for employees in the government, is clear from a reading of the foregoing provisions of the Labor Code. Under said provisions, all revenues collected for the Employees' Compensation Program shall accrue to separate State Insurance Funds established in two different government entities, namely, the GSIS and the SSS. If the legislature had intended otherwise, it would have clearly indicated in the law the creation of one State Insurance Fund for both private and government employees, to be administered by a single government entity, instead of establishing the SIF ‘in the SSS and GSIS, respectively,’ which clearly implies the establishment of two SIFs, one in the GSIS and another in the SSS. Pertinent is the elementary rule in statutory construction that when the language of the law is clear and unequivocal, it should be taken to mean what it says.2

---

1ECC Journal, First Two Quarters, 1990, p. 20.
2IBAA Employees Union vs. Inciong, 132 SCRA 663 as cited in Opinion of the Secretary of Justice No. 239, s. 1988.
Chapter IV
CONTRIBUTIONS

Overview/Key Question: Is it the employers or the consumers that shoulder the contributions to the S.I.F.?

ART. 189 [183]. EMPLOYER’S CONTRIBUTIONS

(a) Under such regulations as the System may prescribe, beginning as of the last day of the month when an employee’s compulsory coverage takes effect and every month thereafter during his employment, his employer shall prepare to remit to the System a contribution equivalent to one percent of his monthly salary credit.

(b) The rate of contribution shall be reviewed periodically and, subject to the limitations herein provided, may be revised as the experience in risk, cost of administration, and actual or anticipated as well as unexpected losses, may require.

(c) Contributions under this Title shall be paid in their entirety by the employer and any contract or device for the deduction of any portion thereof from the wages or salaries of the employees shall be null and void.

(d) When a covered employee dies, becomes disabled or is separated from employment, his employer’s obligation to pay the monthly contribution arising from that employment shall cease at the end of the month of contingency and during such months that he is not receiving wages or salary.

ART. 190 [184]. GOVERNMENT GUARANTEE

The Republic of the Philippines guarantees the benefits prescribed under this Title, and accepts general responsibility for the solvency of the State Insurance Fund. In case of any deficiency, the same shall be covered by supplemental appropriations from the national government.

COMMENTS

The Amended Rules on Employees’ Compensation (see Appendix) specifies ten (10) brackets of monthly salary credits on which to base the one-percent contribution to ECC.
The same Rules provide the penalties to the employer who is delinquent in paying ECC contributions. The penalties include imprisonment and/or fine and a three-percent penalty per month from the date the contribution falls due until paid.
Chapter V
MEDICAL BENEFITS

Overview/Key Questions:

1. What are benefits recoverable under the EC program?
2. Are medical benefits payable even after one’s retirement?

ART. 191 [185]. MEDICAL SERVICES
Immediately after an employee contracts sickness or sustains an injury, he shall be provided by the System during the subsequent period of his disability with such medical services and appliances as the nature of his sickness or injury and progress of his recovery may require, subject to the expense limitation prescribed by the Commission.

ART. 192 [186]. LIABILITY
The System shall have the authority to choose or order a change of physician, hospital or rehabilitation facility for the employee, and shall not be liable for compensation for any aggravation of the employee’s injury or sickness resulting from unauthorized changes by the employee of medical services, appliances, supplies, hospitals, rehabilitation facilities or physicians.

ART. 193 [187]. ATTENDING PHYSICIAN
Any physician attending an injured or sick employee shall comply with all the regulations of the System and submit reports in prescribed forms at such time as may be required concerning his condition or treatment. All medical information relevant to the particular injury or sickness shall on demand be made available to the employee or the System. No information developed in connection with treatment or examination for which compensation is sought shall be considered as privileged communication.

ART. 194 [188]. REFUSAL OF EXAMINATION OR TREATMENT
If the employee unreasonably refuses to submit to medical examination or treatment, the System shall stop the payment of further compensation during such time as such refusal continues. What constitutes an unreasonable refusal shall be determined by the System which may on its own initiative determine the necessity, character and sufficiency of any medical services furnished or to be furnished.
ART. 195 [189]. FEES AND OTHER CHARGES

All fees and other charges for hospital services, medical care and appliances including professional fees shall not be higher than those prevailing in wards of hospitals for similar services to injured or sick persons in general and shall be subject to the regulations of the Commission. Professional fees shall only be appreciably higher than those prescribed under Republic Act numbered sixty-one hundred eleven, as amended, otherwise known as the Philippine Medical Care Act of 1969.

ART. 196 [190]. REHABILITATION SERVICES

(a) The System shall, as soon as practicable, establish a continuing program for the rehabilitation of injured and handicapped employees, who shall be entitled to rehabilitation services, which shall consist of medical, surgical or hospital treatment, including appliances if they have been handicapped by the injury, to help them become physically independent.

(b) As soon as practicable, the System shall establish centers equipped and staffed to provide a balanced program of remedial treatment, vocational assessment and preparation designed to meet the individual needs of each handicapped employee to restore him to suitable employment, including assistance as may be within its resources to help each rehabilitee to develop his mental, vocational or social potential.

COMMENTS AND CASES

1. E.C. BENEFITS SUMMARIZED

The “compensation” extended to the employee (or to beneficiaries) are of three kinds: services, income benefit, and funeral benefit.

A. Services

(1) medical services, appliances and supplies; (Article 185 and Rule VIII of the ECC Rules.)

(2) rehabilitation services; (Article 190 and Rule IX of the ECC Rules.)

B. Cash Income Benefit or Pension due to:

(1) temporary total disability; (Article 191 and Rule X of the ECC Rules.)

(2) permanent total disability; (Article 192 and Rule XI of the ECC Rules.)

(3) permanent partial disability; (Article 193 and Rule XII of the ECC Rules.)

(4) death. (Article 194 and Rule XIII of the ECC Rules.)

C. Funeral Benefit. (Article 194[d] and Rule XIV of the ECC Rules.)
2. MEDICAL BENEFITS

Provision of medical services, appliances and supplies to the employee shall begin on the first day of injury or sickness. It shall continue during the subsequent period of his disability, and as the progress of his recovery may require. Periodic medical report from the attending physician has to be submitted.

The employee is entitled to the benefits only for the ward services of an accredited hospital and accredited physician. ECC accredited hospitals and physicians are not allowed to ask any deposit from EC patients as requisite for admission. Neither are they allowed to collect any amount from EC patients as charges or treatment. ECC accredited hospitals, clinics and physicians are, however, privileged to claim reimbursement with the ECC through the System for expenses incurred in the treatment of EC patients. Medicines purchased by EC patients are reimbursed 100%. Expenses incurred at the intensive care unit (ICU) are also paid in full.

2.1 Duration of Medical Liability

The obligation to provide medical services lasts for as long as the employee is sick because the liability for medical care lasts during the “period of disability.” Medical attendance is owing as long as the employee is sick of a compensable illness, and this duty is not ended when employment terminates.¹

Unlike those provisions relating to compensation for disability, the law does not provide a maximum either in the amount to be paid or the time period within which the medical attendance may be availed of by the employee. On the contrary, the law imposes on the SIF the obligation to “provide the employee with such medical services, appliances and supplies as the nature of his disability and the progress of his recovery may require, subject only to the expense limitation contained in Annex “C” of the Rules.” The implication is that, such medical expenses as may be necessary until the work-connected injury or sickness ceases, may be charged against the SIF and are to be paid by the System.²

2.2 Reimbursement of Medical Expenses

The employee himself may acquire the needed medical services, appliances and supplies if the employer (System) fails to furnish them “promptly,” at the expense of the employer or System.³

The employee’s right of reimbursement for medical expenses is not extinguished upon his death. The rights of action of a deceased person are, in general, transmitted to his legal heirs, unless they are essentially personal in nature or the law declares them to be so.⁴

---

⁴ Ibid.
The reimbursable medical expenses are not only those incurred for the primary illness but even those for its complications even if the complications developed after the employee’s retirement.1

Illustrative Case: Medical Expenses for Complications

_Godofredo Alvero, Sr. vs. Government Service Insurance System (Supreme Court), ECC Case No. 5115, December 4, 1991 —_

_Facts:_ Godofredo Alvero, Sr. joined the government service on March 26, 1953 as Justice of the Peace in Dolores, Quezon, became Asst. Provincial Fiscal on August 1, 1957, and was promoted as RTC Judge on July 26, 1983. He retired on April 8, 1984 at age 63.

For all his compensable ailments, PTB, Moderately Advanced with Pulmonary Emphysema and Chronic Obstructive Pulmonary Disease, he was granted temporary total disability benefits from January 4 to 19, 1984 and permanent total disability benefits from April 8, 1984 to December, 1988. Not satisfied with this, appellant also requested for the reimbursement of medical expenses incurred for his ailments, Diabetes Mellitus and Gastritis.

The respondent System denied his request for reimbursement on the ground that only those medical expenses of primary therapeutic value which pertain to the approved illness at the time of his separation from the service were allowed for reimbursement. Medical expenses incurred due to complications that appeared after he had retired from the service and those which are of preventive value were excluded. The System further alleged that as of December 1987, appellant had already availed of permanent total disability benefits. His medical benefits consisted of reimbursement of medicines, medical supplies, laboratory examinations, professional fees for claimed ailment as well as hospitalization benefits.

Because the System refused to grant his requests for reimbursement, he appealed his case to the Commission.

_Ruling:_ The complications that arose from appellant’s primary illnesses, PTB and COP.D. No. (Emphysema) were brought about by the intake of several medications like steroids, antibiotics, and diuretics. For this reason, we believe that appellant is entitled to reimbursement of medications used in treating the complications, Diabetes Mellitus and Stomach Ulcerations (Gastritis).

3. REHABILITATION SERVICES

Rehabilitation services include a balanced program of remedial treatment, vocational assessment and preparations designed to meet the individual needs of each handicapped employee to restore him to suitable employment, including assistance as may be within its resources to help each rehabilitee develop his mental, vocational or social potential.

1Godofredo Alvero, Sr. vs. GSIS, ECC Case No. 5115, December 4, 1991.
There are three stages of rehabilitation under this program:

a. **Physical rehabilitation.** — This involves physical therapy by the rehabilitation center of the ECC-accredited hospital, furnishing of prosthesis and appliances all paid by the ECC.

b. **Vocational assessment.** — This involves evaluation by guidance psychologist of the ECC and sending to vocational school of those found ready to reengage in gainful employment.

c. **Vocational placement.** — This involves job placement by Employment Service Officer to help him become independent and gainfully employed.
Overview/Key Questions:

1. What are the kinds of disability benefits under the EC program?
2. When is a disability considered permanent-total?

ART. 197 [191]. TEMPORARY TOTAL DISABILITY

(a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall for each day of such a disability or fraction thereof be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: the daily benefit shall not be less than Ten Pesos nor more than Ninety Pesos, nor paid for a continuous period longer than one hundred twenty days, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness. (As amended by Sec. 2, E.O. 179.)

(b) The payment of such income benefit shall be in accordance with the regulations of the Commission. (As amended by Sec. 19, P.D. No. 850.)

ART. 198 [192]. PERMANENT TOTAL DISABILITY

(a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: Provided, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

(b) The monthly income benefit shall be guaranteed for five years, and shall be suspended if the employee is gainfully employed, or recovers from his permanent total disability, or fails to present for examination at least once a year upon notice by the System, except as otherwise provided for in other laws, decrees, orders or Letters of Instructions. (As amended by Sec. 5, P.D. No. 1641.)
ART. 199  HEALTH, SAFETY AND SOCIAL  
WELFARE BENEFITS

(c) The following disabilities shall be deemed total and permanent:
(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;
(2) Complete loss of sight of both eyes;
(3) Loss of two limbs at or above the ankle or wrist;
(4) Permanent complete paralysis of two limbs;
(5) Brain injury resulting in incurable imbecility or insanity; and
(6) Such cases as determined by the Medical Director of the System and approved by the Commission.

(d) The number of months of paid coverage shall be defined and approximated by a formula to be approved by the Commission.

ART. 199 [193]. PERMANENT PARTIAL DISABILITY

(a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall for each month not exceeding the period designated herein be paid by the System during such a disability an income benefits equivalent to the income benefit for permanent total disability.

(b) The benefit shall be paid for not more than the period designated in the following schedules:

<table>
<thead>
<tr>
<th>Complete and permanent loss of the use of</th>
<th>No. of Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>One thumb ....................................</td>
<td>10</td>
</tr>
<tr>
<td>One index finger ...........................</td>
<td>08</td>
</tr>
<tr>
<td>One middle finger ..........................</td>
<td>06</td>
</tr>
<tr>
<td>One ring finger ............................</td>
<td>05</td>
</tr>
<tr>
<td>One little finger ..........................</td>
<td>03</td>
</tr>
<tr>
<td>One big toe ...............................</td>
<td>06</td>
</tr>
<tr>
<td>Any toe ......................................</td>
<td>03</td>
</tr>
<tr>
<td>One arm ......................................</td>
<td>50</td>
</tr>
<tr>
<td>One hand ....................................</td>
<td>39</td>
</tr>
<tr>
<td>One foot ....................................</td>
<td>31</td>
</tr>
<tr>
<td>One leg .....................................</td>
<td>46</td>
</tr>
<tr>
<td>One ear .....................................</td>
<td>10</td>
</tr>
<tr>
<td>Both ears ...................................</td>
<td>20</td>
</tr>
<tr>
<td>Hearing of one ear ........................</td>
<td>10</td>
</tr>
<tr>
<td>Hearing of both ears .....................</td>
<td>50</td>
</tr>
<tr>
<td>Sight of one eye ...........................</td>
<td>25</td>
</tr>
</tbody>
</table>
(c) A loss of a wrist shall be considered as a loss of the hand, and a loss of an elbow shall be considered as a loss of the arm. A loss of an ankle shall be considered as a loss of a foot, and a loss of a knee shall be considered as a loss of the leg. A loss of more than one joint shall be considered as a loss of the whole finger or toe, and a loss of only the first joint shall be considered as a loss of one-half of the whole finger or toe: Provided, That such a loss shall be either the functional loss of the use or physical loss of the member. (As amended by Sec. 7, P.D. No. 1368.)

(d) In case of permanent partial disability less than the total loss of the member specified in the preceding paragraph, the same monthly income benefit shall be paid for a portion of the period established for the total loss of the member in accordance with the proportion that the partial loss bears to the total loss. If the result is a decimal fraction, the same shall be rounded off to the next higher integer.

(e) In cases of simultaneous loss of more than one member or a part thereof as specified in this Article, the same monthly income benefit shall be paid for a period equivalent to the sum of the periods established for the loss of the member or the part thereof. If the result is a decimal fraction, the same shall be rounded off to the next higher integer.

(f) In cases of injuries or illnesses resulting in a permanent partial disability not listed in the preceding schedule, the benefit shall be an income benefit equivalent to the percentage of the permanent loss of the capacity for work. (As added by Sec. 7, P.D. No. 1368.)

(g) Under such regulations as the Commission may approve, the income benefit payable in case of permanent partial disability may be paid in monthly pension or in lump sum if the period covered does not exceed one year. (As added by Sec. 7, P.D. No. 1368.)

**COMMENTS AND CASES**

1. **DISABILITY**

Disability does not refer to the injury nor to the pain and suffering it has occasioned, but to the loss or impairment of earning capacity. There is disability when there is a loss or diminution of earning power because of actual absence from work due to the injury or illness arising out of and in the course of employment. The basis of compensation is reduction of earning power.

Thus, even if an employee suffers a service-connected injury or illness as long as he goes on working without any reduction whatsoever in his earning capacity, there is no disability and, therefore, he is not entitled to any income benefit.1 Article 167(n) defines “disability” as loss or impairment of a physical or mental function resulting from injury or sickness.

---

1Horovitz, *Workmen’s Compensation*, 41 Neb. L.R. 68.
2. **CATEGORIES OF DISABILITY**

_Vicente vs. ECC, G.R. No. 85024, January 23, 1991 —_

Employee’s disability under the Labor Code is classified into three distinct categories: (a) temporary total disability; (b) permanent total disability; and (c) permanent partial disability.

Total disability may either be temporary or permanent. Total disability does not mean a state of absolute helplessness, but means disablement of an employee to earn wages in the same kind of work, or a work of similar nature, that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do.\(^1\)

The object of the law in allowing compensation during temporary disability is to compensate the laborer or employee for what he might have earned during the period of the treatment of his injury. On the other hand, the object of the law in granting compensation for a permanent disability is to compensate the injured laborer or employee for the actual and permanent loss of a member of the body, or the use thereof.\(^2\)

---

3. **TEMPORARY TOTAL**

A total disability is temporary if as a result of the injury or sickness, the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided in Rule X of the Rules.

3.1 **Amount of Benefits**

Any employee entitled to benefit for temporary total disability shall be paid an income benefit equivalent to 90 percent of his average daily salary credit, subject to the following conditions:

1. The daily income benefit shall not be less than P10.00 or more than P90.00 nor paid longer than 120 days for the same disability, unless the injury or sickness requires more extensive treatment that lasts beyond 120 days, but not to exceed 240 days from onset of disability, in which case he shall be paid benefit for temporary total disability during the extended period.

2. The monthly income benefit shall be suspended if the employee fails to submit a monthly medical report certified by its attending physician.

3.2 **Period of Entitlement**

The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability,

---

\(^1\)Abaya vs. Employees’ Compensation Commission, G.R. No. 64255, August 16, 1989.

in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

3.3 Relapse

After an employee has fully recovered from an illness as duly certified to by the attending physician, the period covered by any relapse he suffers, or recurrence of his illness, which results in disability and is determined to be compensable, shall be considered independent of, and separate from, the period covered by the original disability. Such a period shall not be added to the period covered by his original disability in the computation of his income benefit for temporary total disability (TTD).\(^1\)

Where, after the period of temporary total disability had ceased, an employee was found to be suffering from a permanent partial disability, he was entitled to an award based upon partial disability permanent in character.\(^2\)

4. PERMANENT TOTAL

A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days except as otherwise provided for in Rule X of the ECC Rules.

Permanent total disability means an incapacity to perform gainful work which is expected to be permanent. This status does not require a condition of complete helplessness. Nor is it affected by the performance of occasional odd jobs.\(^3\)

Permanent disability is a new and further disability within the provisions of the law. Many times the seriousness of the injury is not at first apparent, and from its very nature cannot be detected until considerable time has elapsed after its infliction. The clear intent of the statute in such cases is that the injured employee shall be entitled to compensation for his permanent disability notwithstanding that he may, in the early stages of his injury, have been granted an award only for temporary disability, or may have been paid compensation by his employer.\(^4\)

Article 192 [now 198] enumerates six instances that are considered total and permanent disability:

1. Temporary total disabilities lasting continuously for more than 120 days, except as otherwise provided for in Rule X hereof;

\(^1\)ICC Resolution No. 1029, August 10, 1978.


\(^3\)Abaya vs. Employees' Compensation Commission, G.R. No. 64255, August 16, 1989.

\(^4\)Cañete vs. Insular Lumber Co., supra; Vishney vs. Empire Steel & Iron Co., 61 Phil. 592.
HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS

(2) Complete loss of sight of both eyes;
(3) Loss of two limbs at or above the ankle or wrist;
(4) Permanent complete paralysis of two limbs;
(5) Brain injury resulting in incurable imbecility and insanity; and
(6) Such cases as determined by the System and approved by the Commission.

4.1 Period of Entitlement
The full monthly income benefit shall be paid for all compensable months of disability. x x x
Except as otherwise provided for in other laws, decrees, orders or letters of instructions, the monthly income benefit shall be guaranteed for 5 years.

4.2 Suspension
The PTD benefit shall be suspended under any of the following conditions:
(1) Failure of employee to present himself for examination at least once a year upon notice by the System;
(2) Failure to submit a quarterly medical report certified by his attending physician as required under Sec. 5 of Rule IV hereof;
(3) Complete or full recovery from his permanent disability; or
(4) Upon being gainfully employed. (ECC Rules)

4.3 Amount of Benefits
(a) In the case of the SSS:
Any employee entitled to permanent total disability benefit shall be paid by the System a monthly income benefit as defined in Sec. 9(a), Rule VI of the ECC Rules.

Amount of benefit for dependent children. — (a) Each dependent child, but not exceeding five, counted from the youngest and without substitution, shall be entitled to 10 percent of the monthly income benefit of the employee. These Rules shall not apply to causes of action which accrued before May 1, 1978.

Except the benefit to dependent children under Sec. 4 of Rule VI, the aggregate monthly benefit payable, in the case of the GSIS, shall in no case exceed the monthly wage or salary actually received by the employee as of the date of his permanent total disability.¹

Disability benefits for seafarers is discussed in cases under Article 17.

¹ECC Resolution No. 2819, August 9, 1984.
5. PERMANENT PARTIAL

A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.\(^1\)

The body parts and the corresponding period of equivalent disability are specified in Article 199.

5.1 Amount of Benefits

Any employee entitled to permanent partial disability benefit shall be paid by the System a monthly income benefit for the number of months indicated in Article 199. If the indicated number of months exceeds twelve, the income benefit shall be paid in monthly pension; otherwise, the System may pay income benefit in lump sum or in monthly pension.

5.2 Effect of Gainful Employment

For purposes of entitlement to income benefits for permanent partial disability, a covered employee shall continue to receive the benefits provided thereunder even if he is gainfully employed and receiving his wages or salary.

5.3 Distinguished from Permanent Total

While “permanent total disability” invariably results in an employee’s loss of work or inability to perform his usual work, “permanent partial disability,” on the other hand, occurs when an employee loses the use of any particular anatomical part of his body which disables him to continue with his former work. Stated otherwise, the test of whether or not an employee suffers from “permanent total disability” is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job for more than 120 days and he does not come within the coverage of Rule X of the Amended Rules on Employees’ Compensability (which, in a more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from “permanent total disability” regardless of whether or not he loses the use of any part of his body.\(^2\)

6. ILLUSTRATIVE CASES: PERMANENT TOTAL DISABILITY

Orlino vs. Employees’ Compensation Commission, et al., G.R. No. 85015, March 29, 1990 —

Suffering from mental lapses which made him unfit for work, petitioner was forced to seek early retirement on December 1, 1980 at the age of 55 years. From that time, to the present, he has not been able to work nor engage in any gainful occupation.

\(^1\)Abaya vs. Employees’ Compensation Commission, G.R. No. 64255, August 1989.

\(^2\)Vicente vs. ECC, G.R. No. 85024, January 23, 1991.
Ruling: He is considered permanently and totally disabled to work when he was incapacitated or disabled to perform any substantial amount of labor in the line of work where he was formerly engaged, or any other kind of work to which he could be assigned. Total disability does not mean a state of absolute helplessness, but disablement of an employee to earn wages in the same kind of work, or a work of similar nature, that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.

The approval of claimant’s application for optional retirement for disability, although he has not yet reached the age of compulsory retirement age, is an indication of his physical incapacity to render further efficient service.

In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one’s earning capacity.

In an earlier similar case, the Court held that when an employee is forced to ask for retirement ahead of schedule, not because of old age, but primarily of her weakened bodily condition due to illness contracted in the course of her employment, she should be given compensation for her inability to work during the remaining days before her scheduled retirement, aside from the benefits received by her.1

Vicente vs. ECC, G.R. No. 85024, January 23, 1991 —

The test of whether or not an employee suffers from ‘permanent total disability’ is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. It does not mean an absolute helplessness but rather an incapacity to perform gainful work which is expected to be permanent.

In the case at bar, the petitioner’s permanent total disability is established beyond doubt by several factors and circumstances. Petitioner’s application for optional retirement on the basis of his ailments had been approved. The decision of the respondent Commission even admits that the petitioner “retired from government service at the age of 45.” Considering that the petitioner was only 45 years old when he retired and still entitled, under good behavior, to 20 more years in service, the approval of his optional retirement application proves that he was no longer fit to continue in his employment. For optional retirement is allowed only upon proof that the employee-applicant is already physically incapacitated to render sound and efficient service.

Further, the appropriate physicians of the petitioner’s employer, the Veterans Memorial Medical Center, categorically certified that the petitioner was classified under permanent total disability.

The fact that the petitioner was granted benefits amounting to the equivalent of twenty-three months shows that the petitioner was unable to perform any gainful occupation for a continuous period exceeding 120 days.

1Abaya vs. Employees’ Compensation Commission, G.R. No. 64255, August 16, 1989.
6.1 Conversion from Permanent Partial Disability to Permanent Total Disability

_GSIS vs. Court of Appeals and R. Balais, G.R. No. 117572, January 29, 1998 —_

**Facts:** In December 1989, the employee claimant was diagnosed to be suffering from Ruptured Aneurysm. She underwent craniotomy.

But despite her operation, she could not perform her duties as cashier in the NHA as efficiently as she did before her illness. This forced her to retire on March 1, 1990 at the age of sixty-two (62). She filed a claim for disability benefits.

The GSIS granted her temporary total disability (TTD) benefits and, subsequently, permanent partial disability (PPD) benefits for nine months.

In November 1992, she requested the GSIS to convert the classification of her disability benefits from permanent partial disability (PPD) to permanent total disability (PTD).

GSIS denied the request and informed her that her condition did not satisfy the criteria for permanent total disability. She asked for reconsideration. GSIS denied it, and ECC affirmed the denial. But on a petition for review, the Court of Appeals promulgated a decision favorable to her. GSIS petitions the Supreme Court to reverse the Court of Appeals.

**Issue:** Is private respondent entitled to conversion of her benefits from permanent partial disability to permanent total disability?

**Ruling:** The Supreme Court, through Justice Romero, refused to reverse the Court of Appeals.

While it is true that the degree of private respondent’s physical condition at the time of her retirement was not considered as permanent total disability, yet, it cannot be denied that her condition subsequently worsened after her head operation and consequent retirement. In fact, she suffered afterwards from some ailments like headaches, dizziness, weakness, inability to sleep properly, inability to walk without support and failure to regain her memory. All these circumstances ineluctably demonstrate the seriousness of her condition, contrary to the claim of petitioner. More than that, it was also undisputed that private respondent was made to take her medication for life.

“A person’s disability may not manifest fully at one precise moment in time but rather over a period of time. It is possible that an injury which at first was considered to be temporary may later on become permanent or one who suffers a partial disability becomes totally and permanently disabled from the same cause.”

In the same vein, this Court has ruled that “disability should not be understood more on its medical significance but on the loss of earning capacity.” Private respondent’s persistent illness indeed forced her to retire early which, in turn, resulted in her unemployment, and loss of earning capacity.

---


2Ibid.
Judicial precedents likewise show that disability is intimately related to one’s earning capacity. It has been a consistent pronouncement of this Court that “permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of a similar nature that she was trained for or accustomed to perform, or any kind of work which a person of her mentality and attainment could do.”¹ “It does not mean state of absolute helplessness, but inability to do substantially all material acts necessary to prosecution of an occupation for remuneration or profit in substantially customary and usual manner.”²

The Court construed permanent total disability as the “lack of ability to follow continuously some substantially gainful occupation without serious discomfort or pain and without material injury or danger to life.”³ It is, therefore, clear from established jurisprudence that the loss of one’s earning capacity determines the disability compensation one is entitled to.

It is also important to note that private respondent was constrained to retire at the age of 62 years because of her impaired physical condition. This, again, is another indication that her disability is permanent and total.

There is nothing in the law that prohibits the conversion of permanent partial disability benefit to permanent total disability benefit if it is shown that the employee’s ailment qualifies as such. Furthermore, the grant of permanent total disability benefit to an employee who was initially compensated for permanent partial disability but is found to be suffering from permanent total disability would not be prejudicial to the government to give it reason to deny the claim.⁴

7. IS EARNING CAPACITY “IMPAIRED” IF EARNING IS HIGHER AFTER THE INJURY?

_Central Azucarera Don Pedro vs. C. de Leon, in his capacity as Workmen’s Compensation Commissioner and L. Alla, No. L-10036, December 28, 1957 —_

The claimant laborer was granted benefit for temporary total disability. When the disability ceased, he found a new employment at a higher salary. Meantime, he filed a claim for permanent partial disability but the ECC denied the claim because in fact his salary was higher than before.

**Ruling:** The alleged new employment does not appear to have been duly established and, indeed, _even supposing it to be true, that fact would not in itself necessarily affect the laborer’s claim for compensation for a permanent partial disability. An injured laborer’s...

---

¹Bejerano vs. Employees’ Compensation Commission, G.R. No. 84777, January 30, 1992, 205 SCRA 598, citing Tolosa vs. ECC, 136 SCRA 335 in turn citing Landicho vs. WCC, _et al._, Marcelino vs. 7-Up Bottling Co. of the Phils., _et al._, 47 SCRA 343 [1972].
²Bejerano vs. ECC, _supra_.
³Bejerano vs. ECC, _supra_, citing Medina vs. ECC, 128 SCRA 349 [1984].
⁴Austria vs. Court of Appeals and Employees’ Compensation Commission [Social Security System], G.R. No. 146636, August 12, 2002.
incapacity for work is not to be measured solely by the wages he receives, or his earning, after the injury, since the amount of such wages or earnings may be affected by various extraneous matters or factors.\(^1\)

As noted in the American Law Reports, “there are a number of possible explanations of the fact that an employee who receives higher wages after an injury than what he earned before may still have suffered an impairment of earning capacity. Thus, it may indicate: (1) that the employee is the beneficiary of a mere gratuity and does not actually ‘earn’ his wages; (2) that the employee, by education and training, has fitted himself for more remunerative employment; (3) that the employee works longer hours than he did before his injury, his hourly remuneration having increased; (4) that a general change in wage scales has taken place for the type of work or in the industry; (5) that the new wages are intended as an inducement to him to refrain from pursuing a claim; (6) that the employee, before his injury, was younger or a minor; (7) that the employment in which the employee was employed after the injury was of uncertain duration.”\(^2\)

---

8. SHOULD PREVIOUS COMPENSATION FOR LESSER DISABILITY BE DEDUCTED?

In *Knoxville Knitting Mills vs. Galyon*, 30 A.L.R. 976, the employee, who had lost three fingers of his left hand, nineteen years before he entered the service of the employer involved in the case, lost his left hand in an industrial accident while performing his duties as the latter’s employee. He sought to recover for the loss of the hand, but the employer contended that the value of the three fingers, previously lost, should be deducted. After declaring that the apportionment statute clearly prohibited the deduction, the Tennessee Supreme Court further declared that independently of such provision, the weight of authority is against such deduction.

Our Supreme Court, speaking through Chief Justice Concepcion in a 1967 case, similarly ruled relative to the question of deductions in a compensation case. Said Chief Justice Concepcion:

As regards the question whether the compensation paid by petitioner in 1936 on account of the amputation of respondent’s left foot, below the knee, should be deducted from the compensation due for the disability resulting from the amputation of the left leg, above the knee, in 1957, it is well-settled that no such deduction can be made, unless the law so provides, and there is no such provision in our laws. We are aware of the fact that, instead of helping the injured employee, this view may sometimes be detrimental to him, in that it may deter the employer from reengaging his services after the first accident. But the language of the law is such as to give us no discretion in the matter. Pursuant to Section 17 of Act 3428,

\(^1\)58 Am. Jur. 780-781.
\(^2\)149 A.L.R. 438, citing cases.
as amended, in the case of disability which is partial in its nature but permanent in its duration and the loss of a leg, to which “amputation at or above the leg shall be considered as equivalent” belongs to this class — “the compensation shall be fifty per centum of the average weekly wages” for “one hundred and ninety weeks.” We cannot, by judicial fiat, qualify this provision by, in effect, adding thereto the words “less the compensation formerly paid for the previous loss of a foot” — to which “amputation between the knee and ankle shall be considered” as equivalent — or “fifty per centum of the average weekly wages” for “one hundred thirty weeks.”

“To offset the undue hardship or injustice that may, at times, be caused to the employer, in consequence of the strict or literal interpretation of the law, the following alternatives have been resorted to in some jurisdictions, namely: (a) an insurance secured by the employer to protect him or his business from the resulting loss, or (b) an amendment of the law, to provide for a deduction of the compensation formerly paid, otherwise known as ‘apportionment statute.’ In either case, courts of justice are limited to the application of the law, without opening themselves to the charge of indulging in judicial legislation or of encroaching upon the political field reserved by the Constitution for Congress and, sometimes, for the Executive.” (Phil. Iron Mines, Inc. vs. Tomas Abar, WCC, L-22555, October 31, 1967, 21 SCRA 652)

**Note:** But see Article 203 regarding “second injuries.”
Chapter VII
DEATH BENEFITS

Overview/Key Questions:

1. In case an SIF-covered employee dies, who are the beneficiaries of the death benefits?
2. If there are competing claimants, who resolves the dispute?

ART. 200 [194]. DEATH

(a) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of the covered employee under this Title an amount equivalent to his monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution, except as provided for in paragraph (j) of Article 167 hereof: Provided, however, That the monthly income benefit shall be guaranteed for five years: Provided, further, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly income benefit but not to exceed sixty months: Provided, finally, That the minimum death benefit shall not be less than fifteen thousand pesos. (As amended by Sec. 4, P.D. No. 1921.)

(b) Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of a covered employee who is under permanent total disability under this Title, eighty percent of the monthly income benefit and his dependents to the dependents pension; Provided, That the marriage must have been validly subsisting at the time of disability: Provided, further, That if he has no primary beneficiary, the System shall pay to his secondary beneficiaries the monthly pension excluding the dependents pension, of the remaining balance of the five-year guaranteed period: Provided, finally, That the minimum death benefit shall not be less than fifteen thousand pesos. (As amended by Sec. 4, P.D. No. 1921.)

(c) The monthly income benefit provided herein shall be the new amount of the monthly income benefit for the surviving beneficiaries upon the approval of this decree. (As amended by Sec. 9, P.D. No. 1368.)
(d) Funeral Benefit. — A funeral benefit of Three Thousand Pesos (P3,000.00) shall be paid upon the death of a covered employee or permanently totally disabled pensioner. (As amended by Sec. 3, E.O. 179.)

COMMENTS AND CASES

The formula for death benefit under paragraph (a) of this Article is the same as that for permanent total disability or for permanent partial disability. It is an “amount equivalent to his monthly income benefit, plus ten percent thereof for each dependent child....”

Who are dependents? What is dependency?

1. DEPENDENTS AND DEPENDENCY

   Article 173(i) [as renumbered] enumerates the persons considered as “dependents.”

   Dependency does not mean absolute dependency for the necessities of life, but rather, that the claimant looked up to and relied on the contribution of the decedent in whole or in part, as a means of supporting and maintaining herself in accordance with her station in life. A person may be dependent, according to this view, although able to maintain herself without any assistance from the decedent.1

   In one case, the employee was killed by thugs while engaged in the performance of his duties as driver of one of petitioner’s taxicabs. Before his death he contributed various sums of money out of his earnings to help support his family. Of the 18 members in the family, only the deceased and a sister were of major age and the latter was still studying. The father of the deceased was earning P300 as an accountant. Petitioner raised the issue of whether the mother (later substituted by the father) was properly a “dependent” of the deceased.

   In holding that the parents were “dependents” notwithstanding the substantial income of the father, the Court of Appeals, relying extensively on American authorities, said:

   The test of dependency is not merely whether the contributions were necessary to bare subsistence; dependency may exist although the dependent could have subsisted without the assistance he received, if such contributions were relied on by claimant for his means of living as determined by his position in life. So, it is immaterial that claimant could have so reduced his living expenses that he could have been supported independently of the earnings of the employee. One need not be actually a part of the deceased employee’s household in order to be a dependent. There may be dependency notwithstanding the employee did not work steadily or was absent from the home at the time of his accidental death, and notwithstanding the employee’s unlawful acts or his statement in his

---

1Castillo vs. Cadwallader, G.R. No. 41261, September 26, 1934.
application for employment that he had no dependents. (Malate Taxicab vs. Del Villar, G.R. No. L-7489, February 29, 1956)

In a nutshell, the rule is that support furnished to the claimant coupled with a reliance thereon establishes dependency. The test of dependency is not whether the claimants could support life without contributions, but whether they depend on such contributions as part of their income or means of living.

2. **SPOUSE AS DEPENDENT**

   The status of dependency of a spouse arises from the fact that a marriage exists. This status subsists even if the spouse is “gainfully employed,” so long as there is still financial need for support.

   A showing of marital status is essential. But as long as there is any reasonable basis for upholding the existence of the marriage, the Supreme Court has tended to sustain the Commission’s finding of the relation.

   In a 1970 case, the novel question was raised as to whether the widow of deceased employee whose marriage occurred after the accident, as well as the posthumous child, could be considered dependents within the meaning of the Workmen’s Compensation Act.

   In this case, when the decedent met the vehicular accident on September 13, 1961, the claimant-widow was not yet married to the decedent although they had already been living together as husband and wife for the previous three months. However, on the day following the accident, they were lawfully wedded in a marriage ceremony solemnized at San Pedro Hospital in Davao City where the deceased was hospitalized up to his death on September 29, 1961. The claimant widow gave birth on April 8, 1962 to the posthumous daughter of the deceased.

   The Court ruled:

   It is true that the marriage took place after the fatal accident but there was no question that at the time of his death she was married to him. She, therefore, comes entirely within the letter of the law. Nor can there be any doubt that the child, Raquel, also falls within the words the Act employs. As set forth in the decision, while the marriage took place on Sept. 14, 1961, the widow and the deceased had already been living together as husband and wife the preceding three months. The child born of such relationship, later legalized, is, as made clear in the decision, the posthumous daughter of the deceased. (Vda. de Macabenta vs. Davao Stevedore Terminal Company, G.R. No. L-27489, April 30, 1970)

---

1Pelayo vs. Lauron, 22 Phil. 453.
3. **TWO WIVES AS CLAIMANTS**

The defunct Workmen’s Compensation Commission, as does the present ECC, is empowered by law to resolve disputes in compensation claims. If there are two women claiming as lawful wives of the deceased, the Commission must resolve the dispute. Said the Court:

The Commission’s determination as to who of the two claimants is the legal wife of the decedent and as such a dependent entitled under Section 9 of the Act to the compensation is a legal question that is subject to appeal in a proper case to this Court for final determination. The hearing referee is therefore enjoined to receive all evidence from the complainants as to their respective claimed status as dependent wife of the decedent, and to resolve the issue, subject to the Commission’s decision on review, conformably to the provisions of substantive and adjective law.

It should be noted, however, that the Commission may, in accordance with Section 8 of the Act, act as referee and arbitrator between the two claimants and help them reach a mutually acceptable compromise settlement of allotting the compensation among themselves and their dependent children, if any, in order to avoid unnecessary expense, delay and litigation between them. *(Samar Mining Co., Inc. vs. Workmen’s Compensation Commission, G.R. Nos. L-29938-39, March 31, 1971)*

In the same *Samar Mining case*, the Court reiterated the position the Court had earlier taken in a situation where two wives appeared as claimants:

It should be borne in mind that in cases where the second wife had in good faith contracted marriage with the decedent notwithstanding the subsistence of his marriage with the first wife, the Court has generally sought and applied a just and equitable solution and division of the decedent’s estate among the two innocent surviving parties. *(See Consuegra vs. GSIS, G.R. No. L-28093, January 30, 1971 and cases cited.)*

3.1 **Two Muslim Wives**

*Akmad vs. GSIS, ECC Case No. 4897, promulgated on May 9, 1990 —*

**Facts:** A. Akmad, the deceased, was an officer of the Philippine Army when he succumbed to cardio-respiratory arrest on May 6, 1985. Finding the claim compensable, the Government Service Insurance System awarded the benefits due to the deceased’s first wife and her five minor children. But the second wife contended that she and her minor child should be paid half of the benefits due, by virtue of the provisions of P.D. No. 1083 (Code of Muslim Personal Laws) which took effect on February 4, 1977. Article 27 of this Decree states:

Notwithstanding the risk of Islamic Law permitting a Muslim to have more than one wife but not more than four at a time, no Muslim male can have more than one wife unless he can deal with equal companionship and just treatment as enjoined by Islamic Law and only in exceptional cases.
To substantiate her claim, the second wife submitted a copy of the decision of the Judge Advocate General’s Office, awarding the posthumous separation pension from the AFP to the herein named wives of the deceased with their children under an equal sharing scheme.

The GSIS asserted that the first marriage of a Muslim male should be considered the valid marriage for purposes of adjudicating the benefits provided under the compensation law. It views the Muslim Code as some sort of a class legislation favoring only a group of individuals because a Christian male who contracts more than one marriage does not so enjoy the same rights under existing laws.

According to the GSIS, P.D. No. 626, as amended, is a social legislation which specifically enumerates those entitled to the benefits. It emphasizes that the law mentions the legitimate spouse as one of the primary beneficiaries of the deceased employee. GSIS further contends that the surviving spouse of the deceased employee from the first legal marriage is his legitimate spouse.

The other wife, however, contests the decision of the GSIS, believing in good faith that under Islamic Law, she too, is equally entitled to the benefits enjoyed by the first wife as she also considers herself a primary beneficiary of her deceased husband.

The case was elevated to the ECC.

**Ruling:** A careful study of the circumstances of the case led us to conclude that the second wife is also entitled to compensation benefits under P.D. No. 626.

Note should be taken that the law permits a Muslim male to have more than one wife but not more than four at a time, provided he can deal with them with equal companionship and just treatment as enjoined by the Islamic Law. Hence, appellant herein is entitled to the benefits being enjoyed by the first wife considering that under the Muslim Law, she is also considered a primary beneficiary.

Thus, the Employees’ Compensation Commission, on March 23, 1990, approved the Suppletory Rules with regard to the distribution of the monthly income benefits to the qualified beneficiaries, as follows:

1. Monthly income benefits shall be shared equally by all primary beneficiaries including dependent children who were not considered in the determination of the dependent pension. Upon emancipation or otherwise disqualification to entitlement to the dependent pension of a dependent child, only ten percent (10%) shall be deducted from the benefits and the remaining income benefits shall once again be divided equally by the qualified primary beneficiaries.

2. If there are no primary beneficiaries, their secondary beneficiaries shall also share equally in the monthly income benefits.

Justice and equity, therefore, demand that appellant herein and her minor child shall be equally entitled to the benefits provided for under the law.
4. **SEPARATED SPOUSE**

Under the ECC rules implementing the employees’ compensation program, a spouse, to be considered a beneficiary, must be legitimate and living with the employee at the time of the latter’s death. By an ECC resolution in September 1997 a surviving spouse who is legally separated or separated de facto from the deceased employee may be held entitled to compensation benefits if the separation occurred owing to any of the following circumstances.

1. Refusal of the covered employee to continue living with the surviving spouse; or the employee’s abandonment of the said spouse, without justifiable or valid cause;
2. Attempt of the covered employee against the life of the surviving spouse, common child/children of the spouse;
3. Commission of an act of sexual abuse against the surviving spouse, common child/children or child/children of the spouse by the covered employee;
4. The covered employee’s recurrent commission of physical violence, or grossly abusive conduct, against the surviving spouse, common child/children or child/children of the spouse;
5. The covered employee’s infliction of physical violence, or imposition of moral duress, to compel the surviving spouse, common child/children or child/children of the spouse to change their religious or political affiliation;
6. Attempt of the covered employee to corrupt, or induce the surviving spouse, common child/children or child/children of the spouse to engage in prostitution, or to make them connive with the employee in such an act of corruption or inducement;
7. Drug addiction or habitual alcoholism of the covered employee;
8. Lesbianism or homosexuality of the covered employee;
9. Contraction of bigamous marriage by the covered employee, whether in the Philippines or abroad;
10. Sexual infidelity or perversion of the covered employee;
11. The covered employee’s act of allowing the surviving spouse, common child/children or child/children of the spouse to be subjected to acts of lasciviousness; and
12. The covered employee’s contraction of serious, sexually transmitted disease extra-maritally.
5. **PARENTS AS DEPENDENTS**

If the deceased employee is the adulterous child of the wife, the husband cannot claim as a dependent of said deceased employee, in the same manner that he is not duty-bound to support said deceased employee.¹

Since abandonment of the child by the parent is cause for the ceasing of the obligation of the former to support the latter, no matter how financially desperate is the situation of said parent, it follows that he cannot claim as a dependent in a compensation case where the deceased employee is an abandoned child. This fact may be interposed as a defense by the respondent-employer² or by the System under P.D. No. 626.

6. **DEATH BENEFIT AND BENEFICIARIES**

Death benefits are paid in the form of cash monthly pension:

a. for life to the primary beneficiaries, guaranteed for five years;

b. for not more than 60 months to the secondary beneficiaries in case there are no primary beneficiaries;

c. in no case shall the total benefit be less than P15,000.

The beneficiaries are:

1. **Primary beneficiaries:**
   a. Dependent spouse until he/she remarries;
   b. Dependent children (legitimate, legitimated, natural-born, or legally adopted).

2. **Secondary beneficiaries:**
   a. Illegitimate children and legitimate descendants;
   b. Parents, grandparents, grandchildren.

The amount of income benefits shall be equivalent to the monthly income benefits under PTD and PPD benefits.

Under ECC rules, the death benefit shall accrue to the Employees’ Compensation Fund if the deceased employee has no beneficiaries at the time of his death.

7. **DEATH BENEFIT AFTER RETIREMENT**

*Manuzon vs. ECC, G.R. No. 88573, June 25, 1990 —*

Article 194(b) [now 200] of Presidential Decree No. 626, as amended provides:

Under such regulations as the Commission may approve, the System shall pay to the primary beneficiaries upon the death of a covered employee who is under permanent total disability under this Title, eighty percent of the monthly income benefit and his dependents to the dependents’ pension:

Provided, That the marriage must have been validly subsisting at the time of disability x x x Provided, finally, that the minimum death benefit shall not be less than Fifteen thousand pesos.

Generally, the term “covered employees” refers to an employee who at the time of his death is still an employee covered by the Government Service Insurance System. (Sec. 4[b], Presidential Decree 626, as amended)

On the other hand, the implementing rules and regulations of the Employees’ Compensation Commission states that to be entitled to death benefits, the employee need not be an actual employee of the public or private sector at the time of his death; he can be a retired employee whose retirement was brought about by permanent disability.

The rules are as follows:

“Sec. 3(a), Rule XIII. x x x If the employee has been receiving income benefits for permanent total disability at the time of his death, the primary beneficiaries shall be paid the monthly income benefit equivalent to eighty percent plus the dependent’s pension equivalent to 10 percent thereof for every dependent child but not exceeding five counted from the youngest and without substitution.

“Sec. 3(b), Rule XIII. x x x If the employee has been receiving monthly income benefit for permanent total disability at the time of death, the secondary beneficiaries shall be paid the monthly pension excluding the dependent’s pension of the remaining balance of the five-year guaranteed period.

Facts: During his employment, the deceased suffered from a stroke, a cardiovascular accident. It was caused by “thrombosis,” or blockage of arteries. He had to retire because of paralysis caused by that cardiovascular attack when he was an assistant professor. He died after his compulsory retirement due to total disability, caused by cardiovascular attack or myocardial infarction.

The Employees’ Compensation Commission denied petitioner’s claim because the cause of death, myocardial infarction, came four and a half years after his retirement caused by work-oriented paralysis arising from cerebrovascular attack. The reason of the Commission is that his death was not caused by a work-oriented cause.

Ruling: The cause of his compulsory retirement due to paralysis arising from cardiovascular accident is closely related to the cause of his death, which was also a cardiovascular attack or myocardial infarction. That heart disease developed when he was still working as a professor. It caused his paralysis and his total permanent disability. The disease was work-oriented because of the nature of his employment as a professor. The same disease eventually caused his death, contrary to the conclusion of both the GSIS and the Employees’ Compensation Commission. The heirs of the deceased are entitled to the benefits they are claiming.

The Court is aware that death benefits must be granted to the primary beneficiaries of the decedent to help the family of a permanent and totally disabled person who was so disabled because of causes that are work-oriented. The rule applies all the more when the disabled person later dies because of the same cause or related cause.
Article 194(b) applies to a retired person as contemplated in Article 194(b) which allows for funeral benefits upon the death of a covered employee or permanently totally disabled pensioner. [Article 194 is renumbered as Article 200.]

8. **BENEFITS FOR DEATH OF PENSIONER**

   Under paragraph (b) of Article 194 [now 200], death benefit shall be paid to the beneficiaries if an employee, while receiving permanent total disability benefit, dies. The death benefit here is lower than that under paragraph (a). Also it should be noted that this provision does not apply to cases where a member under permanent partial disability dies during the period he is receiving monthly income benefits for permanent partial disability. This is reiterated in a resolution adopted on March 23, 1990 by the Employees’ Compensation Commission.¹

9. **A BURNING ISSUE: IS THE PERIOD OF ENTITLEMENT FIVE YEARS ONLY OR EVEN BEYOND?**

   Under the first paragraph of Article 194, the death benefit is “guaranteed for five years.” The ECC Amended Rules, however, state (in Rule XIII, Sec. 2) that the payment of said benefit shall begin at the month of death “and shall continue to be paid for as long as the beneficiaries are entitled thereto.” It further states that after the guaranteed five years “the beneficiaries shall be paid the monthly income benefit for as long as they are entitled thereto.”

   Paying the death benefit beyond the 5-year guaranteed period costs the GSIS more than 400 million pesos per year. This prompted the GSIS President on 30 July 2006 to seek amendment or clarification of the ECC Rule quoted above. Some say the questioned ECC Rule was ultra vires; others contend that it was only wrongly understood. Meantime, the GSIS President has suspended the payment of death benefit beyond five years from death of a covered employee.

   As of mid-2009, the ECC has not amended or clarified the disputed Rule. Meanwhile, the directive of the GSIS president is still in effect.

¹See Annex “D” of the ECC Rules in the Implementing Rules of Book IV.
Chapter VIII
PROVISIONS COMMON TO INCOME BENEFITS

Overview/Key Questions:

Box 28
1. What are the liabilities of an employer who is delinquent in his contributions to the S.I.F.?
2. What is the prescriptive period for EC claims?

ART. 201 [195]. *RELATIONSHIP AND DEPENDENCY*
All questions of relationship and dependency shall be determined as of the time of death.

ART. 202 [196]. *DELINQUENT CONTRIBUTIONS*
(a) An employer who is delinquent in his contribution shall be liable to the System for the benefits which may have been paid by the System to his employees or their dependents, and any benefit and expenses to which such employer is liable shall constitute a lien on all his property, real or personal which is hereby declared to be preferred to any credit, except taxes. The payment by the employer of the lump sum equivalent of such liability shall absolve him from the payment of the delinquent contribution and penalty thereon with respect to the employee concerned.

(b) Failure or refusal of the employer to pay or remit the contributions herein prescribed shall not prejudice the right of the employee or his dependents to the benefits under this Title. If the sickness, injury, disability or death occurs before the System receives any report of the name of his employee, the employer shall be liable to the System for the lump sum equivalent to the benefits to which such employee or his dependents may be entitled.

ART. 203 [197]. *SECOND INJURIES*
If any employee under permanent partial disability suffers another injury which results in a compensable disability greater than the previous injury, the State Insurance Fund shall be liable for the income benefit of the new disability: *Provided,* That if the new disability is related to the previous disability, the System shall be liable only for the difference in income benefits.
ART. 204 [198]. ASSIGNMENT OF BENEFITS

No claim for compensation under this Title is transferable, or liable to tax, attachment, garnishment, levy or seizure by or under any legal process whatsoever, either before or after receipt by the person or persons entitled thereto, except to pay any debt of the employee to the System.

COMMENTS

BENEFITS NOT TRANSFERABLE

A provision of a compensation act making compensation unassignable and exempt from creditor’s claims has been held within the police power of the State.¹

Article 204 is intended to secure the right of the injured worker, or his surviving dependents in case of death, to survival. To allow the transfer or assignment of a claim for compensation in favor of creditors to satisfy or offset existing debts and to subject all compensation or rights to compensation to attachment, garnishment and execution will defeat the very purposes of the law as a social legislation.

ART. 205 [199]. EARNED BENEFITS

Income benefits shall, with respect to any period of disability, be payable in accordance with this Title to an employee who is entitled to receive wages, salaries or allowance for holidays, vacation or sick leaves, and any award of benefit under a collective bargaining or other agreement.

ART. 206 [200]. SAFETY DEVICES

In case the employee’s injury or death was due to the failure of the employer to comply with any law, or to install and maintain safety devices, or take other precautions for the prevention of injury, said employer shall pay to the State Insurance Fund a penalty of twenty-five percent of the lump sum equivalent of the income benefit payable by the System to the employee. All employers, especially those who should have been paying a rate of contribution higher than required of them under this Title, are enjoined to undertake and strengthen measures for the occupational health and safety of their employees.

ART. 207 [201]. PRESCRIPTIVE PERIOD

No claim for compensation shall be given due course unless said claim is filed with the System within three years from the time the cause of action accrued. (As amended by Sec. 5, P.D. No. 1921.)

¹99 C.J.S. 72.
1. PERIOD TO FILE CLAIM: THREE YEARS OR TEN?

Regarding the period within which to file an employees' compensation claim, there appears to be a codal conflict. Under this Article 207, the claim must be filed within three years from accrual of the cause of action. But under Article 1144 of the Civil Code, the prescriptive period is ten years.

The High Court has ruled that the 10-year period applies. “The liability of the employer to pay compensation under the Workmen’s Compensation Act is an obligation created by law, and under paragraph (2) of Article 1144 of the Civil Code of the Philippines, the action to enforce this obligation can be brought within ten years from the time the right of action accrues.”

In the Sanico case, below, the Court of Appeals itself attempted to reconcile the two articles, but the Supreme Court viewed the question differently. The Court saw no need to resolve the “seeming conflict.” The Supreme Court ruled that the claim was filed within three years as required by Article 201 (now 207) because the three years have to be counted from the time the employee lost his earning capacity, not from the time the illness was discovered.

**Employees’ Compensation Commission (Social Security System) vs. E. Sanico, respondent, G.R. No. 134028, December 17, 1999, En Banc —**

**Facts:** The claimant employee worked at John Gotamco and Sons as “wood filer” from 1986 until he was separated from employment on 31 December 1991 due to his illness. His medical evaluation report, dated 31 September 1991, showed that he was suffering from pulmonary tuberculosis (PTB), diagnostically confirmed by chest x-rays.

On 9 November 1994, he filed with the SSS a claim for compensation benefits under P.D. No. 626, as amended. The SSS denied the claim on the ground of prescription because under Article 201 (now 207) of the Labor Code, a claim should be filed with the System three (3) years from the time the cause of action accrued. The SSS reckoned the three-year prescriptive period on 21 September 1991 when his PTB first became manifest. When he filed his claim in November 1994, the claim had allegedly already prescribed.

On appeal, ECC affirmed the decision of the SSS prompting the claimant to elevate the case to the CA. The CA reversed ECC’s decision. The CA reconciled Article 201(207) of the Labor Code with Article 1144(2) of the Civil Code. Under the latter provision of law, an action upon an obligation created by law must be filed within ten (10) years from the time the cause of action accrues. Thus, while the claimant’s illness became manifest in September 1991, the filing of his compensation claim on 9 November 1994 was within, even long before, the prescriptive period.

---

Had the claim for compensation benefit already prescribed when it was filed on 9 November 1994?

**Ruling:** We rule in favor of [the claimant].

The prescriptive period for filing compensation claims should be reckoned from the time the employee lost his earning capacity, i.e., terminated from employment, due to his illness and not when the same first became manifest. Indeed, a person’s disability might not emerge at one precise moment in time but rather over a period of time. In this case, private respondent’s employment was terminated on 31 December 1991 due to his illness; he filed his claim for compensation benefits on 9 November 1994. Accordingly, private respondent’s claim was filed within the three-year prescriptive period under Article 201 of the Labor Code.

In this light, the Court finds no need at this time to rule on the seeming conflict between the prescriptive period for filing claims for compensation benefits under Article 201 of the Labor Code and Article 1144(2) of the Civil Code.

The ruling in *Sanico* appears to be a reiteration of earlier pronouncements. In 1965 and 1940, the High Court already said:

> The one-year [now three-year] period for the filing of a claim for compensation shall be counted from the date when the disease or illness becomes compensable, that is, from the date the employee becomes physically disabled to work. (*Hernandez vs. WCC & MERALCO, G.R. No. L-20202, May 31, 1965*)

> Where the injury to the claimant at the time of the accident was apparently unimportant and, therefore, did not warrant the filing of a claim for compensation until it became evident that he was in imminent danger of losing the sight of the injured eye, he could not exercise his right to claim compensation within the period fixed by law. This right accrued and became available when he finally learned that he lost the sight of one of his eyes. (*Phil. Manuf. Co. vs. Nabor, G.R. No. 47563, November 25, 1940 [70 Phil. 650]*)

2. **CONSTRUCTIVE FILING**

Although the Code requires the claim to be made in writing, the following acts have been held as equivalent to filing a claim with the employer as required by the Workmen’s Compensation Act:

1. A verbal request for medical and hospitalization expenses made to the corporate employer through its treasurer.¹

2. Request for financial aid in behalf of the family of the deceased worker made by the president of his union.²

---


Under Resolution No. 2127 of the ECC, a claim under P.D. No. 626 is deemed to have been filed for purposes of determining the applicability of the prescriptive period under the following circumstances:

1. When the System itself receives from the concerned employee, or his duly authorized representatives, or his employer, a written notice giving information on the occurrence of a certain contingency, which may be held compensable under any of the laws that the System administers;

2. When a pertinent and authentic document evidencing a particular contingency that befalls an employee is submitted to and received by the System, for the purpose of initiating payment of whatever benefits that may duly accrue to the employee, in accordance with any of the laws that the System administers; and

3. When the concerned employee, or any of his legal beneficiaries, or duly authorized representative/s, files a formal claim with the System for life, retirement and/or other insurance benefits because of disability or death, which may be also held compensable under the new Employees’ Compensation Program;

Provided, however, That in all these three cases, the claimant shall be required, if necessary, to submit additional supporting documents or papers, to establish compensability; otherwise, noncompliance therewith for an unreasonably long period of time shall be deemed as abandonment of claims and any subsequent claims shall not be entertained on the ground of laches.

It should be noted, however, that the ECC Resolution on constructive filing does not apply to contingencies whose causes of action accrued on or after June 1, 1984.1

2.1 Mailing Date of Claim Considered Date of Filing

One of the rules promulgated by the Supreme Court is that the date of mailing of motions, pleadings, or any other papers, as shown by the post-office registry receipts, shall be considered as the date of their filing. Applying this principle, it was held that the admitted mailing date of the claim for compensation should be considered as the date of its filing with the defendant, in view of the further fact that the defendant admits having received the claim.2

Suanes vs. Workmen’s Compensation Commission, G.R. No. 42808, January 31, 1989 —

Facts: The employee died on June 21, 1973. The claim for compensation was filed on March 5, 1975. The claim, however, designated the wrong employer, who was impeded about 12 years later.

---

1See ECC Rules, Annex D, in the appendix to this Book.
2Cañete vs. Insular Lumber Co., Inc., G.R. No. 42175, July 10, 1935, 61 Phil. 592
**Ruling:** The claim may not be so cavalierly defeated.

Ordinarily, the statutory right to compensation under the Workmen’s Compensation Act prescribes in ten (10) years counted from the nature of accrual of the claim, e.g., from the time of the death of the employee. But where the original claim designated the wrong employer, given the insistent demands of substantial justice, such original claim should be regarded as having effectively tolled the running of the prescriptive period. The defense of prescription must therefore be rejected.

In line with this ruling, the ECC has laid down the rule that “notice in any form by the employee or employer to the System of any compensable contingency within three years from accrual of the cause of action suspends the running of the prescriptive period.”

**2.2 Period to File Claim of Minors and the Mentally Deficient**

The action to recover compensation under the former WCA or under the present EC law is based on liability created by statute, and prescribes in ten (10) years under the New Civil Code. This prescriptive period goes for the minors as it is for the surviving parents.

With respect to the minors who have no legal guardian, the prescriptive period of ten (10) years begins to run from the time they reach the age of majority. As for the *non compos mentis*, prescription begins to run from the moment a legal guardian has been appointed.

In the light of the provisions of Article 225 of the Family Code, the father and the mother act as the “guardian or next friend” of the mentally incapacitated child or children, or of the dependent minor child or children, and, without the necessity of securing a judicial appointment as legal guardian, can file a claim for compensation under the Workmen’s Compensation Act and under the present Law on Employees’ Compensation, for himself or herself and in behalf of those *non sui juris*.

**ART. 208 [202]. ERRONEOUS PAYMENT**

(a) If the System in good faith pays income benefit to a dependent who is inferior in right to another dependent or with whom another dependent is entitled to share, such payment shall discharge the System from liability, unless and until such other dependent notifies the System of his claim prior to the payments.

(b) In case of doubt as to the respective rights of rival claimants, the System is hereby empowered to determine as to whom payments should be made in accordance with such regulations as the Commission may approve. If the money is payable to a minor or incompetent, payment shall be made by the System to such person or persons as it may consider to be best qualified to take care and dispose of the minor’s or incompetent’s property for his benefit.

---

1ECC Rules, Annex D. See appendix of this Book.
ART. 209 [203]. PROHIBITION

No agent, attorney or other person pursuing or in charge of the preparation or filing of any claim for benefit under this Title shall demand or charge for his services any fee, and any stipulation to the contrary shall be null and void. The retention or deduction of any amount from any benefit granted under this Title for the payment of fees of such services is prohibited. Violation of any provision of this Article shall be punished by a fine of not less than five hundred pesos nor more than five thousand pesos, or imprisonment for not less than six months nor more than one year, or both, at the discretion of the court.

COMMENTS

1. ATTORNEY’S FEES

Article 209 says that “no... attorney... shall demand or charge for his services any fee...” Does this mean no one pays the lawyer’s services? The Supreme Court interprets:

A close examination of the... provision reveals that the intent of the law is to free the award from any liability or charge so that claimant may enjoy and use it to the fullest. It is the claimant who is exempt from liability for attorney’s fees. The defaulting... government agency remains liable for attorney’s fees because it compelled the claimant to employ the services of counsel by unjustly refusing to recognize the validity of the claim of petitioner. This actually is the rationale behind the prohibition. Nothing is wrong with the court’s award of attorney’s fees which is separate and distinct from the other benefits awarded. Besides, in the instant case, the participation of petitioners counsel was not limited to the preparation or filing of the claim but in appealing petitioner’s case before this Court necessitating submission of pleadings to establish his cause of action and to rebut or refute the arguments of herein respondents. Fairness dictates that the counsel should receive compensation for his claimants, majority of whom are not learned in the intricacies of the law, to get good legal service. To deny counsel compensation for his professional services would amount to deprivation of property without due process of law. (L. G. Cristobal vs. ECC, et al., G.R. No. L-49280, February 26, 1981)

2. PARTIES

It is not fatal to a claim for compensation that the Government Service Insurance System was not impleaded as a party respondent. The Supreme Court has ruled that the Government Service Insurance System is a proper party in employees’ compensation cases as the ultimate implementing agency of the Employees’ Compensation Commission. The law and the rules refer to
said System in all aspects of employee compensation including enforcement of decisions.¹

**ART. 210 [204]. EXEMPTION FROM LEVY, TAX, ETC.**

All laws to the contrary notwithstanding, the State Insurance Fund and all its assets shall be exempt from any tax, fee, charge, levy, or customs or import duty, and no law hereafter enacted shall apply to the State Insurance Fund unless it is provided therein that the same is applicable by expressly stating its name.

---
Chapter IX
RECORDS, REPORTS AND PENAL PROVISIONS

Overview/Key Questions:

1. What steps need to be observed in filing and pursuing an EC claim?
2. Under what circumstances may the notice to the employer be dispensed with?

ART. 211 [205]. RECORD OF DEATH OR DISABILITY

(a) All employers shall keep a logbook to record chronologically the sickness, injury or death of their employees, setting forth therein their names, dates and places of the contingency, nature of the contingency and absences. Entries in the logbook shall be made within five days from notice or knowledge of the occurrence of the contingency. Within five days after entry in the logbook, the employer shall report to the System only those contingencies he deems to be work-connected.

(b) All entries in the employer’s logbook shall be made by the employer or any of his authorized officials after verification of the contingencies or the employee’s absences for a period of a day or more. Upon request by the System, the employer shall furnish the necessary certificate regarding information about any contingency appearing in the logbook, citing the entry number, page number and date. Such logbook shall be made available for inspection to the duly authorized representatives of the System.

(c) Should any employer fail to record in the logbook an actual sickness, injury or death of any of his employees within the period prescribed herein, give false information or withhold material information already in his possession, he shall be held liable for fifty percent of the lump sum equivalent of the income benefit to which the employee may be found to be entitled, the payment of which shall accrue to the State Insurance Fund.

(d) In case of payment of benefits for any claim which is later determined to be fraudulent and the employer is found to be a party to the fraud, such employer shall reimburse the System the full amount of the compensation paid.
ART. 212 [206]. NOTICE OF SICKNESS, INJURY OR DEATH

Notice of sickness, injury or death shall be given to the employer by the employee or by his dependents or anybody on his behalf within five days from the occurrence of the contingency. No notice to the employer shall be required if the contingency is known to the employer or his agents or representatives.

ART. 213 [207]. PENAL PROVISIONS

(a) The penal provisions of Republic Act numbered eleven hundred sixty-one, as amended, and Commonwealth Act numbered one hundred eighty-six, as amended, with regard to the funds as are thereunder being paid to, collected or disbursed by the System, shall be applicable to the collection, administration and disbursement of the Fund under this Title. The penal provisions on coverage shall also be applicable.

(b) Any person, who for the purpose of securing entitlement to any benefit or payment under this Title or the issuance of any certificate or document for any purpose connected with this Title, whether for him or for some other person, commits fraud, collusion, falsification, misrepresentation of facts or any other kind of anomaly shall be punished with a fine of not less than Five hundred pesos nor more than Five hundred thousand pesos and an imprisonment for not less than six months nor more than one year, at the discretion of the court.

(c) If the act penalized by this Article is committed by any person who has been or is employed by the Commission or System, or a recidivist, the imprisonment shall not be less than one year; if committed by a lawyer, physician or other professional, he shall in addition to the penalty prescribed herein be disqualified from the practice of his profession; and if committed by any official, employee or personnel of the Commission, System or any government agency, he shall in addition to the penalty prescribed herein, be dismissed with prejudice to reemployment in the government service.

ART. 214 [208]. APPLICABILITY

This Title shall apply only to injury, sickness, disability or death occurring on or after January 1, 1975.

ART. 2151 [208-A]. REPEAL

1Previous article number 208-A is renumbered as 215 because Article 208 is renumbered as 214. Article 215 cannot be 214-A because Article 215 is not as subarticle of 214.

Likewise, 208-A was not a subarticle of 208. Article 208-A was numbered that way only because amendatory P.D. No. 1368 avoided renumbering of Article 209 and the rest.
HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS

All existing laws, Presidential Decrees and Letter of Instructions which are inconsistent with or contrary to this Decree, are hereby repealed: Provided, That, in the case of the GSIS, conditions for entitlement to benefits shall be governed by the Labor Code, as amended: Provided, however, That the formulas for computation of benefits, as well as the contribution base, shall be those provided for under Commonwealth Act numbered one hundred eighty-six, as amended by Presidential Decree No. 1146, plus twenty percent thereof. (As amended by Sec. 7, P.D. No. 1641)

COMMENTS AND CASES

1. NOTICE TO EMPLOYER

Under Article 206 [now 212] of the present law on Employees’ Compensation, it is required that the employee, his dependents or anybody on his behalf, should give the notice of sickness, injury or death to the employer within five (5) days from the occurrence of the contingency. The purpose is not only to establish the employee’s right to compensation, as no claim for compensation shall be given the employer, but also to enable the employer to comply with its duty under the Rules — that of entering the contingency in the logbook and of giving also due notice to the System if the injury, sickness or death is deemed work-connected.

The same Article 212 provides, however, that notice need not be given if the employer or his agent or representative is aware of the contingency that gives rise to the claim for compensation.

2. WHEN NOTICE TO EMPLOYER NOT NEEDED

Under ECC Resolution No. 2127 notice of injury, sickness or death of the employee need not be given to the employer in any of the following situations:

(1) When the employee suffers the contingency within the employer’s premises;

(2) When the employee officially files an application for leave of absence by reason of the contingency from which he suffers;

(3) When the employer provides medical services and/or medical supplies to the employee who suffers from the contingency; and

(4) When the employer can be reasonably presumed to have knowledge of the employee’s contingency, in view of the following circumstances:

   (4.1) The employee was performing an official function for the employer when the contingency occurred;

   (4.2) The employee’s contingency has been publicized through mass media outlets; or

   (4.3) The specific circumstances of the occurrence of the contingency
have been such that the employer can be reasonably presumed to have readily known it soon thereafter; and

(4.4) Any other circumstances that may give rise to a reasonable presumption that the employer has been aware of the contingency.

It has been held that the employer’s act of extending and paying for medical assistance suffices for and obviates the need to give the employer the notice required by law.\(^1\)

Delay or failure to give the employer notice of compensable illness or injury within the prescribed period does not bar a claim for compensation if it is shown that the latter, his agent or representative in fact knows of such injury or illness or that he suffered no damage by reason of such delay or lack of notice.\(^2\)

“Representatives” or “Agents” whose knowledge is deemed knowledge of their employers include the following:

(1) Project engineer in charge of the work\(^3\)
(2) Captain of the vessel in which the employee worked\(^4\)
(3) Foreman\(^5\)
(4) Assistant manager\(^6\)
(5) Superintendent of transport operation\(^7\)

“Damage” or “Prejudice” has been held to mean that the employer/System, by reason of the failure to receive the required notice, has been made less able to resist the claim. The usual forms of prejudice to the employer or his insurer by reason of the failure to give timely notice are the difficulty of the employer or insurer to procure evidence at a time remote from the injury, and failure of the employee to be treated medically promptly after the injury.\(^8\)

Indeed, time lost, occasioned by the failure or delay in the giving of notice is \textit{truth in flight} which makes it harder for the employer/System to master its own defense to defeat the claim. Nevertheless, if the employer or his insurer was not misled or prejudiced by the failure of the employee to give, or the delay in giving, the required notice of the injury, such failure or delay is excused, in which case the right to compensation is not barred.\(^9\)

\(^{1}\)Central Azucarrera Don Pedro vs. Workmen’s Compensation Commission, G.R. No. 29670, October 9, 1987.
\(^{2}\)Ibid.
\(^{4}\)Flores vs. Maritima, 57 Phil. 905.
\(^{5}\)MRR vs. WCC, G.R. No. L-19377, January 30, 1964.
\(^{6}\)Gagni vs. Luzon Brokerage, 40 O.G. 4020.
\(^{7}\)Libron vs. Binalbagan Estate, G.R. No. 41475, July 27, 1934.
\(^{8}\)100 C.J.S. 342.
\(^{9}\)Ibid.
3. EFFECT OF QUITCLAIM

*Philippine International Shipping Corp. vs. NLRC, et al., G.R. No. L-63535, May 27, 1985 —*

**Facts:** Samson filed a claim for disability compensation benefits against his former employer, the petitioner herein. The National Seamen’s Board, after hearing, ordered the employer to pay certain sum of money to Samson. The employer appealed to NLRC. Pending appeal, the employer offered to pay Samson a smaller amount (P18,000.00). Samson accepted the money and executed a “release” document, which stated, among other things, that he had received all wages and other compensation due him and that he was releasing the employer from any claim accruing in his favor. Subsequently NLRC affirmed the decision of the NSB. After the decision became final, NSB issued a writ of execution and subsequently ruled that the payment made by the employer was only a partial compliance with the decision. The petitioner went to the Supreme Court, contending that full payment was already made and that the obligation was already extinguished.

**Ruling:** The “release” document has not released the employer. From the records it appears that there was a hearing on June 7, 1982 called by the National Seamen’s Board precisely to consider and resolve whether the payment of P18,000.00 admittedly made by petitioner was in full or partial satisfaction of the award for disability compensation benefits due to employee. The said Board gave credit to the manifestations of the employee that he was constrained to accept the payment of P18,000.00 and execute the release of document as at that time he was still undergoing medical treatment for which apparently he needed funds for his expense.

In the case of *MRR Yard Crew Union vs. Philippine National Railways*, 72 SCRA 88 [1976], this court held that the fact that the employee “has signed a satisfaction receipt does not result in waiver; the law does not consider as valid any agreement to receive less compensation than what the worker is entitled to recover.”

*Principe vs. Philippine-Singapore Transport Services, G.R. No. 80918, August 16, 1989 —*

**Facts:** Josefina is the widow of Abelardo, then chief engineer of a vessel of Singaporean registry owned by Chuan Hup, the principal of Philippine-Singapore Transport Service, Inc. The contract of employment of deceased with Chuan Hup provides that Abelardo would receive insurance for a capital sum of US$75,000. It also provides that the laws of Singapore shall apply in case of disputes arising out of said appointment to be resolved by courts of the Republic of Singapore.

During his employment, Abelardo contracted a serious illness which resulted in his death.

Josefina filed a complaint against PSTSI, seeking payment of death compensation benefits. While the case was pending, the parties entered into a compromise agreement. Josefina executed a release and quitclaim in favor of PSTSI in consideration of P7,000. Consequently, her counsel moved to dismiss the case with prejudice against PSTSI and without prejudice as against Chuan Hup.
Later, Josefina filed another claim for death benefits against PSTSI including, this time, Chuan Hup. The POEA dismissed the claim on the ground of *res judicata*. The NLRC affirmed the POEA action.

**Ruling:** It is true that a compromise agreement once approved by the court has the effect of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery. However, the NLRC may disregard technical rules of procedure in order to give life to the constitutional mandate affording protection to labor and to conform to the need of protecting the working class whose inferiority against the employer has always been earmarked by disadvantage.

The compromise agreement in favor of PSTSI was not intended to totally foreclose Josefina’s right over the death benefits of her husband, because the release was without prejudice as regards Chuan Hup. The second complaint was filed to enforce the joint and several liability of PSTSI and Chuan Hup. The release is from any claim against PSTSI, Chuan Hup is not a party to it. He cannot be considered covered by the release.

That Josefina received P7,000 only should not be taken to mean as a waiver of her right.

Even if the quitclaim had foreclosed Josefina’s right over the death benefits of her husband, the fact that the consideration given was very much less than the amount she is claiming renders the quitclaim null and void for being contrary to public policy. Quitclaim wherein the consideration is scandalously low and inequitable cannot be an obstacle to her pursuing her legitimate claim.

Anent the argument that Philippine Courts are without jurisdiction over the subject matter as jurisdiction was by agreement of the parties vested in the courts of the Republic of Singapore, it is well-settled that an agreement to deprive a court of jurisdiction conferred on it by law is void and of no legal effect. Labor cases in this jurisdiction are within the competence of the National Labor Relations Commission.

Since the parties agreed that the laws of Singapore shall govern their relationship and that any dispute arising from the contract shall be resolved by the law of that country, then Josefina is entitled to death benefits equivalent to 36 months of her husband’s salary. As the wage of Abelardo was US$2,000 a month, Josefina is entitled to a total of US$100,800.

4. **EVIDENCE**

*Tibulan vs. Inciong, G.R. No. 48576, August 11, 1989 —*

Facts: The Commission denied petitioners’ claim on the ground that the petitioners had failed to establish their relationship to the deceased. Petitioner Mansueta attached to her affidavit filed with the Referee several documents to support her claim, namely, a medical certificate, the baptismal certificates of petitioners Mario and Ulysses, a certification of Mansueta’s marriage to the deceased issued by the parish priest who had solemnized the marriage. Mansueta had also attached to her motion for reconsideration copies of the birth certificates of Mario and Ulysses.
Ruling: The totality of this evidence is sufficient to establish petitioner’s relationship to the deceased. Strict observance of the technical rules of evidence is not properly demanded in Workmen’s Compensation cases.

A doctor’s certification as to the nature of the claimant’s disability may be given credence as he normally would not make a false certification. No physician in his right mind and who is aware of the far-reaching and serious effect that his statements would cause on a money claim filed with a government agency, would issue certifications indiscriminately without even minding his own interests and protection. Under normal circumstances he would not sacrifice his medical career for the sake of a lowly public school teacher.¹

4.1 Physician’s Report

The findings of the doctors and the Chief of the Medical Officer of the GSIS and ECC, respectively, are not binding on the Supreme Court as they are not considered experts. Opinions of the Medical Rating Officer who did not physically examine the claimant cannot be relied upon.²

Physician’s report that the injury caused the workmen’s temporary disability rebuts the Workmen’s Compensation Commission’s findings of claimant’s suffering no disability during the employment with respondent.³

Where physician’s report of sickness established not only the causal relation between claimant’s work and his complained sickness but also his permanent and total disability, petitioner’s claim for permanent total disability should be granted. The physician’s report of sickness or accident substantiates the disability claim.⁴

5. FOREIGN LAW

Atienza vs. Philimare Shipping and Equipment Supply, G.R. No. 71604, August 11, 1989 —

Facts: Joseph was engaged by Philimare, agent of Trans Ocean Liner of Germany, based in Singapore, to work as Third Mate for the stipulated compensation of US$850 a month from January 20, 1981 to January 20, 1982. The Crew Agreement provided for insurance benefits “as per NSB Standard Format” and was approved by the National Seamen’s Board [now POEA].

¹Abaya vs. Employees’ Compensation Commission, G.R. No. 64255, August 16, 1989.
⁴Ibid.
On May 12, 1981, Joseph died as a result of an accident which befell him while working on the vessel in Bombay, India. His father filed a claim for death benefits computed at the rate of 36 months times the seaman’s monthly salary plus 10% thereof in accordance with the Workmen’s Compensation Law of Singapore. Philimare admitted liability but contended that it was limited only to P40,000 under Section D(1) of the NSB Standard Format.

The Philippine Overseas Employment Administration sustained Philimare and held that the applicable law was Philippine law. The National Labor Relations Commission affirmed the POEA’s decision except that it increased the award to P75,000 pursuant to NSB Memorandum Circular No. 71, Series of 1981.

Petitioner (Joseph’s father) urged that the Singaporean law should have been applied in line with the Supreme Court’s ruling in Norse Management Co. vs. National Seamen Board (117 SCRA 486), where foreign law was held controlling because it provided for greater benefits for the claimant. The company, on the other hand, questions the application of NSB Memorandum Circular No. 71, Series of 1981 which, it says, became effective after the seaman’s death.

**Ruling:** The Supreme Court set aside the decision of the National Labor Relations Commission and reinstated that of the POEA.

The Norse case is not applicable to the present because in that case, it was specifically stipulated by the parties in the Crew Agreement that “compensation shall be paid to employee in accordance with and subject to the limitations of the Workmen’s Compensation Act of the Philippines or the Workmen’s Insurance Law of the registry of the vessel, whichever is greater.” That was why the higher benefits prescribed by the foreign law was awarded. By contrast, no such stipulation appears in the Crew Agreement now under consideration. Instead, it stated that the insurance benefits shall be “as per NSB Standard Format” in the event “of death of the seaman during the term of his contract, over and above the benefits for which the Philippine Government is liable under Philippine law.”

The amended award was based by the POEA on NSB Memorandum Circular No. 46, which became effective in 1979. The NLRC, laboring under the belief that Memorandum Circular No. 71 was already effective when Joseph died on May 12, 1981, increased the death benefits to P75,000. The fact is that the new rule became effective only in December 1981, as certified by the POEA or seven months after Joseph’s death.

Considering that the applicable law governing death compensation for seamen at the time of Joseph’s death was Memorandum Circular No. 46, Series of 1979, the employer’s liability should be limited to P30,000.00. Moreover, if manning agents or shipping corporations secure employer’s insurance to cover their liabilities for death, total disability and sickness of officers and ratings on board foreign-going vessels, the extent of the coverage is based on the applicable law at the time. It would be unjust to compel them to pay benefits based on a law not yet in effect at the time the contingency occurs.
6. FOREIGN CURRENCY

Compensation benefits may be paid in foreign currency. While it is true that R.A. No. 529 makes it unlawful to require payment of domestic obligations in foreign currency, this particular statute is not applicable to the case at bar. A careful reading of the decision rendered by the Executive Director of the NSB dated April 2, 1981 which led to the writ of execution protested to by petitioner, will readily disclose that the award to the private respondent does not compel payment in dollar currency but in fact expressly allows payment of “its equivalent in Philippine currency.”

Moreover, as pointed out by public respondent, without any subsequent controversion interposed by petitioner, the fixing of the award in dollars was based on the parties’ employment contract, stipulating wages and benefits in dollars since private respondent was engaged in as overseas seaman on board petitioner’s foreign vessel.1

7. APPEAL

Siliman University vs. L. Benarao, Workmen’s Compensation Commission, et al., G.R. No. L-46613, February 26, 1990 —

1. No Necessity of Filing a Motion for Reconsideration Before Certiorari Could Be Availed of. — It is incorrect to state that since petitioner had not resorted to a prior motion for reconsideration of the decision, subject of controversy, its filing of the instant petition for certiorari is procedurally erroneous. While we support respondent Benarao’s reasoning that a motion for reconsideration is needed to enable a judicial body issuing the questioned order, in the first instance, to pass upon and correct its mistakes without the intervention of a higher court, we, however, held in BA Finance Corporation vs. Pineda, et al. (119 SCRA 493) that in case of a final order or judgment, a motion for reconsideration, prior to taking an appeal, is not always required. In the case at bar, the July 28, 1975 order was not interlocutory; it was a final one as it disposed of the action for compensation benefits and there was nothing more to be done in the proceedings as to the merits of the case. On the other hand, in the case cited by respondent Benarao, in his effort to justify and support his arguments, the orders complained of were merely interlocutory and, therefore, a motion for reconsideration had to be filed before certiorari could be availed of.

2. Theory of Exhaustion of Administrative Remedies, Not Applicable. — Likewise, the theory of exhaustion of administrative remedies can not be invoked or applied where the challenged administrative act is patently illegal (as in the present case amounting to lack of jurisdiction).

8. **APPLICABLE LAW**

In workmen’s compensation cases, the governing law is determined by the date on which the claimant contracted his illness. Thus, [as indicated in Article 208] where an ailment supervened before the new Labor Code took effect, the governing law is the old Workmen’s Compensation Act. On the other hand, where an ailment occurred after January 1, 1975, the new law on Employees’ Compensation applies.¹

If the application for compensation does not state when the claimant contracted the disease and the claim is filed under P.D. No. 626, the presumption is that he contracted the disease after the effectivity of said Presidential Decree, *i.e.*, January 1, 1975. The Employees’ Compensation Commission cannot be faulted for applying the governing law, which is P.D. No. 626.²

The claimant is entitled to his claim for income benefit by virtue of his wife’s death, although the latter passed away on March 10, 1975, just two months and ten days after the effectivity of the new law on January 1, 1975, because the sickness which caused her demise could be traced way back in 1969 when she first had her medical treatment for peptic ulcer.³

The cause of action for the income benefit claim arose as early as 1969 before the new law had even been conceived. Following the principle that “rights accrued and vested while a statute was in force ordinarily survives its repeal,” the old Workmen’s Compensation Law applies.⁴

Where the claim was filed under the provisions of the Workmen’s Compensation Act, claimants are entitled to the presumption of compensability.⁵

**Note:** P.D. No. 570-A took effect on November 1, 1974.

P.D. No. 626 was signed by the President on December 27, 1974 and took effect on January 1, 1975.

P.D. No. 850 took effect on December 16, 1975.

P.D. No. 865-A took effect on December 31, 1975.

P.D. No. 891 took effect on February 9, 1976.

P.D. No. 1692 took effect on May 1, 1980.

P.D. No. 1368 took effect on May 1, 1978.

P.D. No. 1921 took effect on June 1, 1984.

P.D. No. 1641 took effect on January 1, 1980.

EO 179 took effect on June 1, 1987.


²Ibid.


⁴Ibid.

⁵Tibulan vs. Inciong, G.R. No. 48576, August 11, 1989.
Title III
MEDICARE

ART. 216 [209]. MEDICAL CARE
The Philippine Medical Care Plan shall be implemented as provided under Republic Act numbered sixty-one hundred eleven, as amended.

COMMENTS
R.A. No. 7875, known as the “National Health Insurance Act,” approved on February 14, 1995, initiated the National Health Insurance Program intending to provide health insurance coverage and health care services for all Filipinos. To carry out the program the law also created the Philippine Health Insurance Corporation. PHIC has taken over the assets and functions of the Philippine Medical Care Commission which therefore is rendered inoperative.

Title IV
ADULT EDUCATION

ART. 217 [210]. ADULT EDUCATION
Every employer shall render assistance in the establishment and operation of adult education programs for their workers and employees as prescribed by regulations jointly approved by the Department of Labor and the Department of Education and Culture.

NOTES
DOLE figures (October 2010) show that of the 36.5 million employed persons in the country, 26 million or 72 percent has not reached college; in fact, more than 11 million ended their formal education at elementary level. This means that about 72 percent of workers go into employment without knowing about labor rights and duties since these matters are not taught in high school or lower grades. This fact suggests that labor rights and duties should be taught at or below the high school level; otherwise, mass ignorance of labor rights and duties will persist. Where ignorance abounds, is labor exploitation unlikely?
ADDENDUM TO BOOK IV

Outside the Labor Code some other laws relate to health and welfare of workers. The major ones are briefly explained below. (The texts are in the Labor Laws Source Book.)

1. THE COMPREHENSIVE DANGEROUS DRUGS ACT

Repealing the Dangerous Drugs Act of 1972, the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165, approved on June 7, 2002), mandates the government to pursue an intensive and unrelenting campaign against the trafficking and use of dangerous drugs and similar substances through an integrated system of anti-drug abuse policies, programs, and projects. Among other punitive provisions, it punishes a person found positive for use of any dangerous drug, after a confirmatory test, with a penalty ranging from rehabilitation to imprisonment for 12 years maximum, plus fines, depending on whether he is a first-time or second-time offender.

At the work place, it punishes as a co-principal the president, manager or any officer who consents to or knowingly tolerates any violation of the Act.

It authorizes drug testing which is of two kinds:

(1) The screening test which will determine the positive result and the type of the drug used, and (2) the confirmatory test which will confirm a positive screening test.

Officers and employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company’s work rules and regulations, which shall be borne by the employer for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of Article 282 of the Labor Code and pertinent provisions of the Civil Service Law. (Sec. 36)

All labor unions, federations, associations, or organizations in cooperation with the respective private sector partners shall include in the collective bargaining or any similar agreements, joint continuing programs and information campaigns for the laborers... with the end in view of achieving a drug-free workplace. (Sec. 49)

2. HIV/AIDS PREVENTION AND CONTROL LAW

R.A. No. 8504 (approved on February 13, 1998), known as the “Philippine AIDS Prevention and Control Act of 1998,” directs the State to promote public awareness about the causes, modes of transmission, consequences, and means of
HEALTH, SAFETY AND SOCIAL
WELFARE BENEFITS

prevention and control of HIV/AIDS. Educational and information campaign is to be carried out in schools, workplaces, training centers, and communities.

D.O. No. 53-03 provides the Guidelines for the Implementation of a Drug-free Workplace Policies and Programs for the Private Sector.

In Section 2(b), the law provides:

(b) The State shall extend to every person suspected or known to be infected with HIV/AIDS a full protection of his/her human rights and civil liberties. Towards this end:

1. compulsory HIV testing shall be considered unlawful unless otherwise provided in this act;
2. the right to privacy of individuals with HIV shall be guaranteed;
3. discrimination, in all its forms and subtleties, against individuals with HIV or persons perceived or suspected of having HIV shall be considered inimical to individual and national interests;
4. provision of basic health and social services for individuals with HIV shall be assured.

x x x

Article III
Testing, Screening and Counselling

x x x

SECTION 15. Consent as a Requisite for HIV Testing. — No compulsory HIV testing shall be allowed. However, the State shall encourage voluntary testing for individuals with a high risk for contracting HIV: Provided, That written informed consent must first be obtained. Such consent shall be obtained from the person concerned if he/she is of legal age or from the parents or legal guardian in the case of a minor or a mentally incapacitated individual. Lawful consent to HIV testing of a donated human body, organ, tissue, or blood shall be considered as having been given when:

(a) a person volunteers or freely agrees to donate his/her blood, organ, or tissue for transfusion, transplantation, or research;
(b) a person has executed a legacy in accordance with Section 3 of Republic Act No. 7170, also known as the “Organ Donation Act of 1991”;
(c) a donation is executed in accordance with Section 4 of Republic Act No. 7170.

SEC. 16. Prohibitions of Compulsory HIV Testing. — Compulsory HIV testing as a precondition to employment, admission to educational institution, the exercise of freedom of abode, entry or continued stay in the country, or the right to travel, the provision of medical service or any other kind of service, or the continued enjoyment of said undertaking shall be deemed unlawful.
SEC. 17. Exception to the Prohibition on Compulsory Testing. — Compulsory HIV testing may be allowed only in the following instances:

(a) When a person is charged with any of the crimes punishable under Articles 264 and 266 as amended by Republic Act Nos. 8353, 335 and 338 of Act No. 3815, otherwise known as the Revised Penal Code or under Republic Act No. 7659;

(b) When the determination of the HIV status is necessary to resolve the relevant issues under Executive Order No. 309, otherwise known as the Family Code of the Philippines; and

(c) When complying with the provisions of Republic Act No. 7170, otherwise known as the “Organ Donation Act” and Republic Act No. 7719, otherwise known as the “National Blood Service Act.”

x x x

SEC. 30. Medical Confidentiality. — All health professionals, medical instructors, workers, employers, recruitment agencies, insurance companies, data encoders, and other custodian of any medical record, file data, or test results are directed to strictly observe confidentiality in the handling of all medical information, particularly the identity and status of persons with HIV.

SEC. 31. Exceptions to the Mandate of Confidentiality. — Medical confidentiality shall not be considered breached in the following cases:

(a) when complying with reportorial requirements in conjunction with the AIDSWATCH programs provided in Section 27 of this Act.

(b) when informing other health workers directly involved or about to be involved in the treatment or care of a person with HIV/AIDS: Provided, That such treatment or care carry the risk of HIV transmission: Provided, further, That such workers shall be obliged to maintain the shared medical confidentiality;

(c) when responding to a subpoena duces tecum and subpoena ad testificandum issued by a Court with jurisdiction over a legal proceeding where the main issue is the HIV status of an individual: Provided, That the confidentiality medical record shall be properly sealed by its lawful custodian after being double-checked for accuracy by the head of the office or department, hand delivered, and personally opened by the Judge: Provided, further, That the judicial proceedings be held in executive session.

SEC. 32. Release of HIV/AIDS Test Results. — All results of HIV/AIDS testing shall be confidential and shall be released only to the following persons:

(a) the person who submitted himself/herself to such test;

(b) either parent of a minor child who has been tested;
HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS

(c) a legal guardian in the case of insane person or orphans;
(d) a person authorized to receive such results in conjunction with the AIDSWATCH program as provided in Section 27 of this Act;
(e) a justice of the Court of Appeals or the Supreme Court, as provided under subsection (c) of this Act and in accordance with the provision of Section 16 hereof.

x x x

Article VII

Discriminatory Acts and Policies

SECTION 35. Discrimination in the Workplace. — Discrimination in any form from pre-employment to post-employment, including hiring, promotion or assignment, based on the actual, perceived or suspected HIV status of an individual is prohibited. Termination from work on the sole basis of actual, perceived or suspected HIV status is deemed unlawful.

SEC. 37. Restrictions on Travel and Habitation. — The freedom of abode, lodging and travel of a person with HIV shall not be abridged. No person shall be quarantined, placed in isolation, or refused lawful entry into or deported from Philippine territory on account of his/her actual, perceived or suspected HIV virus.

SEC. 38. Inhibition from Public Service. — The right to seek an elective or appointive public office shall not be denied to a person with HIV.

SEC. 39. Exclusion from Credit and Insurance Service. — All credit and loan services, including health, accident and life insurance shall not be denied to a person on the basis of his/her actual, perceived or suspected HIV virus: Provided, That the person with HIV has not concealed or misrepresented the fact to the insurance company upon application. Extension and continuation of credit and loan shall likewise not be denied solely on the basis of said health condition.

SEC. 40. Discrimination in Hospitals and Health Institutions. — No person shall be denied health care service or charged with a higher fee on account of actual, perceived or suspected HIV status.

SEC. 41. Denial of Burial Service. — A deceased person who had AIDS or who was known, suspected or perceived to be HIV-positive shall not be denied any kind of decent burial services.

x x x

3. SOCIAL SECURITY LAW

The Social Security Law of 1997 — R.A. No. 8282, approved on May 1, 1997— amends the Social Security Act of 1954 (as amended) principally to provide for better benefit packages, expansion of coverage, flexibility in investments and stiffer penalties for violators.

566
But the mission of the law is unchanged: to promote social justice and provide protection to its members and their families against the hazards of disability, sickness, maternity, old-age, death and other contingencies resulting in loss of income or causing financial burden.

The law compulsorily covers a private sector employee who is defined as “any person who performs services for an employer in which either or both mental and physical efforts are used and who receive compensation for such services, where there is employer-employee relationship.” The “employer,” who is also compulsorily covered, is defined as “any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government or any of its political subdivisions, branches or instrumentalities. A self-employed person with a monthly income of at least P1,000.00 is also compulsorily covered.”

See the SSS law with annotation in the book *Special Labor Laws*.

4. **THE GSIS LAW**

The Government Service Insurance System is the SSS counterpart for the public sector. It is also the insurance company for government properties; it therefore renders non-life or general insurance services.

In its social security package the GSIS covers more than 1.4 million employees of the Philippine government, including local government units and government corporations. The GSIS also renders benefits to members’ dependents and beneficiaries, the retirees and pensioners.

GSIS members include: an appointive or elective official, permanent, substitute, temporary, casual or contractual employee with employee-employer relationship, who are receiving basic pay or salary but not per diems, honoraria, or allowances; and who have not reached the compulsory retirement age of 65 years.

Barangay and sanggunian official who receive basic pay or salary are covered under R.A. No. 8291. On the other hand, those who receive per diems or honoraria only are not covered.

The compulsory coverage of elective officials shall cease upon the expiration of their term of office. Like other employees, they only have the option to continue with their life insurance coverage so long as they will pay both the employee and employer share’s of the life insurance average. Regarding his social security coverage, the said elective official shall continue to be a member and shall be entitled to benefits that provide for contingencies (death, disability or separation) subject to satisfaction of eligibility conditions.
The following are not covered by the GSIS:

1. Employees who have separate retirement schemes under special laws and are therefore covered by their respective retirement laws, to include the members of the Judiciary, Constitutional Commissions and other similarly situated government officials;

2. Contractual employees who have no employer-employee relationship with the agencies they serve;

3. Uniformed members of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) including the Bureau of Jail Management and Penology (BJMP) and the Bureau of Fire Protection (BFP).

A major development is the enactment of R.A. No. 8291, (amending P.D. No. 1146) which took effect on June 24, 1997. This Act expands and increases the coverage and benefits of the GSIS and provides for pre-need insurance, unemployment and separation, benefits. Aside from increasing and expanding the social security protection of the government workers, it also enhances the powers and functions of the GSIS to better respond to the needs of its membership.

The GSIS is also entrusted with the enforcement of the provisions of R.A. No. 910, passed on June 20, 1953, as amended, providing for separate retirement plan for the judiciary.

Also entrusted with the GSIS is the administration of the Barrio Officials Insurance Fund, passed on June 17, 1967, extending life, disability and accident insurance benefits to barrio (now barangay) officials and other such officials of the local government units.

In addition to its social security mandate, GSIS also administers the General Insurance Fund and provides insurance protection to government assets and properties by virtue of R.A. No. 656 or the Property Insurance Fund, enacted on June 16, 1951.

The unemployment benefit is different from the separation benefit. A new benefit provided under R.A. No. 8291 starting 1997, the separation benefit is cash payment or cash payment and pension given to employees who have not reached the retirement age (60) but separated from the service.

5. NATIONAL HEALTH INSURANCE ACT

R.A. No. 7875 was approved on February 14, 1995 to create the Philippine Health Insurance Corporation to administer the National Health Insurance Program (NHIP) that replaced the Medicare programs.
5.1 Coverage
The NHIP covers the following —

1. Employed members — all those employed in the government and private sector.
2. Individually Paying members — self-employed, Overseas Filipino Workers, professionals in private practice (doctors, lawyers, dentists, etc.)
3. Non Paying members — the following are entitled to lifetime coverage:
   • Retirees and pensioners of the GSIS and SSS (including permanent total disability and survivorship pensioners of the SSS) prior to the effectivity of R.A. No. 7875 on March 4, 1995.
   • Members who have reached the age of retirement and have paid at least 120 monthly contributions. Optional retirees (under R.A. No. 1616, P.D. No. 1146 or P.D. No. 1184) are not yet entitled to lifetime coverage until they reach the age of retirement (60 years old).
4. Indigent members under the indigent component of the NHIP.
   The following are legal dependents who also enjoy coverage although the member does not have to pay additional premium:
   1. Legitimate spouse, non-member
   2. Children (legitimate, illegitimate, adopted and stepchild) below 21 years old, unmarried and unemployed; children 21 years old or above but suffering from any congenital disability, either physical or mental, or any disability acquired that renders them totally dependent on the member for support are also given free coverage as dependents provided membership remains active.
   3. Parents 60 years old and above, not qualified as non-paying members and wholly dependent on the member for support.

5.2 Medicare Benefits and Non-compensable Procedures
Membership with PhilHealth entitles the member and dependents to a basic health insurance coverage which consists of the following:

1. Subsidy for room and board and operating room fees
2. Allowances for drugs and medicines, laboratories and doctor’s professional fees including those of surgeon and anesthesiologist fees.

Each benefit item is subject to a certain limit or ceiling depending on the case/type of the illness (whether ordinary, intensive or catastrophic case) and
the category of the hospital. PhilHealth covers up to the maximum allowances set for each benefit item as indicated in the benefit schedule.

If the hospital and doctor’s bills exceed the allowances set in the benefit schedule, the member will be asked to pay for the balance in excess of PhilHealth coverage.

Expenses for the following procedures are not covered except when PhilHealth, after actuarial studies, recommends their inclusion subject to approval of the PhilHealth Board:

- Non-prescription drugs and medicines;
- Outpatient psychotherapy and counseling for mental disorders;
- Drug and alcohol abuse and dependency treatment;
- Cosmetic surgery;
- Home and rehabilitation services;
- Optometric services;
- Normal obstetrical delivery; and
- Other cost ineffective procedures as defined by PhilHealth.

5.3 Requirements

To avail himself of NHIP benefits, the member has to meet the following requirements:

- Payment of at least three (3) monthly contributions within the immediate six (6) months prior to confinement
- Confinement in a PhilHealth-accredited hospital for not less than 24 hours due to an illness or injury requiring hospitalization

Minor surgical procedures and chemotherapy, radiotherapy, hemodialysis and cataract extraction and a special diagnostic package are also compensable even on an outpatient basis.

- Confinement falls within the 45 days allowance for room and board and complies with the rule/policy on single period of confinement.

Principal members are entitled to 45 days coverage each year while their dependents also have 45 days which will be shared among them. Any unused benefit for the given year is not carried over to the succeeding year or is not cumulative.

Single period of confinement refers to series or successive confinements for the same illness, injury or condition not separated from each other by more than 90 days within a calendar year. In this case, a member or a beneficiary is not entitled to another set of Medicare benefits/allowances until after 90 days. They can only avail of the unused benefits and room and board fees until the 45-day allowance is exhausted.

However, a member can avail himself/herself of new set of benefits if succeeding confinements are of different illness or condition.
Part Two
IMPLEMENTING RULES
IMPLEMENTING RULES OF BOOK I

[Presented here as Rules Implementing Book I of the Labor Code are two sets of rules: (1) pertaining to local employment issued by the Department of Labor and Employment on 5 June 1997 and (2) pertaining to overseas employment, issued by the Philippine Overseas Employment Administration on 4 February 2002 to replace the POEA rules and regulations issued in 1991. — CAA]

PRELIMINARY PROVISIONS

SECTION 1. Title. — These Rules shall be referred to as the “Rules to Implement the Labor Code.”

SEC. 2. Meanings of Terms. — Whenever used herein, the words “Code,” “Minister,” “Ministry,” “Regional Office,” and “Regional Director” shall respectively mean the Labor Code of the Philippines; the Minister of Labor and Employment; the Ministry of Labor and Employment; Regional Office of the Ministry; and Director of the Regional Office.

SEC. 3. Construction. — All doubts in the interpretation and implementation of these Rules shall be resolved in favor of labor.

A. LOCAL EMPLOYMENT

RULES AND REGULATIONS GOVERNING PRIVATE RECRUITMENT AND PLACEMENT AGENCY FOR LOCAL EMPLOYMENT

By virtue of the authority vested in the Secretary of Labor and Employment under Article 25 of the Labor Code of the Philippines, as amended, the following revised rules and regulations are hereby promulgated to govern and regulate the activities of all individuals and entities engaged in the recruitment and placement of persons for local employment.

Rule I

DEFINITION OF TERMS

SECTION 1. Definition of Terms.

a. Department — refers to the Department of Labor and Employment.

b. Secretary — refers to the Secretary of Labor and Employment.

c. Bureau — refers to the Bureau of Local Employment.
d. **Regional Office** — refers to the Regional Offices of the Department.

e. **District Provincial Office** — refers to the extension offices of the Department.

f. **Regional Director** — refers to the Director of the Regional Office.

g. **Private Recruitment and Placement Agency (PRPA) or Agency** — refers to any individual, partnership, corporation or entity engaged in the recruitment and placement of persons for local employment.

h. **PRPA Branch** — refers to any extension office of a licensed PRPA.

i. **Representative** — refers to a person acting as an agent of a licensed PRPA registered with the Regional Office and granted Authority in the recruitment of persons for local employment.

j. **Recruitment and Placement** — refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for local employment, whether for profit or not; **Provided**, that any person or entity which in any manner, offers or promises employment for a fee, to two or more persons shall be deemed engaged in recruitment and placement.

k. **Recruit** — refers to any individual promised, contracted, or enlisted for employment for a fee.

l. **License** — refers to the certificate issued by the Department authorizing an individual, partnership, corporation, or entity to operate a private recruitment and placement agency.

m. **Authority to Operate Branch Office** — refers to the document granted by the Department authorizing the licensed PRPA to establish and operate a branch office.

n. **Authority to Recruit** — refers to the document granted by the Regional Office authorizing a person to conduct recruitment activities in the region.

o. **Licensee** — refers to any person or entity duly licensed and authorized by the Department to operate a private recruitment and placement agency.

p. **Recruitment Contract** — refers to the agreement entered into between a licensed PRPA or its authorized representative and a recruit stating clearly the terms and conditions of the recruitment in a language known and understood by the recruit.

q. **Employment Contract** — refers to the agreement entered into between the employer and a recruit stating clearly the terms and conditions of the employment in a language known and understood by the recruit.

r. **Placement Fee** — refers to the amount charged by a PRPA from a recruit as payment for placement services.

s. **Service Fee** — refers to the amount charged by a PRPA from an employer as payment for employment services.
IMPLEMENTING RULES OF BOOK I: RULE II
(LOCAL EMPLOYMENT)

Rule II
APPLICATION/RENEWAL OF LICENSE OF PRIVATE RECRUITMENT AND PLACEMENT AGENCY

SECTION 2. Qualifications. An applicant for a license to operate a private recruitment and placement agency must possess the following:

a. Must be a Filipino citizen, if single proprietorship. In case of a partnership or a corporation, at least seventy-five percent (75%) of the authorized capital stock must be owned and controlled by Filipino citizens;

b. Must have a minimum networth of P200,000.00 in the case of single proprietorship and partnership or a minimum paid-up capital of P500,000.00 in the case of a corporation;

c. The owner, partners or the officers of the corporation must be of good moral character and not otherwise disqualified by law;

d. Must have an office space with a minimum floor area of fifty (50) square meters.

SEC. 3. Place to File Application. Application for license shall be filed with the Regional Office having jurisdiction over the place where the applicant wishes to establish its main office.

SEC. 4. Requirements for Application. The applicant for a license shall submit a duly accomplished application form, and in support thereof, the following requirements:

a. A filing fee of Five Hundred Pesos (P500.00); if single proprietor; and P2,000.00 if corporation or partnership;

b. Certified copy of the Certificate of Registration of firm or business name from the Department of Trade and Industry (DTI), in the case of a single proprietorship; or a certified copy of the Articles of Partnership or Incorporation duly registered with the Securities and Exchange Commission (SEC), in the case of a partnership or a corporation;

c. A sworn statement of assets and liabilities and/or a duly audited financial statement, as the case may be;

d. Owner’s certificate/title of office location or contract of lease of office space for at least two (2) years;

e. NBI clearance of the applicant, or the partners in the case of a partnership or all the officers and members of the Board of Directors, in the case of a corporation;

f. Income Tax Returns for the last two (2) years;

g. A verified undertaking that the applicant shall:

(1) not engage in the recruitment of children below 15 years of age or place children below 18 years of age in hazardous occupation in accordance with Republic Act No. 7610 as amended by Republic Act No. 7658 and other related laws; and
IMPLEMENTING RULES

(2) assume full responsibility for all claims and liabilities which may arise in connection with the use of the license;

h. Organizational structure and list of all officers and personnel with their respective bio-data, two (2) passport-size ID pictures and a detailed description of their duties and responsibilities;

i. Specific address and location map of the Office/proposed office; and

j. List of all authorized representatives, if any, who must be at least high school graduate, with their corresponding bio-data, two (2) passport-size ID pictures, high school diploma or other proof of educational attainment duly authenticated, NBI clearance and Special Power of Attorney (SPA).

No application shall be accepted, unless all the requirements have been complied with.

SEC. 5. Action on the Application.

a. Upon receipt of the application, the Regional Director or his duly authorized representative shall evaluate the documents submitted and conduct an ocular inspection of the applicant’s office;

b. Within fifteen (15) working days after the ocular inspection, the Regional Director shall act on the application, and immediately notify the applicant of the action taken; and

c. Application which do not meet the requirements set forth in these rules shall be denied.

SEC. 6. Posting of Cash and Surety Bonds and Payment of License Fee. Prior to the approval of the license, the applicant shall post cash and surety bonds of Twenty-Five Thousand Pesos (P25,000.00) and One Hundred Thousand Pesos (P100,000.00) respectively, valid for two (2) years and then pay a license fee of Five Thousand Pesos (P5,000.00). The bonds shall answer for all valid and legal claims arising from the illegal use of the license and shall likewise guarantee compliance with the provisions of the Labor Code and its Implementing Rules.

In case of loss of license, the licensee shall pay Five Hundred Pesos (P500.00) as payment for the issuance of a certified copy of the license upon presentation of proof of loss.

SEC. 7. Publication. The Agency shall publish once in a newspaper of general circulation the license number of the agency, names and pictures of authorized representatives within fifteen (15) days from the issuance of the license and shall submit a copy of said publication to the Department.

SEC. 8. Validity of the License. The license shall be valid all over the Philippines for two (2) years from the date of issuance, upon submission of proof of publication unless sooner suspended, cancelled or revoked by the Regional Director.

SEC. 9. Non-transferability. No license shall be transferred, conveyed or assigned to any other person or entity.

SEC. 10. Display of License. The original license or a copy shall be displayed conspicuously at all times in the office premises of the PRPA.
SEC. 11. Renewal of License. An application for renewal of license shall be filed not later than thirty (30) days before expiration of the same. No agency shall be allowed to renew its license if it has been convicted by the regular courts for violation of the Labor Code, as amended, and its Implementing Rules, or if its license has been previously revoked.

SEC. 12. Requirements for Renewal. The Agency shall submit its existing license together with the requirements specified in Section 4 of these Rules.

SEC. 13. Change of Ownership. Any Agency which desires to transfer ownership shall surrender its license to the issuing Regional Office.

SEC. 14. Change of Business Address. An Agency which desires to transfer to a new business address shall notify the Regional Office which issued the license at least thirty (30) working days prior to the intended date of transfer. It shall likewise notify the Regional Office which has jurisdiction over the new business address and submit a sketch of the new office and a copy of the contract of lease, if any.

Rule III
GRANTING/RENEWAL OF AUTHORITY TO RECRUIT, RECRUITMENT PROCEDURE, PLACEMENT AND OTHER RELATED ACTIVITIES

SECTION 15. Authority to Recruit. A licensed Agency or its authorized representative shall secure an authority to recruit from the Regional Office having jurisdiction over the place where recruitment activities will be undertaken. Such authority shall be co-terminus with the license unless sooner revoked/cancelled by the issuing Regional Office or terminated by the Agency.

SEC. 16. Documents Required. The following documents shall be submitted by the applicant/agency for the issuance/renewal of an Authority to Recruit:

a. Letter request by the agency;
b. Copy of current license;
c. Certification under oath of licensee of the proposed recruitment activities of the representative;
d. NBI clearance and bio-data of the representative with two (2) ID pictures;
e. Clearance from previous agency, if applicable; and
f. Previous Authority to Recruit, in case of renewal.

No application shall be accepted unless all the requirements have been complied with.

SEC. 17. Action on the Application for the Issuance/Renewal of an Authority to Recruit.

a. Within ten (10) working days from receipt of complete documents, the Regional Director shall act on the application for authority to recruit;
b. In case of denial, the Regional Director shall state the reasons for denial;
IMPLEMENTING RULES

A new application/renewal may be denied on any of the following grounds:
— non compliance with the requirements;
— applicants’ record of unresolved illegal recruitment case; or
— presence of any pending case against the applicant and/or the agency.

c. Upon approval of application/renewal, the applicant shall pay a fee of P1,000.00 to the Regional office concerned.

SEC. 18. Recruitment by Representative. Only representatives duly authorized to recruit and whose names are registered with the Regional Office can engage in recruitment activities.

SEC. 19. Termination of Authority of Representatives. The authority of the representatives may be revoked or terminated by the Agency or cancelled by the issuing Regional Office.

The Agency shall publish in a newspaper of general circulation the names and pictures of representatives whose authority has been revoked or terminated and the Regional Office shall be furnished a copy of said publication.

The Regional Office shall keep a record of the authorities issued, revoked or terminated and furnish copy to the Bureau.

SEC. 20. Steps to be followed in the Recruitment of Persons. The following procedures shall be followed by the licensed Agency or its duly authorized representative in the recruitment of persons:

a. The Agency or its duly authorized representative shall present to the PESO, Provincial and District Office where the recruitment activity is to be undertaken, copy of existing license, and original copy of authority to recruit issued by the Regional Office concerned.

b. The representative shall require the recruit to submit a copy each of the following:
   (1) birth certificate from the local civil registrar; and
   (2) medical certificate issued by a government physician or by a reputable private medical practitioner.

c. The Agency or its authorized representative and the recruit shall enter into a recruitment contract, duly notarized a copy of which shall be submitted to the Regional Office where recruitment activity was undertaken.

d. The Agency or its duly authorized representative shall submit a list of the names and addresses of its recruits, together with copy of documents specified in procedure (b) above, to the Regional Office or the appropriate Provincial/District Office where recruitment was undertaken for appropriate authentication and validation; copies of these documents shall be furnished the Regional Office of destination of the recruit.

e. After the recruitment activity, the Regional Office of origin shall issue a certification to the Agency or its duly authorized representative that the recruitment activity has been in accordance with this Rule, copy furnished the Marine Police/Coast Guard/Philippine National Police, as the case may be.
f. Provide the recruit with a stamped envelope and form indicating the name, address of recruit and the name, address, telephone number of his/her employer to be sent to the parent.

g. Prior to deployment the Regional Office of origin shall notify the Regional Office of destination of the arrival of the recruits, and the latter shall see to it that the terms and conditions of the recruitment contract are followed strictly.

SEC. 21. Replacement of Worker Without Cost. An employer shall be entitled to replace a worker without additional cost only once, within one (1) month from the first day the worker reported for work, on any of the following grounds:

a. The worker is found to be suffering from an incurable or contagious disease as certified by a competent physician;

b. The worker is physically or mentally incapable of discharging the minimum normal requirements of the job, as specified in the employment contract; or

c. The worker abandons the job, voluntarily resigns, commits theft or any other act prejudicial to the employer.

SEC. 22. Refund of Service Fee. The employer is entitled to a refund of seventy five (75%) percent of the service fee if the Agency failed to provide a replacement after a lapse of one (1) month from receipt of the request for the replacement based on any of the grounds enumerated in the preceding Section.

SEC. 23. Forfeiture of Rights. The employer is deemed to have forfeited his right for a replacement without cost or refund of the service fee, if he failed to avail of the same within one (1) month from the date of engagement of the worker.

Rule IV

ESTABLISHMENT OF BRANCH OFFICE/RENEWAL OF AUTHORITY TO OPERATE BRANCH OFFICE

SECTION 24. Establishment of Branch Office. The application to establish a branch office shall be filed with the Regional Office having jurisdiction over the place where the branch office is to be established.

SEC. 25. Requirements. A licensee who desires to establish a branch office shall submit the following requirements:

a. Filing fee of Five Hundred Pesos (P500.00);

b. Certified copy of the current license;

c. Organizational structure of the branch office, including duly notarized appointments;

d. NBI clearance, bio-data and two (2) passport-size ID pictures of the branch manager and staff members;

e. Certification that the branch office has office space with a minimum floor area of fifty (50) square meters;

f. Certification that the licensee has no pending case with the Regional Office issuing the license or where it has established branch office; and
g. List of all authorized representatives, if any, who must be at least high school graduate, with their corresponding bio-data, two (2) passport-size ID pictures, high school diploma or other proof of educational attainment, NBI clearance and Special Power of Attorney (SPA) issued by the licensee.

No application shall be accepted, unless all the requirements have been complied with.

   a. Upon receipt of the application, the Regional Director or his duly authorized representative shall evaluate the documents submitted and conduct an ocular inspection of the PRPA branch.
   b. Within fifteen (15) working days from the date of filing, the Regional Director shall either deny or approve the application and immediately notify the applicant of the action taken.

SEC. 27. Posting of Additional Surety Bond and Payment of Registration Fee. Prior to approval of the authority to establish a branch office, the licensee/applicant shall post an additional surety bond of Fifty Thousand Pesos (P50,000.00) and pay a registration fee of Two Thousand Pesos (P2,000.00).

In case of loss, the licensee shall pay Five Hundred Pesos (P500.00) as payment for the issuance of a certified copy of the authority upon presentation of proof of loss.

SEC. 28. Validity of the Authority. The authority to operate branch office shall be co-terminus with the validity of the license of the Agency subject for renewal upon submission of the original authority and requirements provided for under Section 25 hereof as well as the original authority.

Rule V

PLACEMENT FEE, SERVICE FEE, AND OTHER CHARGES

SECTION 29. Placement Fee. A licensed PRPA may charge workers a placement fee which shall not exceed twenty percent (20%) of the worker’s first month’s basic salary; in no case shall such fee be charged prior to the actual commencement of employment.

SEC. 30. Service Fee. A licensed PRPA may charge employers a service fee which shall not exceed twenty percent (20%) of the annual basic salary of the worker. In no case shall the service fee be deducted from the worker’s salary.

SEC. 31. Transportation. Transportation expenses of the worker from the place of origin to the place of work shall be charged against the employer, and shall in no case be deducted from the worker’s salary.

SEC. 32. Issuance of Official Receipt. All payments made or fees collected by a licensed Agency shall be covered by an official receipt indicating the amount paid and the purpose of such payment.
Rule VI
SUSPENSION, REVOCATION/CANCELLATION OF LICENSE

SECTION 33. **Grounds for Suspension of a License.** Any of the following shall constitute a ground for suspension of a license:

a. violation of any of the provisions of Sections 7, 13, or 14 of these Rules;
b. violation of Department Order No. 21, series of 1994 regarding publication of job vacancies;
c. non-issuance of official receipt for every fee collected;
d. non-submission of monthly report as provided in Section 61 of these Rules;
e. charging or accepting directly or indirectly, any amount in excess of what is prescribed by these Rules;
f. disregard of lawful orders and notices issued by the Secretary or his duly authorized representative; or
g. non-observance of the procedures on recruitment as stated in Section 20 of these Rules.

SEC. 34. **Grounds for Cancellation/Revocation of a License.** Any of the following shall constitute a ground for the cancellation/revocation of license:

a. violation/s of the conditions of license;
b. engaging an act or acts of misrepresentation for the purpose of securing a license or renewal thereof;
c. continuous operation despite due notice that the license has expired; or
d. incurring two (2) suspensions by a PRPA based on final and executory orders;
e. engaging in labor-only contracting as defined in Article 106 of the Labor Code, as amended;
f. recruitment and placement of workers in violation of Republic Act No. 7610 as amended by Republic Act No. 7658:
g. transferring, conveying or assigning of license/authority to any person or entity other than the one in whose favor it was issued;
h. violation of any of the provisions, particularly, Article 34 of the Labor Code, as amended, and its Implementing Rules and Regulations.

SEC. 35. **Table of Penalties and Fines.** The commission of any of the aforecited grounds for suspension, cancellation/revocation shall merit imposition of fine and penalties provided in the herein Table of Penalties and Fines.
## IMPLEMENTING RULES

### Grounds for Suspension of License

<table>
<thead>
<tr>
<th>Violations</th>
<th>Penalties and Fines</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. violation of any of the provisions of Sections 7, 13, or 14 of these Rules</td>
<td>3 months suspension and fine of P5,000</td>
</tr>
<tr>
<td>b. violation of Department Order No. 21, series of 1994 regarding publication of job vacancies</td>
<td>3 months suspension and fine of P5,000</td>
</tr>
<tr>
<td>c. non-issuance of official receipt for every fee collected</td>
<td>3 months suspension and fine of P5,000</td>
</tr>
<tr>
<td>d. non-submission of monthly report as provided in Section 61 of these Rules</td>
<td>3 months suspension and fine of P5,000</td>
</tr>
<tr>
<td>e. charging or accepting directly or indirectly any amount in excess of what is prescribed by these Rules</td>
<td>3 months suspension and fine of P5,000</td>
</tr>
<tr>
<td>f. disregard of lawful orders and notices issued by the Secretary or his duly authorized representative</td>
<td>3 months suspension and fine of P5,000</td>
</tr>
<tr>
<td>g. non-observance of the procedures on recruitment as stated in Section 20 of these Rules</td>
<td>3 months suspension and fine of P5,000</td>
</tr>
</tbody>
</table>

### Grounds for Cancellation of License

<table>
<thead>
<tr>
<th>Violations</th>
<th>Penalties and Fines</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. violation/s of the conditions of license</td>
<td>cancellation of license and fine of P10,000</td>
</tr>
<tr>
<td>b. engaging in act or acts of misrepresentation for the purpose of securing a license or renewal thereof</td>
<td>cancellation of license and fine of P10,000</td>
</tr>
<tr>
<td>c. continuous operation despite due notice that the license has expired</td>
<td>cancellation of license and fine of P10,000</td>
</tr>
<tr>
<td>d. incurring two (2) suspensions by a PRPA based on final and executory orders</td>
<td>cancellation of license and fine of P10,000</td>
</tr>
<tr>
<td>e. engaging in labor-only contracting as defined in Article 106 of the Labor Code, as amended</td>
<td>cancellation of license and fine of P10,000</td>
</tr>
<tr>
<td>f. recruitment and placement of workers in violation of Republic Act No. 7610 as amended by Republic Act No. 7658</td>
<td>cancellation of license and fine of P10,000</td>
</tr>
<tr>
<td>g. transferring, conveying or assigning the license/authority to any person or entity other than the one in whose favor it was issued</td>
<td>cancellation of license and fine of P10,000</td>
</tr>
<tr>
<td>h. violation of any of the provisions, particularly Article 34 of the Labor Code, as amended, its Implementing Rules and Regulations</td>
<td>cancellation of license and fine of P10,000</td>
</tr>
</tbody>
</table>
IMPLEMENTING RULES OF BOOK I: RULE VII
(LOCAL EMPLOYMENT)

The Agency is jointly and severally liable to any violation or illegal act committed by its branch.

Rule VII
HEARING AND DISPOSITION OF RECRUITMENT VIOLATION AND RELATED CASES

SECTION 36. Complaints Against Agency. Complaints based on any of the grounds enumerated under the previous Sections against a licensee/and or the authorized representative/s shall be filed in writing and under oath with the DOLE Regional/District/Provincial Office having jurisdiction over the place where the PRPA/Branch Office is located, or where the prohibited act was committed, or at complainant’s place of residence, at the option of the complainant; Provided, that the Regional Office which first acquires jurisdiction over the case shall do so to the exclusion of the others.

SEC. 37. Caption and Title. The complaint shall be filed in accordance with the following caption:

Republic of the Philippines
Department of Labor and Employment
Regional Office No. ___
Province/District

In the Matter of Violation of
Recruitment Rules and Regulations/Pertinent
Regulations Implementing the Labor
Code, as Amended

-versus-

RO Case No. PRPA yr/mo/no. RV

Respondent/s.

SEC. 38. Contents of Complaint. — All complaints shall be under oath to be administered by any officer authorized by law and must contain, among others the following:

a. The name/s and address/es of the complainant/s;
b. The name/s and address/es of the respondent/s;
c. The nature of the complaint;
d. The substance, cause/grounds of the complaint;
e. When and Where the action complained of happened;
f. The amount of claim, if any; and
g. The relief/s sought.
All pertinent papers or documents in support of the complaint must be attached whenever possible.

SEC. 39. **Docket and Assignment of Cases.** Complaints duly received shall be docketed and numbered and shall be scheduled for hearing within ten (10) working days.

SEC. 40. **Answer/Counter-Affidavit.** Upon receipt of the complaint, the Regional Director shall issue show cause order directing the respondent/s to file a verified Answer/Counter-Affidavit within ten (10) working days and copy furnished the complain/s [sic] and not a Motion to Dismiss, incorporating therein all pertinent documents in support of its defense, and attaching thereto proof of service of a copy thereof upon the complaint/s. The answer shall be deemed filed on the date of receipt stamped thereon, if filed personally, or on the date indicated in the registry receipt, if filed by registered mail.

SEC. 41. **Motion for Extension.** Only one motion for extension of time to file answer shall be allowed. The Regional Director, upon receipt of such motion may, upon meritorious grounds, grant a non-extendible period not exceeding ten (10) working days. Rulings of the Regional Director on motions for extension shall be sent by personal service or by registered mail.

SEC. 42. **Failure to File Answer.** Failure to file an answer/counter affidavit will constitute a waiver on the part of the respondent.

SEC. 43. **Service of Subpoena Duces Tecum and Subpoena Ad Testificandum.** The Regional Director shall issue subpoena or subpoena duces tecum.

The process server who personally served the subpoena duces tecum and/or subpoena ad testificandum, notice, order, resolution or decision shall submit his return within five (5) working days from the date of his service thereof, stating legibly in his return his name, the mode/s of service, the name/s of the other person/s served and the date/s of receipt. If no service was effected, the serving officer shall state the reason therefor. The return shall form part of the records of the case.

SEC. 44. **Failure or Refusal to Obey Subpoena Duces Tecum and Subpoena Ad Testificandum.** The license of an agency who fails or refuses to obey the subpoena duces tecum/subpoena ad testificandum, shall be suspended until compliance of the directive of the Regional Director.

This is without prejudice to the outcome of the investigation wherein the proper penalty may be imposed.

SEC. 45. **Proof and Completeness of Service.** The return is prima facie proof of the facts stated therein. Service by registered mail is completed upon receipt of the addressee or agent; but if the addressee or agent fails to claim his mail from the post office within five (5) working days from date of last notice of the postmaster, service shall take effect after such time.

SEC. 46. **Authority to Initiate Clarifying Questions.** At any stage of the proceedings and prior to the submission by the parties of the case for resolution, the Regional Office may initiate clarificatory questions to further elicit facts or
information, including but not limited to the subpoena of relevant documentary evidence.

SEC. 47. **Summary Judgment.** Should the Regional Director find upon consideration of the answers, counter-affidavits and evidence submitted, that resolution/decision may be rendered thereon, the case shall be deemed submitted for decision.

SEC. 48. **Nature of Proceedings.** The proceedings before the Regional Office shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of and procedure and rules obtaining in the courts of law shall not strictly apply thereto. The Regional Director may avail himself of all reasonable means to ascertain the facts of the case, including ocular inspection, where appropriate, and examination of informed persons.

SEC. 49. **Effects of Withdrawal/Desistance.** The withdrawal/desistance of the complaining witness shall not bar the Regional Office from proceeding with the investigation on recruitment violation/s. The Regional Office shall act on the case as may be merited by the results of the investigation and impose such penalties on the erring Agency as may be deemed appropriate.

SEC. 50. **Effects of Settlement.** At any stage of the proceedings, the parties may submit a Compromise Agreement subject to the approval of the Regional Office.

SEC. 51. **Resolution of the Case.** The conduct of hearings shall be terminated within fifteen (15) working days from the first scheduled hearing. The Regional Director shall resolve the case within ten (10) working days from the time the case is deemed submitted for decision.

SEC. 52. **Suspension of License Pending Investigation.** Pending investigation of a complaint leading to the cancellation/revocation of license, the Regional Director, who is hearing the case, may suspend the license of the PRPA concerned on any of the following grounds:

a. There exist reasonable grounds to believe that the continued operation of the Agency will lead to further violation or exploitation of the workers being recruited;

b. Failure of the licensed PRPA to submit its Position Paper/Answer on the complaint within the prescribed period;

c. Failure to attend the hearing despite due notice called by the Regional Office;

d. Failure or refusal to obey subpoena *duces tecum* and subpoena ad *testificandum* issued by the Regional Director; and

e. *Prima facie* evidence shows that the Agency has violated and continues to violate any of the provisions of the Labor Code, as amended, its Implementing Rules and Regulations on the recruitment and placement of workers.

SEC. 53. **Suspension/Cancellation of License.** The Regional Director who issued the license shall have the power to suspend/cancel the license of the Agency.

SEC. 54. **Effects of Orders of Suspension/Cancellation or Revocation.** An order of suspension/cancellation or revocation shall have the effect of suspending or
terminating all activities of the Agency which fall under the definition of recruitment and placement. The Regional Office may seek the assistance of other government institutions, agencies or offices to ensure that suspension or cancellation orders are implemented.

SEC. 55. **Suppletory Application of the Rules of Court.** In the absence of any applicable provisions of these Rules, the pertinent provisions of the Rules of Court may be applied in a suppletory character.

SEC. 56. **Appeal.** Decision of the Regional Director is appealable to the Secretary within ten (10) working days from receipt of a copy of the order, on any of the following grounds:

a. if there is *prima facie* evidence of abuse of discretion on the part of the Regional Director;

b. if the decision and/or award was secured through fraud or coercion;

c. if made purely on questions of law; and/or

d. if serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

The appeal shall be filed with the Office of the Secretary, copy furnished the Regional Office issuing the Order of suspension or cancellation/revocation.

The Secretary shall have thirty (30) working days from receipt of the records to resolve the appeal. The decision of the Secretary shall be final and inappealable.

**Rule VIII**

**CESSATION OF OPERATION OF THE AGENCY/BRANCH**

SECTION 57. **Notice of Closure of the Agency or its Branch.** The Agency or its branch office which ceases to operate prior to the expiration of its license or its authority to operate shall notify the Regional Office concerned, stating the justification for such closure, accompanied by the original receipt of cash bond and the license, or the authority to operate, as the case may be.

SEC. 58. **Refund of Cash Bond.** An Agency which voluntarily surrenders its license shall be entitled to the refund of its deposited cash bond only after posting a surety bond of similar amount from a bonding company accredited by the Insurance Commission. The surety bond is valid for three (3) years from expiration of the license.

**Rule IX**

**INSPECTORATE AND ENFORCEMENT FUNCTIONS**

SECTION 59. **Inspection Function.** To ensure the effective supervision and regulation of the activities of all licensees, the Regional Director or his duly authorized representative shall have access to the licensee’s records and premises at any time of the day or night whenever work is being undertaken therein, to determine violation or may aid in the enforcement of these Rules.
IMPLEMENTING RULES OF BOOK I: PART I, RULE I
(OVERSEAS EMPLOYMENT)

SECTION 60. Writ of Execution. The Regional Director shall issue writs of execution to the appropriate authority for the enforcement of his/her Orders.

SEC. 61. Submission of Monthly Reports. All Agencies shall submit to the Regional Office, copy furnished the Bureau, not later than the 5th working day of every month reports verified and confirmed by the Regional Director or his duly authorized representative of their recruitment and placement activities during the preceding month.

Rule X
REPEALING CLAUSE AND EFFECTIVITY DATE

SECTION 62. Repealing Clause. All rules and regulations, guidelines and issuances inconsistent herewith are repealed or modified accordingly.

SEC. 63. Effectivity. The provisions of these Rules and Regulations shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

Done in the City of Manila this 5th day of June, 1997

LEONARDO A. QUISUMBING
Secretary

B. OVERSEAS EMPLOYMENT

POEA RULES AND REGULATIONS
GOVERNING THE RECRUITMENT AND EMPLOYMENT
OF LAND-BASED OVERSEAS WORKERS

[Issued, 2002]

PART I
GENERAL PROVISIONS

Rule I
STATEMENT OF POLICY

It is the policy of the Administration:

a. To uphold the dignity and fundamental human rights of Filipino migrant workers and promote full employment and equality of employment opportunities for all;

b. To protect every citizen desiring to work overseas by securing the best possible terms and conditions of employment;

---

1For lack of space and time, the POEA Rules pertaining to seafarers are not included in this volume. — CAA
c. To allow the deployment of Filipino migrant workers only in countries where their rights are protected;

d. To provide an effective gender-sensitive mechanism that can adequately protect and safeguard the rights and interest of Filipino migrant workers;

e. To disseminate and allow free flow of information which will properly prepare individuals into making informed and intelligent decisions about overseas employment;

f. To ensure careful selection of Filipino workers for overseas employment in order to protect the good name of the Philippines abroad;

g. To institute a system to guarantee that migrant workers possess the necessary skills, knowledge or experience for their overseas jobs;

h. To recognize the participation of the private sector in the recruitment and placement of overseas workers to serve national development objectives;

i. To deregulate recruitment activities progressively taking into account emerging circumstances which may affect the welfare of migrant workers;

j. To support programs for the reintegration returning migrant workers into Philippine society; and

k. To cooperate with duly registered non-government organizations, in a spirit of trust and mutual respect, in protecting and promoting the welfare of Filipino migrant workers.

**Rule II**

**DEFINITION OF TERMS**

For purposes of these Rules, the following terms are defined as follows:

1. Accreditation — shall refer to the grant of authority to foreign principal to recruit and hire Filipino workers through a licensed agency for overseas employment.

2. Administration — shall refer to the Philippine Overseas Employment Administration (POEA).

3. Administrator — shall refer to the Administrator of the POEA.

4. Agency — shall refer to a private employment agency as defined herein.

5. Corporate Recruitment — shall refer to the act of providing the required manpower for all facets of an overseas project.

6. Department — shall refer to the Department of Labor and Employment (DOLE).

7. Derogatory record — refers to the existence of negative information such as, but not limited to, illegal recruitment, falsification, swindling or estafa, and/or conviction for crimes involving moral turpitude.

8. Documentation cost — shall refer to actual cost incurred in the documentation of an applicant worker in relation to his/her application for overseas employment, such as, but not limited to passport, NBI/
Police/Barangay clearance, authentication, birth certificate, Medicare, PDOS, trade test, inoculation and medical examination fees.

9. Employment Contract — shall refer to an individual written agreement between the foreign principal/employer and the worker which is based on the master employment contract.

10. Foreign Placement Agency — shall refer to a foreign principal indirectly engaging the services of Overseas Filipino Workers.

11. Joint and Solidary Liability — refers to the nature of liability of the principal/employer and the recruitment/placement agency, for any and all claims arising out of the implementation of the employment contract involving Filipino workers for overseas deployment. It shall likewise refer to the nature of liability of officers, directors, partners with the company over claims arising from employer-employee relationship.

12. License — shall refer to the document issued by the Secretary or his duly authorized representative authorizing a person, partnership or corporation to operate a private employment agency.

13. Master Employment Contract — shall refer to the model employment agreement submitted by the foreign principal for verification and approval which contains the terms and conditions of employment of each worker hired by such principal.

14. Name Hire — shall refer to a worker who is able to secure an overseas employment opportunity with an employer without the assistance or participation of any agency.

15. New Market — shall refer to a principal or a foreign placement agency which is not in the active list of registered or accredited principals/foreign placement agencies for the past six months or more or which has never been registered or accredited to any licensed landbased agency; Provided, that in the case of a foreign placement agency, its direct employer(s) are identified and are likewise not in the active list of registered or accredited employer of any licensed landbased agency for the past six months or more or has not been registered or accredited to any licensed landbased agency.

16. NLRC — shall refer to the National Labor Relations Commission.

17. Non-License — shall refer to any person, partnership or corporation who has no valid license to engage in recruitment and placement of Overseas Filipino Workers or whose license is suspended.

18. Overseas Employment — shall refer to a Filipino worker outside the Philippines covered by a valid contract.

19. Overseas or Migrant Filipino Worker — shall refer to any person, eighteen years of age or above, as provided in R.A. No. 8042, who is to be engaged, or is engaged or has been engaged in a remunerated activity in a state of which the worker is not legal resident.
20. Placement Fee — shall refer to the amount charged by a private employment agency from a worker for its recruitment and placement services, as prescribed by the Secretary.

21. Principal — shall refer to a foreign person, partnership, or corporation hiring Filipino workers through a licensed agency.

22. Private Employment Agency — shall refer to any person, partnership or corporation engaged in the recruitment and placement of workers for a fee, which is charged, directly or indirectly, from the workers or employers or both.

23. Provisional License — refers to a license issued to a new agency with a limited period of one (1) year within which an applicant shall comply with its undertaking to deploy 100 workers to its new market.

24. Recruitment Agreement — shall refer to an agreement by and between the principal and the private employment agency or the Administration defining their rights and obligations.

25. Recruitment and Placement — shall refer to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring works and includes referrals, contract services, promising or advertising for employment abroad, whether for profit or not; Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

26. Registration — shall refer to the act of recognizing and entering in the official records of the Administration the existence of a foreign principal/employer or project whose documents have been verified in the job site by the appropriate officials of the Philippine government. It shall also refer to the act of entering in the official records of the Administration the names of name hires and workers on leave who will depart for overseas employment.

27. SEC — shall refer to the Securities and Exchange Commission.

28. Secretary — shall refer to the Secretary of Labor and Employment.

29. Service Contractor — shall refer to any person, partnership or corporation duly licensed by the Secretary of Labor and Employment to recruit workers for its accredited projects or contracts overseas.

30. Service Fee — shall refer to the amount charged by a licensee from its foreign principal as payment for actual services rendered in relation to the recruitment and placement of workers.

31. Special Recruitment Authority — shall refer to the authority granted to an agency to conduct recruitment outside its registered business address approved by the Administration.

32. Valid Employment Contract — shall refer to an individual written agreement between the foreign principal/employer and the worker which is based on the master employment contract approved by the Administration.
33. Verification — shall refer to the act performed by a Philippine Overseas Labor Officer, or any other officer designated by the Secretary of Labor and Employment in the Philippine Embassy or Consulate, in reviewing and verifying the recruitment documents of foreign principals, including the employment contracts of Filipino nationals, with the view to establish the existence of the employing person, company or project, its capability to hire workers at the acceptable rates, and at desirable working conditions in conformity with the minimum standards prescribed by the Administration and taking into consideration the labor laws and legislations of the host government.

34. Worker-on-Leave — shall refer to an overseas worker who is on vacation or on leave and is returning to the same employer.

PART II
LICENSING AND REGULATION

Rule I
PARTICIPATION OF THE PRIVATE SECTOR IN THE OVERSEAS EMPLOYMENT PROGRAM

SECTION 1. Qualifications. Only those who possess the following qualifications may be permitted to engage in the business of recruitment and placement of Filipino workers:

a. Filipino citizens, partnership or corporation at least seventy-five percent (75%) of the authorized capital stock of which is owned and controlled by Filipino citizens;

b. A minimum capitalization of Two Million Pesos (P2,000,000.00) in case of a single proprietorship or partnership and a minimum paid-up capital of Two Million Pesos (P2,000,000.00) in case of a corporation; Provided, that those with existing licenses shall, within four years from effectivity hereof, increase their capitalization or paid up capital, as the case may be, to Two Million Pesos (P2,000,000.00) at the rate of Two Hundred Fifty Thousand Pesos (P250,000.00) every year.

c. Those not otherwise disqualified by law or other government regulations to engage in the recruitment and placement of workers for overseas employment.

SEC. 2. Disqualification. The following are not qualified to engage in the business of recruitment and placement of Filipino workers overseas:

a. Travel agencies and sales agencies of airline companies;

b. Officers or members of the Board of any corporation or members in a partnership engaged in the business of a travel agency;

c. Corporations and partnerships, when any of its officers, members of the board or partners, is also an officer, member of the board or partner of a corporation or partnership engaged in the business of a travel agency;
d. Persons, partnerships or corporations which have derogatory records, such as but not limited to the following:

1) Those certified to have derogatory record or information by the National Bureau of Investigation or by the Anti-Illegal Recruitment Branch of the POEA;

2) Those against whom probable cause or prima facie finding of guilt for illegal recruitment or other related cases exists;

3) Those convicted for illegal recruitment or other related cases and/or crimes involving moral turpitude; and

4) Those agencies whose license have been previously revoked or cancelled by the Administration for violation of R.A. No. 8042, P.D. No. 442 as amended and their implementing rules and regulations as well as these rules and regulations.

All applicants for issuance/renewal of license shall be required to submit clearances from the National Bureau of Investigation and Anti-illegal Recruitment Branch, POEA, including clearances for their respective officers and employees.

e. Any official or employee of the DOLE, POEA, OWWA, DFA and other government agencies directly involved in the implementation of R.A. No. 8042, otherwise known as Migrant Workers and Overseas Filipino Act of 1995 and/or any of his/her relatives within the fourth civil degree of consanguinity or affinity; and

f. Persons or partners, officers and Directors of corporations whose license have been previously canceled or revoked for violation of recruitment laws.

Rule II

ISSUANCE OF LICENSE

SECTION 1. Requirements for Licensing. Every applicant for license to operate a private employment agency shall submit a written application together with the following requirements:

a. A certified copy of the Articles of Incorporation or of Partnership duly registered with the Securities and Exchange Commission (SEC), in the case of corporation or partnership or Certificate of Registration of the firm or business name with the Department of Trade and Industry (DTI), in the case of single proprietorship;

b. Proof of financial capacity: In the case of a single proprietorship or partnership, verified income tax returns of the proprietors or partners for the past two (2) years and a savings account certificate showing a maintaining balance of not less than P500,000.00, provided that the applicant should submit an authority to examine such bank deposit.

c. In the case of a newly organized corporation, savings account certificate showing a maintaining balance of not less than P500,000.00 with authority
to examine the same. For an existing corporation, submission of a verified financial statement, corporate tax returns for the past two (2) years and savings account certificate showing a maintaining balance of not less than P500,000.00 with the corresponding authority to examine such deposit.

d. Proof of marketing capability:
   1. A duly executed Special Power of Attorney and/or a duly conducted Recruitment/Service Agreement;
   2. Manpower request(s) or visa certification from new employers(s)/principal(s) for not less than one hundred (100) workers; and
   3. Certification from Pre-Employment Services Office of POEA on the existence of new market.

e. Clearance of all members of the Board of Directors, partner, or proprietor of the applicant agency from the National Bureau of Investigation (NBI) and other government agencies as may be required; appropriate clearance in case of persons with criminal cases; provided that where the member or partner concerned is a foreigner, clearance from his country of origin shall be required.

f. A verified undertaking stating that the applicant:
   1. Shall select only medically and technically qualified recruits;
   2. Shall assume full and complete responsibility for all claims and liabilities which may arise in connection with the use of the license;
   3. Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriations;
   4. Shall guarantee compliance with the existing labor and social legislations of the Philippines and of the country of employment of the recruited workers;
   5. Shall assume full and complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement;
   6. Shall negotiate for the best terms and conditions of employment;
   7. Shall disclose the full terms and conditions of employment to the applicant workers;
   8. Shall deploy at least 100 workers to its new markets within one (1) year from the issuance of its license;
   9. Shall provide orientation on recruitment procedures, terms and conditions and other relevant information to its workers and provide facilities therefor; and
   10. Shall repatriate the deployed workers and his personal belongings when the need arises.
IMPLEMENTING RULES

For purpose of compliance with item (1), the agency may require the worker to undergo trade testing and medical examination only after the worker has been pre-qualified for employment.

g. In case of corporation or partnership, verified undertaking by its officers, directors, partners that they will be jointly and severally liable with the company over claims arising from employer-employee relationship.

h. Individual income tax return of the proprietor, partners, stockholders/inciporators, as the case maybe, for the past two (2) years.

i. Proof of possession by the sole proprietor, partner or chief executive officer, as the case maybe, of a bachelor’s degree and three years business experience.

j. List of all officials and personnel involved in the recruitment and placement, together with their appointment, bio-data and two (2) copies of their passport-size pictures as well as their clearances from the National Bureau of Investigation and the Anti-illegal Recruitment Branch of the Administration.

k. Copy of contract of lease or proof of building ownership, indicating the office address, providing for an office space at least one hundred (100) square meters.

l. Proof of publication of notice of the application with the names of the proprietor, partners, incorporators and officers.

m. Certificate of attendance of owner and/or chief executive officer in a pre-application seminar conducted by the Administration.

Only applications with complete supporting documents shall be processed.

SEC. 2. Payment of filing fee. Upon receipt of an application with complete requirements, the Administration shall require payment of a non-refundable filing fee of P10,000.00 and submission of proof of payment thereof.

SEC. 3. Action upon the application. Within fifteen (15) calendar days from receipt of an application with complete requirements including proof of payment of the filing fee of P10,000.00, the Administration shall evaluate the pertinent documents, inspect the offices and equipment and determine whether or not to grant or deny the application. Denial of an application will result in the forfeiture of the filing fee.

SEC. 4. Payment of Fees and Posting of Bonds. Upon approval of the application, the applicant shall pay a license fee of P50,000.00. It shall submit an Escrow Agreement in the amount of P1,000,000.00 confirmation of escrow deposit with an accredited reputable bank and surety bond of P100,000.00 from a bonding company acceptable to the Administration and accredited with the Insurance Commission.

Agencies with existing license shall, within four years from effectivity hereof, increase their Escrow Deposit to One Million Pesos.

The bonds and escrow shall answer for all valid and legal claims arising from violations of the conditions for the grant and use of the license, and/or
accreditation and contracts of employment. The bonds and escrow shall likewise guarantee compliance with the provisions of the Code and its implementing rules and regulations relating to recruitment and placement, the Rules of the Administration and relevant issuances of the Department and all liabilities which the Administration may impose. The surety bonds shall include the condition that notice to the principal is notice to the surety and that any judgment against the principal in connection with matters falling under POEA’s/NLRC’s jurisdiction shall be binding and conclusive on the surety. The surety bonds shall cover the validity period of the license.

SEC. 5. Provisional License. Applicants for new license shall be issued a provisional license which shall be valid for a limited period of one (1) year within which the applicant should be able to comply with its undertaking to deploy 100 workers to its new principal. The license of a complying agency shall be upgraded to a full license entitling them to another three years of operation. Non-complying agencies will be notified of the expiration of their license.

SEC. 6. Validity of the License. Except in case of a provisional license, every license shall be valid for four (4) years from the date of issuance unless sooner cancelled, revoked or suspended for violation of applicable Philippine law, these rules and other pertinent issuances. Such license shall be valid only at the place/s stated therein and when used by the licensed person, partnership or corporation.

SEC. 7. Non-Transferability of License. No license shall be transferred, conveyed or assigned to any person, partnership or corporation. It shall not be used directly or indirectly by any person, partnership or corporation other than the one in whose favor it was issued.

In case of death of the sole proprietor and to prevent disruption of operation to the prejudice of the interest of legitimate heirs, the license may be extended upon request of the heirs, to continue only for the purpose of winding up business operations.

SEC. 8. Change of Ownership/Relationship of Single Proprietorship or Partnership. Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment shall cause the automatic revocation of the license.

A change in the relationship of the partnership duly licensed to engage in overseas employment which materially interrupts the course of the business or results in the actual dissolution of the partnership shall likewise cause the automatic revocation of the license.

SEC. 9. Upgrading of Single Proprietorship or Partnerships. License holders which are single proprietorships or partnership may, subject to the guidelines of the Administration, convert into corporation for purposes of upgrading or raising their capabilities to respond adequately to developments/changes in the international labor market and to enable them to better comply with their responsibilities arising from the recruitment and deployment of workers overseas.

The approval of merger, consolidation or upgrading shall automatically revoke or cancel the licenses of the single proprietorships, partnerships or corporations so merged, consolidated or upgraded.
SEC. 10. Derogatory Record After Issuance/Renewal of License. The license of a single proprietorship or a partnership shall be suspended until cleared by the Administration should any derogatory record be found to exist against the single proprietorship or any or all of the partners, as the case may be. The appointment of any officer or employee of any licensed agency may be cancelled or revoked at any time with due notice to the agency concerned, whenever said officer or employee is found to have any derogatory record, as herein contemplated.

SEC. 11. Appointment/Change of Officers and Personnel. Every appointment of agents or representatives of a licensed agency shall be subject to prior approval or authority of the Administration. The acknowledgment or approval may be issued upon submission of or compliance with the following:

a. proposed appointment or special power of attorney;

b. clearances of the proposed representative or agent from National Bureau of Investigation (NBI)/Anti-Illlegal Recruitment Branch, POEA; and

c. sworn or verified statement by the designating or appointing person or company assuming full responsibility for all acts of the agent or representative done in accordance with the recruitment and placement of workers.

Every change in the composition of the Board of Directors of a corporation, appointment or termination of officers and personnel shall be registered with the Administration within thirty (30) calendar days from the date of such change. The agency shall be required to submit the minutes of proceedings duly certified by SEC in case of election of new members of the Board of Directors with their bio-data, ID pictures and clearances.

The Administration reserves the right to deny the acknowledgment or appointment of officers, employees and representatives who were directly involved in recruitment irregularities.

SEC. 12. Publication of Change of Directors/Other Officers and Personnel/Revocation or Amendment of Appointment of Representatives. In addition to the requirement of registration with and submission to the Administration, every change in the membership of the Board of Directors, termination for cause of other officers and personnel, revocation or amendment of appointment of representatives shall be published at least once in a newspaper of general circulation, in order to bind third parties. Proof of such publication shall be submitted to the Administration.

SEC. 13. Transfer of Business Address. Any transfer of business address shall be effected only with prior authority or approval of the Administration. The approval shall be issued only upon formal notice of the intention to transfer with the following attachments:

a. In the case of a corporation, a Board Resolution duly registered with the SEC authorizing the transfer of business address; and

b. Copy of the contract of lease or proof of building ownership. The new office shall be subject to the regular ocular inspection procedures by duly authorized representatives of the Administration.
A notice to the public of the new address shall be published in a newspaper of general circulation.

SEC. 14. Establishment of additional offices. Additional offices may be established subject to the prior approval of the Administration.

SEC. 15. Conduct of Recruitment Outside of Registered Office. No licensed agency shall conduct any provincial recruitment, jobs fair or recruitment activities of any form outside of the address stated in the license or approved additional office(s) without first securing prior authority from the Administration.

SEC. 16. Renewal of License. An agency shall submit an application for the renewal of its license on or before its expiration. Such Application shall be supported by the following documents:

a. Surety bond duly renewed or revalidated;

b. Renewed escrow agreement in the amount of P1,000,000.00 with a commercial bank to primarily answer for valid and legal claims of recruited workers as a result of recruitment violations or money claims;

c. Audited financial statements for the past two years with verified corporate or individual tax returns. In case the equity of the agency is below the minimum capitalization requirement, it shall be given thirty (30) days from release of the renewed license to submit proof(s) of capital infusion, such as SEC certification of such infusion or bank certification corresponding to the amount infused and treasurer’s affidavit duly received by the SEC. Otherwise, the license shall be suspended until it has complied with the said requirement;

d. Clearances from the National Bureau of Investigation and the Anti-Illegal Recruitment Branch for the Board of Directors and responsible officers; and

e. Other requirement as may be imposed by the Administration.

SEC. 17. Monitoring Compliance with Conditions of License. The Administration shall monitor the compliance of the agencies with their undertakings in connection with the issuance or renewal of the license. Appropriate sanctions shall be imposed for non-compliance with any of their undertakings.

SEC. 18. Non-expiration of License. Where the license holder has made timely and sufficient application for renewal, the existing license shall not expire until the application shall have been finally determined by the Administration. For this purpose, an application shall be considered sufficient if the applicant has substantially complied with the requirements for renewal.

SEC. 19. Action on Renewal of License. Within forty-eight (48) hours from receipt of the application for renewal with the complete requirements, the Administration shall undertake evaluation and inspection and determine the grant or denial of the application. Licenses of agencies which fail to meet the requirements set by the Administration shall not be renewed.

Only application for renewal submitted with complete requirements shall be processed.
SEC. 20. **Late Filing of Renewal.** Any agency which failed to file an application for renewal of license may be allowed to renew within thirty (30) days from expiry thereof but shall pay a fine of P10,000.00.

SEC. 21. **Escrow Deposit as Garnished.** As soon as an Order or Notice of Garnishment is served upon the Bank, and the same is correspondingly earmarked, the deposit in escrow of an agency shall no longer be considered sufficient. The Administration shall forthwith serve the agency a notice to replenish its escrow deposit.

SEC. 22. **Replenishment of Surety Bonds/Deposit in Escrow.** Within fifteen (15) calendar days from date of receipt of notice from the Administration that the bonds/deposit in escrow, or any part thereof had been garnished, the agency shall replenish the same. Failure to replenish such bonds/deposit in escrow within the said period shall cause the suspension of the license.

SEC. 23. **Release of Deposit in Escrow.** A licensed agency which voluntarily surrenders its license shall be entitled to the release of the deposit in escrow, only after posting a surety bond of similar amount valid for four (4) years from expiration of license and submission of the necessary clearances from the National Labor Relations Commission (NLRC) and the Administration.

SEC. 24. **Classification, Ranking and Incentives.** The Administration shall undertake the classification and ranking of agencies. In recognition of their exemplary performance, the Administration shall issue guidelines for entitlement of agencies to schemes for incentives and rewards such as extension of validity of license, express processing and in-house documentation.

**Rule III**

**INSPECTION OF AGENCIES**

SECTION 1. **Inspection for Purposes of Establishment/Transfer of Office.** Before issuance of a license, the Administration shall conduct an inspection of the premises and facilities including the pertinent documents of the applicant. Inspection shall likewise be conducted on the new premises in case of transfer of office.

SEC. 2. **Routine/Regular Inspection.** All agencies shall be subject to periodic inspection of offices, studios of pre-departure orientation seminar (PDOS) venues by the Administration to determine compliance with existing rules and regulations.

SEC. 3. **Spot Inspection.** Inspection may be conducted by the Administration upon receipt of a complaint or report of violation of existing rules and regulation.

SEC. 4. **Authority to Inspect.** An authority to inspect shall be issued by the Administration before any inspection may be conducted. Such authority, stating the purpose and subject of inspection, shall be presented to the agency before inspection.

SEC. 5. **Scope of Inspection.** Depending on the purpose of inspection, the Administrator or his duly authorized representative may inspect the premises and
require the presentation of necessary documents, records and books of accounts of
the agency and examine the same.

SEC. 6. Inspection Program and Procedures. The Administration shall conduct
inspection in accordance with the Inspection Program and Procedures of the POEA.

SEC. 7. Violations Found in the Course of Inspection. Violations found in
the course of inspection such as non-compliance with the existing laws, rules and
regulations, shall be grounds for the imposition of appropriate sanction or for the
denial of application for issuance or renewal of license. A copy of the results of
inspection shall be endorsed to the appropriate unit for the conduct of necessary
proceedings.

Rule IV

LICENSING OF POCB-REGISTERED COMPANIES

SECTION 1. Issuance of License. POCB-registered companies with overseas
projects duly accredited by the POCB may apply for a license subject to the following
requirements:

a. Articles of incorporation;
b. A certified true copy of its POCB certificate of registration; and
c. Proof of payment of non-refundable filing fee of P10,000.00.

However, application for a license by POCB-registered companies without
POCB-accredited overseas projects shall be subject to the usual requirements for
issuance/renewal of license as prescribed in Rule II, Part 2 of these Rules.

SEC. 2. Payment of Fees. Upon approval of the application, the contractor
company shall:

a. Pay license fee of P50,000.00; and
b. Post a surety bond in the amount of P50,000.00 and escrow deposit of
   P200,000.00.

SEC. 3. Validity of License. The license shall be valid for four (4) years from
date of issuance and co-terminus with the validity of the POCB registration, unless
sooner cancelled, revoked by the Secretary of Labor and Employment, or suspended
by the Administration for violation of the Labor Code and its rules, relevant decrees,
orders and issuances and rules and regulations of the Department of Labor and
Employment. Such license shall be valid only at the place stated therein and when
used by the licensee or authorized POCB registered company.

SEC. 4. Requisites for Renewal. Upon expiration of the license, the POCB-
registered company shall submit a written application together with the following
requirements:

a. Certified copy of POCB Certificate of Renewal of Registration;
b. Proof of renewed surety bond of P50,000.00; and
c. Certificate from the bank that the escrow deposit of P200,000.00 is still
   intact.
IMPLEMENTING RULES

Rule V
FEES, COSTS AND CONTRIBUTIONS

SECTION 1. Service Fees. Agencies shall charge from their principals a service fee to cover services rendered in the recruitment, documentation and placement of workers. The Administration shall provide incentives to agencies and employers who are able to comply with this rule.

SEC. 2. Fees and Costs Chargeable to Principals. Unless otherwise provided, the principal shall be responsible for the payment of the following:

a. visa fee;
b. airfare;
c. POEA processing; and
d. OWWA membership fee.

SEC. 3. Fees/Costs Chargeable to the Workers. Except where the prevailing system in the country where the worker is to be deployed, either by law, policy or practice, do not allow the charging or collection of placement and recruitment fee, a landbased agency may charge and collect from its hired workers a placement fee in an amount equivalent to one month salary, exclusive of documentation costs.

Documentation costs to be paid by the worker shall include, but not be limited to, expenses for the following:

a. Passport
b. NBI/Police/Barangay Clearance
c. Authentication
d. Birth Certificate
e. Medicare
f. Trade Test, if necessary
g. Inoculation, when required by host country
h. Medical Examination fees

In the event that the recruitment agency agrees to perform documentation services, the worker shall pay only the actual costs of the document which shall be covered by official receipts.

The above-mentioned placement and documentation costs are the only authorized payments that may be collected from a hired worker. No other charges in whatever form, manner or purpose, shall be imposed on and be paid by the worker without prior approval of the POEA.

Such fees shall be collected from a hired worker only after he has obtained employment through the facilities of the recruitment agency.

Rule VI
RECRUITMENT OUTSIDE REGISTERED OFFICE

SECTION 1. Conduct of Recruitment Outside Registered Office. Except for recruitments conducted under the Public Employment Service Office Act of 1999
(R.A. No. 8759), no licensed agency shall conduct recruitment activities of any form outside of the address stated in the license or acknowledged additional office(s) without securing prior approval from the Administration. A special recruitment authority shall be issued upon compliance with the documentary requirements prescribed by the Administration.

SEC. 2. Venue. Recruitment activities outside the registered office of the agency shall be conducted only at venues authorized by the Administration, and shall be supervised by the Administration, the DOLE, or the appropriate local government unit.

SEC. 3. Validity of Special Recruitment Authority. The special authority granted to an agency to conduct recruitment activities outside of its registered office based on its manpower requirements shall be valid for a specified period unless otherwise extended, modified or revoked by this Administration or any of its regional offices concerned.

SEC. 4. Cancellation of Authority. The Administration reserves the right to cancel a special recruitment authority issued to an agency for violation of the conditions set in the authority such as venue, representative, duration and compliance with these rules.

SEC. 5. Submission of Report. The agency shall submit a terminal report to the Administration within thirty (30) days from termination of the recruitment activity conducted outside its registered office. No subsequent authority shall be issued until the agency has submitted its report.

Rule VII
ADVERTISEMENT FOR OVERSEAS JOBS

SECTION 1. Advertisement for Actual Job Vacancies. Licensed agencies may advertise for actual job vacancies without prior approval from the Administration if covered by manpower requests of registered/accredited foreign principals and projects. The advertisements shall indicate the following information:

a. Name, address and POEA license number of the agency;
b. Work site of prospective principal/project;
c. Skill categories and qualification standards; and
d. Number of available positions.

SEC. 2. Advertisement for Manpower Pooling. Licensed agencies may advertise for manpower pooling without prior approval from the Administration subject to the following conditions:

a. The advertisement should indicate in bold letters that it is for manpower pooling only and that no fees will be collected from the applicants; and
b. The advertisement indicates the name, address and POEA license number of the agency, name and worksite of the prospective registered/accredited principal and the skill categories and qualification standards.
SEC. 3. **Foreign Advertisers for Overseas Job Vacancies.** Foreign principals/employers who wish to advertise overseas job vacancies may do so only through a POEA-licensed agency or through the Administration.

**Rule VIII**

**SKILLS TEST AND MEDICAL EXAMINATION FOR OVERSEAS EMPLOYMENT**

SECTION 1. **When to Refer for Skills Test.** An applicant for overseas employment shall be referred for skills test to a TESDA-accredited skills-testing center only after the agency and/or its foreign principal or employer has interviewed and pre-qualified him to an existing overseas position duly covered by an approved job order by the Administration.

SEC. 2. **Scope of Skills Test.** The agency shall ensure that the test shall only be for the skill category that the worker has applied for.

SEC. 3. **When to Refer for Medical Examination.** The agency shall refer an applicant for overseas employment medical test to a DOH-accredited medical clinic only after the agency and/or its foreign principal or employer has interviewed him and pre-qualified him for an existing overseas position duly covered by an approved job order by the Administration.

SEC. 4. **Scope of Medical Examination.** The agency shall ensure that the medical examination shall be conducted in accordance with the requirements of the employer.

**Rule IX**

**DEPARTURE AND ARRIVAL OF OVERSEAS FILIPINO WORKERS**

SECTION 1. **Departure of Workers.** All departing OFWs shall be monitored through the POEA assistance centers established by the Administration at international airports and other exit points in the country to ensure that they are properly documented before proceeding to their overseas job sites. Workers without proper documents shall not be cleared by the center.

SEC. 2. **Overseas Employment Certificate (OEC) Issuance at the Center.** Departing overseas Filipino workers may secure overseas employment certificate at the labor assistance centers under such circumstances as may be determined by the Administration. POEA shall cease issuing OECs as soon as the computerized ID system is implemented.

SEC. 3. **Arrival of Workers.** The LAC shall support OWWA and other government agencies in providing assistance to arriving workers particularly those who are in distress.

SEC. 4. **POEA Clearance for Special Cases.** The POEA shall issue special clearances for travel abroad in accordance with guidelines which may be issued by the Administration.
Rule X

LEGAL ASSISTANCE AND ENFORCEMENT MEASURES

SECTION 1. Acts Constituting Illegal Recruitment. Illegal Recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers and includes referrals, contract services promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-license or non-holder of authority. Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged.

It shall likewise include the following acts committed by any person whether or not a holder of a license or authority:

a. To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary or to make a worker pay the recruiter or its agents any amount greater than that actually loaned or advanced to him;
b. To furnish or publish any false notice or information or document in relation to recruitment or employment;
c. To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;
d. To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
e. To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;
f. To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines as may be prohibited by law or duly constituted authority;
g. To obstruct or attempt to obstruct inspection by the Secretary or by his/her duly authorized representative;
h. To fail to submit reports on the status of employment, placement vacancies, remittances of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary under penalty of law;
i. To substitute or alter to the prejudice of the worker, employment contract approved and verified by the DOLE from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the DOLE;
j. For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;
k. To withhold or deny travel documents from applicant workers before departure for monetary or financial consideration other than those authorized under the Labor Code and its implementing rules and regulations;

l. To fail to actually deploy without valid reason as determined by the DOLE; and

m. To fail to reimburse expenses incurred by the worker in connection with his/her documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker’s fault.

SEC. 2. Anti-Illegal Recruitment Programs. The Administration shall adopt policies and procedures, prepare and implement programs toward the eradication of illegal recruitment activities such as, but not limited to the following:

a. Providing legal assistance to victims of illegal recruitment and related cases;

b. Assistance in the prosecution of suspected illegal recruiters;

c. Special operations such as surveillance of persons and entities suspected to be engaged in illegal recruitment; and

d. Information and education campaign.

Whenever necessary, the Administration shall coordinate with other appropriate entities in the implementation of said programs.

SEC. 3. Legal Assistance. The Administration shall provide free legal assistance to victims of illegal recruitment and related cases including but not limited to, legal advice, assistance in the preparation of complaints and supporting documents, institution of criminal actions and whenever necessary, provide counseling during preliminary investigation and hearings.

SEC. 4. Receiving Complaints for Illegal Recruitment. Victims of illegal recruitment and related cases may file with the Administration a report or complaint in writing and under oath for assistance purposes. In regions outside the National Capital Region, complaints and reports involving illegal recruitment may be filed with the appropriate regional office of the Administration or DOLE.

SEC. 5. Action on the Complaint/Report. Where the complaint/report alleges that illegal recruitment activities are on-going, surveillance shall be conducted and if such activities are confirmed in the preliminary examination, issuance of closure order may be recommended to the POEA Administrator through the Director of the Licensing and Regulation Office (Director-LRO).

If sufficient basis for criminal action is found, the case shall be immediately forwarded to the appropriate office for such action.

SEC. 6. Surveillance. The Administrator and/or designated official in the DOLE regional offices may, on his own initiative, conduct surveillance on the alleged illegal recruitment activities.
Within two (2) days from the termination of surveillance, a report supported by an affidavit, shall be submitted to the Director-LRO or the Regional Director concerned, as the case may be.

SEC. 7. **Issuance of Closure Order.** The Secretary or the Administrator or the DOLE Regional Director of the appropriate regional office outside the National Capital Region, or their duly authorized representatives, may conduct an *ex-parte* preliminary examination to determine whether the activities of a non-licensee constitute a danger to national security and public order or will lead to further exploitation of job seekers. For this purpose, the Secretary, the Administrator or the Regional Director concerned or their duly authorized representatives, may examine personally the complainants and/or their witnesses in the form of searching questions and answers and shall take their testimony under oath. The testimony of the complainants and/or witnesses shall be reduced in writing and signed by them.

If upon the preliminary examination or surveillance, the Secretary, the Administrator or the DOLE Regional Director is satisfied that such danger or exploitation exists, a written order may be issued for the closure of the establishment being used for illegal recruitment activity.

In case of a business establishment whose license or permit to operate a business was issued by the local government, the Secretary, the Administrator or the Regional Director concerned shall likewise recommend to the granting authority the immediate cancellation/revocation of the license or permit to operate its business.

SEC. 8. **Implementation of Closure Order.** Closure order shall be served upon the offender or the person in charge of the establishment subject thereof. The closure shall be effected by sealing the establishment and posting a notice of such closure in bold letters in a conspicuous place in the premises of the establishment. Whenever necessary, the assistance and support of the appropriate law enforcement agencies may be requested for this purpose.

SEC. 9. **Report on Implementation.** A report on the implementation of the closure order executed under oath, stating the details of the proceedings undertaken shall be submitted to the Director-LRO or the Regional Director concerned, as the case may be, within two (2) days from the date of implementation.

SEC. 10. **Institution of Criminal Action.** The Secretary, the Administrator or the Regional Director concerned, or their duly authorized representatives or any aggrieved person, may initiate the corresponding criminal action with the appropriate office.

Where a complaint is filed with the Administration and the same is proper for preliminary investigation, it shall file the corresponding complaint with the appropriate officer, with the supporting documents.

SEC. 11. **Motion to Lift A Closure Order.** A motion to lift a closure order which has already been implemented may be entertained only when filed with the Licensing and Regulation Office (LRO) within ten (10) calendar days from the date of implementation thereof. The motion shall clearly state the grounds upon which it is based, attaching thereto the documents in support thereof. A motion to lift which does not conform with the requirements herein set forth shall be denied.
SEC. 12. Who May File. The motion to lift a closure order may be filed only by the following:

a. The owner of the building or his/her authorized representative;
b. The building administrator or his/her duly authorized representative;
c. The person or entity against whom the closure order was issued and implemented or the duly authorized representative; or
d. Any other person or entity legitimately operating within the premises closed/padlocked and whose operation/activities are distinct from the recruitment activities of the person/entity subject of the closure order.

SEC. 13. Grounds for Lifting/Re-Opening. Lifting of the closure order and/or re-opening of the office closed or padlocked may be granted on any of the following grounds:

a. That the office not the subject of the closure order;
b. That the contract of lease with the owner of the building or the building administrator has already been cancelled or terminated. The request to re-open shall be duly supported by an affidavit of undertaking either of the owner of the building or the building administrator that the same will not be leased/rented to any other person/entity for recruitment purposes without the necessary license from the Administration;
c. That the office is shared by a person/entity not involved in illegal recruitment activities, whether directly or indirectly; or
d. Any other ground that the Administration may consider as valid and meritorious.

Lifting of a closure order is without prejudice to the filing of a criminal complaint with the appropriate office against the person alleged to have conducted illegal recruitment activities.

SEC. 14. Appeal. The order of the POEA Administrator denying the motion to lift may be appealed to the Secretary within ten (10) days from the service or receipt thereof.

SEC. 15. Re-Padlocking of Office. Where a re-opened office was subsequently confirmed to be used for illegal recruitment activities, a new closure order shall be issued which shall no longer be subject to a motion to lift.

PART III
PLACEMENT BY THE PRIVATE SECTOR

Rule I
VERIFICATION OF DOCUMENTS AND REGISTRATION OF FOREIGN PRINCIPALS, EMPLOYERS AND PROJECTS

SECTION 1. Verification of Documents. Recruitment documents of foreign principals, employers and projects shall undergo verification at the worksite prior to registration with POEA. The Philippine Overseas Labor Office (POLO) nearest the
worksite shall review and verify the recruitment documents, including the master employment contract with the view to establish the existence of the employing person, company or project, its capability to hire workers at the applicable rates and at desirable working conditions that are in conformity with the minimum standards prescribed by the Administration and/or with the labor laws and legislations of the host country.

SEC. 2. Documentary Requirements for Verification. The following shall be submitted to the POLO for verification:

a. Special Power of Attorney issued by the principal or employer to the licensed Philippine agency, or recruitment agreement or service agreement;

b. Master employment contract which incorporates, among others the minimum provisions of employment contracts of land based workers, as follows;
   1. Guaranteed wages for regular work hours and overtime pay, which shall not be lower than the prescribed minimum wage in the host country or not lower than the appropriate minimum wage standards set forth in a bilateral agreement or international convention, if applicable, or not lower than the minimum wage in the country, whichever is highest;
   2. Free transportation to and from the worksite, or offsetting benefit;
   3. Free food and accommodation, or offsetting benefit;
   4. Just/authorized causes for termination of the contract or of the services of the workers taking into consideration the customs, traditions, mores, practices, company policies and the labor laws and social legislations of the host country;

c. Manpower request indicating the position and salary of the workers to be hired;

d. Valid business license, registration certificate or equivalent document.

SEC. 3. Application for Registration of Foreign Principals and Projects. Only duly licensed entities may file for the registration of foreign principals and projects.

SEC. 4. Documentary Requirements for Registration of Principals/Projects. The following verified documents shall be submitted to the POEA, through the Philippine licensed agent for registration of the principal, employer or project:

a. Special power of attorney or recruitment agreement, or service agreement, as the case may be;

b. Master employment contract of the foreign principal; and

c. Manpower request of the foreign principal indicating the position and salary of the workers to be hired;

POCB-registered projects shall also be registered with the Administration without however undergoing the foregoing procedures, subject to guidelines as may be prescribed.
IMPLEMENTING RULES

Subsequent manpower request from the registered principal/project shall be submitted to the Administration.

SEC. 5. Registration of Foreign Placement Agencies. Foreign placement agencies or similar entities may be registered as principals if they are authorized to operate as such in their respective countries and subject to such guidelines as may be prescribed by the Administration.

SEC. 6. Validity of registration of Foreign Principals and Projects. Upon compliance with the documentary requirements, the foreign principal or project shall be registered by the POEA valid for a maximum of four (4) years, unless sooner revoked or cancelled by the Administration on any of the following grounds:

a. Expiration of the principal’s business license;
b. Upon written mutual agreement by the parties to pre-terminate the Agreement;
c. False documentation or misrepresentation in connection with the application for registration; and
d. Final judgment in a disciplinary action against the foreign principal.

Provisional registration may be granted for a period of ninety (90) days for a principal that substantially meets the registration requirements.

The expiration of the agency’s license shall not cause the automatic expiration or cancellation of the registration which shall only be suspended until the renewal of the license.

SEC. 7. Renewal of Registration. The registration shall be renewed upon the request by the agency provided that the documents required for initial registration are still valid.

SEC. 8. Open Registration. A foreign principal that acts as direct employer may be registered to more than one Philippine agency, provided that:

a. A uniform compensation package shall be adopted by the principal and the agency; and
b. The principal has a verified job order of at least 50 workers; or
c. That the principal must have hired at least 50 workers within a period of one year immediately preceding the registration.

SEC. 9. Dual Registration. A principal that is licensed to operate as foreign placement agency by its government may be registered to a maximum of two (2) Philippine agencies, provided that:

a. A uniform compensation package shall be adopted by the principal and the agency; and
b. The principal has a verified job order of at least 50 workers, or
c. That the principal must have hired at least 50 workers within a period of one year immediately preceding the registration.

SEC. 10. Transfer of Registration. The registration of a foreign placement agency may be transferred to another agency provided the compensation package previously approved by the Administration shall be maintained; and provided further
the transferee shall assume full and complete responsibility for all contractual obligations of the principals to its workers originally recruited and processed by the former agency.

SEC. 11. Action on Application for Registration of Principals With Outstanding Obligations. Claims for money or enforcement of obligations arising out of business relations between principals and their existing agencies may be conciliated by the Administration. However, the pendency of the conciliation shall not prevent the Administration from acting on the request for registration, if public interest so requires.

SEC. 12. Registration of Principals in Countries with Special Conditions of Employment. The registration of principals in countries with unique or special conditions of employment shall be governed by guidelines prescribed by the Administration.

Rule II

ACREDITATION OF FOREIGN PRINCIPALS, EMPLOYERS AND PROJECTS

SECTION 1. Accreditation of Foreign Principals, Employers and Projects. Foreign principals, employers or projects in countries or worksites where there are no POLOS to verify recruitment documents shall undergo accreditation at the POEA.

SEC. 2. Documentary Requirements for Accreditation. The principal/employer shall submit the following documents to the POEA through the Philippine licensed agency for evaluation and accreditation:

a. Special power of attorney or recruitment agreement, or service agreement with the Philippine licensed agency;

b. Master employment contract of the direct employer or foreign placement agency containing the minimum requirements for contracts of employment of land-based workers as provided for in Section 2(b), Rule 1, Part III of these Rules.

c. Manpower request indicating the position and salary of the workers to be hired;

d. Valid business license, registration certificate or equivalent document or proof of existence of project validated or certified by the issuing authority or in the host country; and

e. Visa assurance or any equivalent validated by the issuing authority.

SEC. 3. Validity of Accreditation. The accreditation of a foreign principal, employer or project shall be valid for four (4) years unless sooner revoked or cancelled by the POEA on any of the following grounds:

a. Expiration of the principal’s business license;

b. Upon written mutual agreement by the parties to pre-terminate the Agreement;
IMPLEMENTING RULES

c. False documentation or misrepresentation in connection with the application for registration; and

d. Final judgment in a disciplinary action against the foreign principal.

SEC. 4. Renewal of Accreditation. The accreditation shall be renewed upon request by the agency provided that the documents required for initial accreditation are still valid.

SEC. 5. Open Accreditation. A foreign principal that acts as direct employer may be accredited to more than one Philippine agency, provided that:

a. A uniform compensation package shall be adopted by the principal and the agency; and

b. The principal has a verified job order of at least 50 workers; or

c. That the principal must have hired at least 50 workers within a period of one year immediately preceding the accreditation.

SEC. 6. Dual Accreditation. A principal that is licensed to operate as foreign placement agency by its government may be accredited to a maximum of two (2) Philippine agencies, provided that:

a. A uniform compensation package shall be adopted by the principal and the agency; and

b. The principal has a verified job order of at least 50 workers; or

c. That the principal must have hired at least 50 workers within a period of one year immediately preceding the accreditation.

Rule III
DOCUMENTATION OF LANDBASED WORKERS
BY THE PRIVATE SECTOR

SECTION 1. Documentation of New Hires. Based on the master employment contract, request for processing should include the names, positions and salaries of workers using the prescribed form of the Administration. The agency shall provide every worker a copy of the approved employment contract or service contract.

SEC. 2. Payment of Documentation Fees. Payment of the required documentation fees shall be made to the Administration upon request for processing.

SEC. 3. Period to Deploy. An agency shall deploy its recruited/hired workers within sixty (60) days from the date of issuance of the overseas employment certificate.

SEC. 4. Cancellation of Worker’s Documents. If the deployment of the worker does not materialize within thirty (30) days from the lapse of the period to deploy, the agency shall report the non-deployment and the reasons therefor and apply to the Administration for the cancellation of the worker’s processed documents.

If the deployment of the worker does not materialize due to his fault, the agency may charge the worker for actual expenses incurred in connection with his recruitment, duly supported by official receipts.
SEC. 5. Registration of Worker-on-Leave. Workers who are considered as Workers-on-Leave as defined in these Rules, shall submit the following documents to the Administration or to its designated centers or units in the country or overseas for registration:

a. valid passport; and
b. re-entry visa, work permit, or any equivalent document.

SEC. 6. Registration of Name Hires. Name hires, as defined in these Rules, shall be registered by the Administration, subject to such guidelines as the Administration may prescribe, and upon submission of the following documents:

a. employment contract
b. valid passport
c. employment visa or work permit, or equivalent document
d. certificate of medical fitness
e. certificate of attendance to the required employment orientation/briefing

The Administration shall ensure that the worker is made fully aware of the terms and conditions of his employment.

The Administration reserves the right to disapprove employment contracts which are contrary to law, morals, and public policy.

The Administration shall transmit on a regular basis the list of registered name hires to the various Philippine Embassies/Consulates or POLOs in countries that host overseas Filipino workers for proper monitoring.

SEC. 7. Payment of Registration Fees. Payment of the prescribed fees shall be made upon registration by the name hire or the Worker-on-Leave.

SEC. 8. Ban on Direct Hires. No foreign principal or employer may hire a Filipino worker for overseas employment except through the boards and entities authorized by the Secretary. Direct hiring by members of the diplomatic corps, international organizations such other employers as may be allowed by the Secretary is exempt from this provision.

SEC. 9. In-House Processing Facility. The Administration shall extend to qualified agencies an in-house processing facility for the documents of workers who are scheduled for deployment. Agencies that qualify to enjoy the privilege shall comply with the documentary requirements.

The agencies shall be subject to regular audit and/or inspection by the Administration to ensure compliance with the prescribed guidelines on in-house processing facility.

The Administration reserves the right to recall the privilege and incentive being enjoyed by an agency should there be an established case of violation of POEA rules and regulations. Automatic preventive suspension shall be imposed in case of violation of the prescribed guidelines.

The agencies shall submit a monthly report on the utilized or missing overseas employment certificates to the Administration.
SEC. 10. **One Stop Shop-Processing Center.** A one stop shop-processing center shall be established to house all governmental activities pertaining to overseas employment.

**PART IV**  
**PLACEMENT BY THE ADMINISTRATION**

**Rule I**  
**RECRUITMENT AND PLACEMENT THROUGH THE ADMINISTRATION**

**SECTION 1. Hiring through the Administration.** The Administration shall recruit and place workers primarily on government-to-government arrangements and shall therefore service the hiring of foreign government instrumentalities. It shall also recruit and place workers for foreign employers in such sectors as the policy may dictate. In pursuance thereof, the Administration shall, among others:

a. Administer programs and projects that may support the employment development objectives of the Administration;
b. Set parameters in servicing other foreign clients; and
c. Undertake, in coordination with POEA Regional Centers and Extension Units as well as Regional Offices of the Department of Labor and Employment and concerned local government units, organized recruitment activities in the provinces in aid of the employment dispersal efforts of the government.

**SEC. 2. Recruitment and Placement of Workers.** All employers, whether government or private, hiring through the Administration shall undertake the recruitment and placement of workers through the facilities of the Administration. The activities shall include but not be limited to interview and selection; referral to medical examination; processing of contracts; assistance in securing of passport and appropriate visas; pre-employment orientation; pre-departure orientation; and travel arrangements.

**SEC. 3. Foreign Employer’s Guarantee Trust Fund.** A Guarantee Trust Fund shall be established for all workers hired on a government-to-government arrangement for the purpose of covering monetary claims of the workers arising from breach of contractual obligations.

**PART V**  
**EMPLOYMENT STANDARDS**

**Rule I**  
**FORMULATION OF EMPLOYMENT STANDARDS**

**SECTION 1. Employment Standards.** The Administration shall determine, formulate and review employment standards in accordance with the market
development thrusts and welfare objectives of the overseas employment program and the prevailing market conditions.

SEC. 2. Minimum Provisions of Employment Contract. Consistent with its welfare and employment facilitation objectives, the following shall be considered the minimum requirements for contracts of employment of landbased workers:

a. Guaranteed wages for regular work hours and overtime pay, as appropriate, which shall not be lower than the prescribed minimum wage in the host country, not lower than the appropriate minimum wage standard set forth in a bilateral agreement or international convention duly ratified by the host country and the Philippines or not lower than the minimum wage in the Philippines, whichever is highest;

b. Free transportation to and from the worksite, or offsetting benefit;

c. Free food and accommodation, or offsetting benefit;

d. Just/authorized causes for termination of the contract or of the services of the workers taking into consideration the customs, traditions, norms, mores, practices, company policies and the labor laws and social legislations of the host country;

e. The Administration may also consider the following as basis for other provisions of the contract:
   1. Existing labor and social laws of the host country;
   2. Relevant agreements, conventions, delegations or resolutions;
   3. Relevant bilateral and multilateral agreements or arrangements with the host country; and
   4. Prevailing condition/realities in the market.

SEC. 3. Freedom to Stipulate. Parties to overseas employment contracts are allowed to stipulate other terms and conditions and other benefits not provided under these minimum requirements; provided the whole employment package should be more beneficial to the worker than the minimum; provided that the same shall not be contrary to law, public policy and morals, and provided further, that Philippine agencies shall make foreign employers aware of the standards of employment adopted by the Administration.

SEC. 4. Disclosure of Terms and Conditions of Employment. The agency and the worker shall fully disclose all relevant information in relation to the recruitment and employment of the worker in accordance with the guidelines set by the Administration.

PART VI
RECRUITMENT VIOLATION AND RELATED CASES

Rule I
JURISDICTION AND VENUE

SECTION 1. Jurisdiction. The Administration shall exercise original and
exclusive jurisdiction to hear and decide all cases which are administrative in character, involving or arising out of violations of recruitment rules and regulations including refund of fees collected from workers and violation of the conditions for issuance of license to recruit workers.

SEC. 2. **Grounds for imposition of administrative sanctions:**

a. Charging, imposing or accepting directly or indirectly, any amount of money, goods or services, or any fee or bond for any purpose whatsoever before employment is obtained for an applicant worker;

b. Charging or accepting directly and indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary, or making a worker pay any amount greater than that actually received by him as a loan or advance;

c. Charging or collecting placement fee for deployment to countries where the prevailing system, either by law, policy or practice, do not allow the charging or collection of placement and recruitment fees;

d. Collecting any fee from a worker without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made;

e. Engaging in act/s of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment;

f. Inducing or attempting to induce an already employed worker to transfer from or leave his employment for another unless the transfer is designated to liberate a worker from oppressive terms and conditions of employment.

g. Influencing or attempting to influencing any person or entity not to employ any worker who has not applied for employment through his agency;

h. Obstructing or attempting to obstruct inspection by the Secretary, the Administrator or their duly authorized representatives;

i. Substituting or altering to the prejudice of the worker, employment contracts approved and verified by the Department from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department.

j. Failure to submit reports related to overseas recruitment and employment within the specified time, as may be required by the Secretary or the Administration;

k. For the owner, partner, or officer/s of any licensed agency to become an officer or member of the Board of any corporation or partnership engaged directly or indirectly in the management of a travel agency.

l. Withholding or denying travel or other pertinent documents from workers for considerations other than those authorized under existing laws and regulations.
m. Engaging in recruitment activities in places other than that specified in the license without previous authorization from the Administration;

n. Appointing or designating agents, representatives or employees without prior approval from the Administration;

o. Falsifying or altering travel documents of applicant worker in relation to overseas recruitment activities.

p. Deploying workers whose employment and travel documents were not processed by the Administration or those agencies authorized by it;

q. Deploying workers to principals not accredited/registered by the Administration;

r. Failure to deploy a worker within the prescribed period without valid reason;

s. Disregard of orders, notices and other legal processes issued by the Administration;

t. Coercing workers to accept prejudicial arrangements in exchange for certain benefits that rightfully belong to the workers;

u. Withholding of workers’ salaries or remittances without justifiable reasons or shortchanging of remittances;

v. Deploying underage workers;

w. Engaging in act/s of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false information or documents;

x. Engaging in the recruitment or placement of workers in jobs harmful to public health or morality or to dignity of the Republic of the Philippines;

y. Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment;

z. Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, where deployment does not take place without the worker’s fault;

aa. Failure to comply with the undertaking to deploy the required number of workers within the period provided in these Rules;

bb. Failure to comply with the undertaking to provide Pre-Departure Orientation Seminar to workers;

cc. Non-compliance with any other undertaking in connection with the issuance or renewal of the license;

dd. Allowing persons who are otherwise disqualified to participate in the overseas employment program under existing laws, rules and regulations to participate in the management and operation of the agency; and

ee. Violation of other pertinent provisions of the Code and other relevant laws, rules and regulations, guidelines and other issuances on recruitment and placement of workers for overseas employment and the protection of their welfare.
SEC. 3. Venue. Any complaint arising out of recruitment violation or violation of conditions of license may be filed with the Adjudication or at the POEA Regional Centers/Extension Units exercising territorial jurisdiction over the place where the complainant was recruited at the option of the complainant. The Office with which the complaint was first filed shall take cognizance of the case.

Where the complainant was recruited within the National Capital Region, the complaint shall be filed with the Adjudication Office of the Administration.

In case of reports received by the Administration, the report shall be investigated by the Adjudication Office, or by the appropriate Regional Center/Extension Unit of the Administration.

However, the venue of cases filed with the Adjudication Office of the Administration may be transferred to the POEA Regional Center/Extension Unit before the respondent files its answer upon request of either party and approved by the Administration.

For the purpose of hearing and receiving of evidence, the DOLE Regional Office exercising territorial jurisdiction over the place where the complainant was recruited may be deputized by the Secretary of Labor to take cognizance of the case for submission of its findings and recommendations to the Administrator.

Rule II
FILING OF COMPLAINTS

SECTION 1. Who may file. Any aggrieved person may file a complaint in writing and under oath for violation of the Labor Code and the POEA Rules and Regulations and other issuances relating to recruitment.

For this purpose, an aggrieved person is one who is prejudiced by the commission of a violation.

However, the Administration, on its own initiative, may conduct proceedings based on reports of violation of POEA Rules and Regulations and other issuances on overseas employment subject to preliminary evaluation.

SEC. 2. Contents of Complaint. All complaints must contain, among others, the following:

a. The name/s and address/es of the complaint/s;
b. The name/s and address/es of respondent/s;
c. The nature of the complaint;
d. The substance, cause/grounds of the complaint;
e. When and where the action complained of happened;
f. The amount of claim; if any;
g. The relief/s sought.

The complaint shall be under oath and must be accompanied by supporting documents and a certificate of non-forum shopping.

SEC. 3. Docket and Assignment of Cases. Complaints duly received shall be docketed and raffled for investigation and hearing.
Rule III
ACTION UPON COMPLAINT

SECTION 1. Answer. Upon receipt of the complaint, the Administration shall issue an order, together with the complaint and supporting documents, if any, directing the respondent/s to file a verified Answer and not a Motion to Dismiss within ten (10) calendar days from receipt, attaching proof that a copy was sent to the complaint.

SEC. 2. Failure to File Answer. In case of failure to file Answer, the investigation/hearing shall proceed.

An Answer filed out of time shall not be admitted except on meritorious grounds and upon motion.

SEC. 3. Motion for Extension. Only one motion for extension of time to file Answer shall be allowed. The OE Adjudicator, upon receipt of such motion may, upon meritorious grounds, grant a non-extendible period of ten (10) calendar days. Except where allegations in the complaint refers to facts or circumstances which occurred abroad making it necessary to verify with the concerned foreign principal, a longer period may be granted. A ruling on the motion may be made by the OE Adjudicator during the proceedings and entered in the minutes or sent by personal service or by registered mail.

SEC. 4. Proof and Completeness of Service. The contents of the return shall be proof of the facts stated therein. Service by registered mail is complete upon receipt by the addressee or agent; but if the addressee or agent fails to claim his mail from the postmaster, service shall take effect after the date of the last notice. Where the present location of the addressee is unknown, service made at the last known address shall be sufficient.

Personal service made in any registered office or officer or personnel of the private recruitment agency shall likewise be sufficient.

SEC. 5. Nature of Proceedings. The proceedings shall comply with the requirements of due process without strictly adhering to the technical rules of procedure and evidence applicable to judicial proceedings. The OE Adjudicator may avail himself of all reasonable means to ascertain the facts of the case.

SEC. 6. Preliminary Hearing. The OE Adjudicator shall set the date, time and place of the preliminary hearing with due notice to the parties, with the end view of arriving at an amicable settlement and for purposes of simplifying the issues, marking of evidence and stipulation of facts.

SEC. 7. Clarificatory Questions. At any stage of the proceedings and before the case is submitted for resolution, the OE Adjudicator may initiate clarificatory questions to the parties or their witnesses to further elicit relevant facts or information.

The OE Adjudicator may set a hearing where the parties shall be given an opportunity to be present but without right to examine or cross-examine. If the parties so desire, they may submit questions to the OE Adjudicator who may ask the parties or witnesses concerned.
SEC. 8. **Service of Order to Appear/To Produce Documents.** The Administration may issue an order to appear/to produce documents specified in the order.

The process server who personally served the order to appear/produce documents, notice order, resolution or decision shall submit his return within five (5) calendar days from the date of his service thereof, stating legibly in the return his name, the model/s of service, the name/s of the other person/s to whom it was served and the date/s of receipt. If no service was effected, the serving officer shall state the reason. The return shall form part of the records of the case.

SEC. 9. **Failure or Refusal to Obey to Appear/to Produce Documents.** The license of any agency whose officers or employers fail or refuse to comply with an order to appear/to produce documents without justifiable reason shall be suspended until otherwise ordered. This is without prejudice to the outcome of the investigation where the proper penalty may be imposed.

SEC. 10. **Summary Judgment.** Should the OE Adjudicator find, upon consideration of the complaint, answers and evidence submitted, that resolution/decision may be rendered, the case shall be deemed submitted and a summary judgment shall be issued.

SEC. 11. **Effects of Withdrawal of Complaint/Desistance.** The withdrawal of complaint/desistance shall not bar the Administration from proceeding with the investigation of the recruitment violation/s. The Administration shall resolve the case on the merits and impose the appropriate penalties.

SEC. 12. **Resolution of the Case.** Except as provided in Section 16 hereof and Section 6, Rule II, Part VII, the OE Adjudicator shall within ninety (90) calendar days from the filing of the case, submit his findings and recommendations in the form of a draft order.

SEC. 13. **Who May Issue Orders.** The Administrator may issue orders of reprimand, suspension of documentary processing, suspension, cancellation or revocation of license, or dismissal on the merits of the case.

All other orders or resolutions shall be signed by the Director, Adjudicator Office of the Administration.

SEC. 14. **Contents of Orders/Resolutions.** Orders/Resolutions issued by the Administration shall be clear and concise and shall include a brief statement of the following:

a. facts of the case;

b. issue/s involved;

c. applicable law/s or rule/s

d. conclusions and reasons therefor; and

e. specific remedy/ies or relief/s granted or sanction/s.

SEC. 15. **Suspension of Documentary Processing.** The Administration may order the suspension of the processing of documents of a respondent agency for violation of any provision of these Rules, Orders, and Regulations. Such is without prejudice to the outcome of the investigation wherein the proper penalty may be imposed.
SEC. 16. Preventive Suspension. Pending investigation of the recruitment violation/s, the license of the respondent agency may be suspended for a period not exceeding the impossible penalties under the revised schedule of penalties, on the following grounds:

a. There exist reasonable grounds to believe that the continued operation of the agency will lead to further violation or exploitation of the workers being recruited or adversely affect friendly relations with any country or otherwise prejudice national interest; and

b. There is a prima facie evidence of a case for violation of the pertinent provisions of the Labor Code, its implementing rules and regulation, POEA Rules and Regulation or any issuance of the Administration where the evidence of guilt is strong.

The Administrator may issue an order lifting or modifying the order of preventive suspension as the circumstances may warrant.

Where an Order of Preventive Suspension is issued by the Administration, the OE Adjudicator shall, within sixty (60) calendar days from filing of the case, submit his findings and recommendations in the form of a draft order.

SEC. 17. Effects of Orders of Suspension, Revocation or Cancellation of License. An order of suspension, cancellation or revocation of license shall have the effect of suspending or terminating all activities of the agency which fall under the definition of recruitment and placement.

SEC. 18. Fines. The Administration may also impose fines for failure to comply with a final order.

Rule IV
CLASSIFICATION OF OFFENSES
AND SCHEDULE OF PENALTIES

SECTION 1. Classification of Offenses. Administrative offenses are classified into serious, less serious and light, depending on their gravity. The Administration shall impose the appropriate administrative penalties for every recruitment violation.

A. The following are serious offenses with their corresponding penalties:

1. Deploying underage workers
   1st Offense — Cancellation of License

2. Engaging in act/s of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false information documents
   1st Offense — Cancellation of License

3. Engaging in the recruitment or placement of workers in jobs harmful to public health or morality or to dignity of the Republic of the Philippines
   1st Offense — Cancellation of License

4. Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment.
   1st Offense — Cancellation of License
5. Charging or collecting placement fee for deployment to countries where the prevailing system, either by law, policy or practice do not allow the charging or collection of placement and recruitment fees.
   
   1st Offense — Cancellation of License plus refund of the placement fee charged or collected from the worker.
   
   The penalty shall carry the accessory penalty of refund of the fee collected from the worker.

6. Charging or accepting directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary, or making a worker pay any amount greater than that actually received by him as a loan or advance.
   
   1st Offense — Cancellation of License plus refund of the placement fee charged or collected from the worker.
   
   The penalty shall carry the accessory penalty of refund of the excessive fee charged or collected from the worker.

B. The following are less serious offenses with their corresponding penalties:

1. Charging, imposing or accepting directly or indirectly, any amount of money, goods or services, or any fee or bond for any purpose whatsoever before employment is obtained for an applicant worker.
   
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License
   
   The penalty shall carry the accessory penalty of refund of the fee charged or collected from the worker, in case of non-deployment.

2. Collecting any fee from a worker without issuing the appropriate receipt clearly showing the amount paid and the purpose for which payment was made.
   
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License

3. Engaging in act/s of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment.
   
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License
4. Obstructing or attempting to obstruct inspection by the Secretary, the Administrator or their duly authorized representatives.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License

5. Substituting or altering to the prejudice of the worker, employment contracts approved and verified by the Department from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License

6. Withholding or denying travel or other pertinent documents from workers for reasons other than those authorized under existing laws and regulations.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License

7. Engaging in recruitment activities in places other than that specified in the license without previous authorization from the Administration.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License

8. Appointing or designating agents, representatives or employees without prior approval from the Administration.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License

9. Falsifying or altering travel documents of applicant worker in relation to recruitment activities.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License
10. Deploying workers whose employment and travel documents were not processed by the Administration or those agencies authorized by it.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License

11. Deploying workers to principals not accredited/registered by the Administration.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License

12. Withholding of workers’ salaries or remittances without justifiable reasons or shortchanging of remittances.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License
   The penalty shall carry the accessory penalty of immediate release of the salaries or remittances being claimed.

13. Allowing persons who are otherwise disqualified to participate in the overseas employment program under existing laws, rules and regulations to participate in the management and operation of the agency.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License

14. Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, where deployment does not take place without the worker’s fault.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License
   The penalty shall carry the accessory penalty of immediate refund of expenses incurred by the worker.

15. Failure to comply with the undertaking to provide Pre-Departure Orientation Seminar to workers.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License
16. Non-compliance with any other undertaking in connection with the issuance or renewal of the license.
   1st Offense — Suspension of License (Two Months to Six Months)
   2nd Offense — Suspension of License (Six Months and One day to One year)
   3rd Offense — Cancellation of License

C. The following are light offenses with their corresponding penalties:

1. For the owner, partner, or officer/s of any licensed agency to become an officer or member of the Board of any corporation or partnership engaged directly or indirectly in the management of a travel agency.
   1st Offense — Reprimand
   2nd Offense — Suspension of License (One Month to Three Months)
   3rd Offense — Suspension of License (Three Months and One day to Six Months)
   4th Offense — Cancellation of License

2. Including or attempting to induce an already employed worker to transfer from or leave his employment for another unless the transfer is designated to liberate a worker from oppressive terms and conditions of employment.
   1st Offense — Reprimand
   2nd Offense — Suspension of License (One Month to Three Months)
   3rd Offense — Suspension of License (Three Months and One day to Six Months)
   4th Offense — Cancellation of License

3. Influencing or attempting to influence any person or entity not to employ any worker who has not applied for employment through his agency.
   1st Offense — Reprimand
   2nd Offense — Suspension of License (One Month to Three Months)
   3rd Offense — Suspension of License (Three Months and One day to Six Months)
   4th Offense — Cancellation of License

4. Failure to deploy a worker within the prescribed period without valid reason.
   1st Offense — Reprimand
   2nd Offense — Suspension of License (One Month to Three Months)
   3rd Offense — Suspension of License (Three Months and One day to Six Months)
   4th Offense — Cancellation of License
5. Coercing workers to accept prejudicial arrangements in exchange for certain benefits that rightfully belong to the workers.
   1st Offense — Reprimand
   2nd Offense — Suspension of License (One Month to Three Months)
   3rd Offense — Suspension of License (Three Months and One day to Six Months)
   4th Offense — Cancellation of License

6. Disregard of orders, notices and other legal processes issued by the Administration.
   1st Offense — Reprimand
   2nd Offense — Suspension of License (One Month to Three Months)
   3rd Offense — Suspension of License (Three Months and One day to Six Months)
   4th Offense — Cancellation of License

7. Failure to submit reports related to overseas recruitment and employment within the specified time as may be required by the Secretary or the Administration.
   1st Offense — Reprimand
   2nd Offense — Suspension of License (One Month to Three Months)
   3rd Offense — Suspension of License (Three Months and One day to Six Months)
   4th Offense — Cancellation of License

8. Violation of other pertinent provisions of the Code and other relevant laws, rules and regulations, guidelines and other issuances on recruitment and placement of workers for overseas employment and the protection of their welfare.
   1st Offense — Reprimand
   2nd Offense — Suspension of License (One Month to Three Months)
   3rd Offense — Suspension of License (Three Months and One day to Six Months)
   4th Offense — Cancellation of License

   Money claims arising from recruitment violation may be awarded in addition to the administrative penalties imposed.

SEC. 2. **Imposing of Fines.** In addition or in lieu of the penalty of suspension of license, the Administration may impose the penalty of fine which shall be computed at P10,000.00 for every month of suspension.
SEC. 3. Mitigating, Aggravating or Alternative Circumstances. In the determination of the penalties to be imposed, the following mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered:
   a. First Offender;
   b. Admission of guilt and voluntary restitution, where applicable;
   c. Good faith;
   d. Exemplary Performance;
   e. Recidivism;
   f. Prejudice to the worker;
   g. Gross negligence;
   h. Other analogous circumstances.

SEC. 4. Manner of Imposition. When applicable, the imposition of the penalty may be made in accordance with the manner provided below:
   a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.
   b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.
   c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
   d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied where there are more aggravating circumstances.

SEC. 5. Penalty for Cases Involving Five or More Complainants. A respondent found guilty of committing an offense, regardless of the number or nature of changes, against five (5) or more complainants in a single case shall be imposed the penalty of cancellation of license.

Rule V
APEAL/PETITION FOR REVIEW

SECTION 1. Jurisdiction. The Secretary of Labor and Employment shall have exclusive jurisdiction to act on appeals/petitions for review of recruitment violation cases and other related cases decided by the Administration.

SEC. 2. Period to Appeal. The party aggrieved by a decision of the Administration may appeal the same to the Secretary of Labor and Employment within fifteen (15) calendar days from receipt of a copy of the decision. Failure of the aggrieved party to perfect his appeal within the reglementary period shall render the decision of the Administration final and executory.

SEC. 3. Requirements for Appeal. The appealing party shall file a Notice of Appeal and an Appeal Memorandum with Adjudication Office or the Regional Office...
of the Administration, as the case may be. In case a fine and/or a monetary award is imposed against the appealing party, he shall also file a supersedeas bond in the amount of such fine and/or monetary award, in cash or in surety bond posted by a surety company acceptable to the Administration. The Appeal Memorandum shall clearly point out the errors of law and/or fact in the decision appealed from and shall be verified. Any appeal that does not comply with these requirements shall not be acted upon and the Administration shall issue forthwith an order for the execution of the decision for which the appeal is sought.

SEC. 4. Transmittal of the Records of the Case on Appeal. Within twenty-four (24) hours from receipt of the appeal seasonably filed with the corresponding requirements, the Adjudication Office shall transmit the entire records of the case to the Office of the Secretary of Labor and Employment.

SEC. 5. Stay of Execution. The decision of the Administration shall be stayed during the pendency of the appeal; Provided, That where the penalty imposed carries the maximum penalty of twelve months suspension or cancellation of license, the decision shall be immediately executory despite the pendency of the appeal. Provided further, That where the penalty imposed is suspension of license for one month or less, the decision shall be immediately executory and may only be appealed on ground of grave abuse of discretion.

SEC. 6. Period to Resolve the Appeal. Appeals format the decision of the Administrator shall be resolved by the Office of the Secretary for Labor and Employment within sixty (60) calendar days from receipt of the transmittal of the entire records of the case.

Rule VI
EXECUTION OF DECISIONS

SECTION 1. Issuance of Writ of Execution. Unless otherwise provided in these Rules, after the Order has become final and executory, the Administration, upon motion or on its own initiative, shall issue a writ of execution requiring the Enforcement Officer to enforce a monetary award and/or fine imposed in the decision.

SEC. 2. Issuance, Form and Contents of a Writ of Execution. The writ of execution must be issued in the name of the Republic of the Philippines, requiring the Enforcement Officer to execute the Orders of the Administrator or the Secretary or his duly authorized representative, as the case may be.

The writ of execution must contain the dispositive portion of the order or decision sought to be executed. It must require the Enforcement Officer to serve the writ upon the losing party or upon any other person required by law to obey the same before proceeding to satisfy the judgment.

Execution shall proceed against the assets of the losing party in the following order:

a. escrow deposit
b. surety bond
A writ of execution shall not be necessary for the enforcement of Orders in the following cases:

a. For the return of travel and other related documents. A copy of the order served upon the losing party or upon any other required by law to obey such order is sufficient; and

b. Where the agency had earlier posted a cash or surety bond in relation to an appeal/petition for review. Certified copies of the final and executory order and official receipt of the cash or surety bond shall be sufficient basis for the preparation of the voucher for the release of the amount to be refunded, or for the confiscation/forfeiture of the amount equivalent to the fine.

The writ of execution shall be valid and effective for a period of sixty (60) calendar days from issuance thereof.

SEC. 3. Motion to Cancel Writ of Execution. Within five (5) days from receipt of a copy of Writ of Execution, the judgment debtor may file a Motion to Cancel the Writ of Execution on meritorious ground. The filing of such motion shall not stay the execution of the writ unless a cash or surety bond is posted equivalent to the judgment award and/or fine which shall answer for the same in the event that the motion is denied.

An Order denying a Motion to Quash the Writ of Execution is final and no further motions of similar nature shall be entertained.

SEC. 4. Enforcement of Writs. In executing an Order, the Enforcement Officer shall be guided strictly by the Manual of Instructions for Enforcement Officers of the POEA which the Administration will adopt.

SEC. 5. Garnishment. In cases where several writs of execution are issued against the same agency, satisfaction of the claims of workers against the escrow deposit or surety bond shall be on a “first-come, first-served” basis, irrespective of the date of filing of the case or date of the decision or date of the writ of execution. Provided, That where the orders of garnishment are served simultaneously, the escrow deposit or surety bond shall be pro-rated among the claimants.

SEC. 6. Return of Writ of Execution. The Enforcement Officer implementing the writ of execution shall submit his return immediately upon the satisfaction of the claim. Regardless, however, of the outcome of his implementation, he shall submit his return not later than sixty (60) calendar days from date of issuance thereof. The return shall state the mode/s of service, the name/s of the person/s served and the date/s of receipt. The return shall also indicate legibly the full name of the serving officer. The return shall form part of the records of the case.

SEC. 7. Execution Pending Petition for Certiorari. Once a petition for certiorari has been filed with and given due course by the appellate court, the execution of the order insofar as the monetary award to private claimant is concerned shall be stayed.
PART VII
DISCIPLINARY ACTION CASES

Rule I
JURISDICTION AND VENUE

SECTION 1. Jurisdiction. The Administration shall exercise original and exclusive jurisdiction to hear and decide disciplinary action cases against migrant workers, foreign employers and principals that are administrative in character.

SEC. 2. Venue. Any complaint involving disciplinary action cases shall be filed with the Adjudication Office of the Administration.

Rule II
DISCIPLINARY ACTIONS AGAINST PRINCIPALS/EMPLOYERS

SECTION 1. Grounds for Disciplinary Action Against Foreign Principals/ Employers.

a. Default on its contractual obligations to the migrant workers and/or to its Philippine agent;
b. Gross violations of laws, rules and regulations on overseas employment;
c. Gross negligence leading to serious injury or illness or death of the worker;
d. Grave misconduct;
e. Conviction of an offense involving moral turpitude;
f. Any other case analogous to the foregoing.

SEC. 2. Filing of Complaint. Any aggrieved person may file a complaint in writing and under oath for disciplinary action against a principal/employer with the Administration. The Administration may, on its own initiative, conduct proceedings against principals/employers based on verifiable or official reports.

SEC. 3. Contents and Form of Complaint. All complaints shall be under oath and must contain the following:

a. Name/s and address/es of the complainant/s;
b. Name/s and address/es of the respondent/s;
c. Specific acts or omissions constituting the alleged offense;
d. Place where the offense was committed;
e. Date when the offense was committed;
f. Relief sought.

All supporting documents must be attached to the complaint, whenever possible.

SEC. 4. Temporary Disqualification. A foreign employer/principal against whom a complaint for disciplinary action has been filed shall be temporarily
disqualified from participating in the overseas employment program until the respondent submits to the jurisdiction of the Administration.

SEC. 5. Effect of filing an Answer. Upon filing of an answer, the respondent employer shall be qualified to participate in the overseas employment program without prejudice to the outcome of the investigation whereby the proper penalty shall be imposed.

SEC. 6. Preventive Suspension. A principal/employer may be suspended from participating in the overseas employment program pending investigation of the disciplinary action case when the evidence of guilt is strong and there is reasonable ground to believe that the continued deployment to the principal/employer will result to further violation or exploitation of migrant workers.

The OE Adjudicator shall, within sixty (60) calendar days from the filing of the case, submit his findings and recommendations in the form of a draft.

SEC. 7. Handling of Cases. The procedure provided in this Book shall also apply to disciplinary action cases involving foreign employers/principals.

SEC. 8. Disqualification of Foreign Employers/Principals. Foreign employers/ principals against whom the penalty of suspension or disqualification had been imposed through an order, decision or resolution shall be disqualified from participating in the overseas employment program unless cleared by the Administration or the penalty imposed is lifted.

Rule III
DISCIPLINARY ACTION AGAINST OVERSEAS WORKERS

SECTION 1. Grounds for Disciplinary Action. Commission by a migrant worker of any of the offenses enumerated below or of similar offenses shall be a ground for disciplinary action:
A. Pre-Employment Offenses
   1. Using, providing, or submitting false information or documents for purposes of job application or employment.
   2. Unjustified refusal to depart for the worksite after all employment and travel documents have been duly approved by the appropriate government agency/ies.
B. Offenses during Employment
   1. Commission of a felony or crime punishable by Philippine Laws or by the laws of the host country;
   2. Unjustifiable breach of employment contract;
   3. Embezzlement of company funds or monies and/or properties of a fellow worker entrusted for delivery to kin or relatives in the Philippines; and
   4. Violation/s of the sacred practices of the host country.
SEC. 2. Filing of Complaint. Any person may file a complaint in writing and under oath for disciplinary action against a migrant worker with the Administration.
IMPLEMENTING RULES

The Administration may, on its own initiative, conduct proceedings against a migrant worker on the basis of verifiable or official reports.

SEC. 3. Contents and Form of Complaint. All complaints shall be under oath and must contain, among others, the following:

a. Name/s and address/es of the complainant/s;
b. Name/s and address/es of the respondent/s;
c. Specific act/s or omission/s constituting the alleged offense;
d. Place where the offense was committed;
e. Date when the offense was committed; and
f. The relief/s sought.

All supporting documents must be attached to the complaint, whenever possible.

SEC. 4. Exempting Circumstances. The following considerations shall be legitimate reasons for the refusal of a worker to depart for the worksite, or to abandon or withdraw from employment:

a. Exposure to hazardous, demeaning working and living conditions;
b. Refusal of the employer or principal to grant, release or remit wages and other benefits due the worker;
c. War, plague or other calamities at the worksite; and

d. Violation of labor laws of the Philippines, the host country or international labor laws;

SEC. 5. Handling of Cases. The procedures provided in this Book shall apply in disciplinary cases involving workers.

SEC. 6. Temporary disqualification from overseas employment. A respondent worker subject of a pending complaint for disciplinary action, as provided in Section 1 (A and B) of Rule III, Part VII of these Rules, or those against whom a warrant of arrest or hold departure order is issued by competent authority shall be disqualified from overseas employment unless temporarily cleared.

SEC. 7. Effect of Filing of an Answer. Upon filing of an answer, the respondent worker shall be qualified for overseas employment without prejudice to the outcome of the investigation whereby the proper penalty may be imposed.

SEC. 8. Disqualification from Overseas Employment. Migrant workers against whom suspension of disqualification has been imposed through an order, decision, or resolution shall be disqualified from overseas employment unless cleared by the Administration or the penalty imposed had been lifted.

SEC. 9. Preventive Suspension. A migrant worker may be preventively suspended when the evidence of guilt is strong and the change involves a serious offense.

Rule IV

CLASSIFICATION OF OFFENSES AND SCHEDULE OF PENALTIES

SECTION 1. Classification of Offenses. Administrative offenses committed by the worker are classified into serious and less serious, depending on their gravity.
The Administration shall impose the appropriate administrative penalties for every violation.

A. The following are serious offenses with their corresponding penalties:
   1. Commission of a felony or crime punishable by Philippine laws or by the laws of the host country
      1st Offense — Six months and one day to One (1) year suspension from participation in the overseas employment program
      2nd Offense — Permanent Disqualification
   2. Unjust refusal to depart for the worksite after all employment and travel documents have been duly approved by the appropriate government agency/ies
      1st Offense — Six months and one day to One (1) year suspension from participation in the overseas employment program
      2nd Offense — Permanent Disqualification

B. The following are less serious offenses with their corresponding penalties:
   1. Submission/furnishing or using false information or documents for purposes of job application or employment.
      1st Offense — Two months to Six months suspension from participation in the overseas employment program
      2nd Offense — Six months and one day to One (1) year suspension from participation in the overseas employment program
      3rd Offense — Permanent Disqualification
   2. Unjustified breach of employment contract
      1st Offense — Two months to Six months suspension from participation in the overseas employment program
      2nd Offense — Six months and one day to One (1) year suspension from participation in the overseas employment program
      3rd Offense — Permanent Disqualification
   3. Embezzlement of company funds or monies and/or properties of a fellow worker entrusted for delivery to kin or relatives in the Philippines
      1st Offense — Two months to Six months suspension from participation in the overseas employment program
      2nd Offense — Six months and one day to One (1) year suspension from participation in the overseas employment program
      3rd Offense — Permanent Disqualification
   4. Violation/s of the sacred practices of the host country
      1st Offense — Two months to Six months suspension from participation in the overseas employment program
      2nd Offense — Six months and one day to One (1) year suspension from participation in the overseas employment program
      3rd Offense — Permanent Disqualification
IMPLEMENTING RULES

Rule V
APPEAL/PETITION FOR REVIEW

SECTION 1. Jurisdiction. The Secretary shall have the exclusive jurisdiction to act on appeals/petitions for review of disciplinary action cases decided by the Administration.

SEC. 2. Filing of Appeal/Petition. Appeals/Petitions for review shall be filed with the Administration within fifteen (15) calendar days from receipt of the decision by the appealing or petitioning party.

Rule VI
COMMON PROVISIONS

SECTION 1. Record of Proceedings. The records of all proceedings before the OE Adjudicator shall be summarized in writing by the OE Adjudicator, including the substance of the evidence presented. The minutes of proceedings shall be signed by the parties and shall form part of the records. Where any of the parties refuse to sign, the refusal and reason/s given must be indicated by the OE Adjudicator in the minutes, which must be chronologically arranged and appropriately paged.

SEC. 2. Appearances. An attorney appearing for a party is presumed to be properly authorized for that purpose.

Appearances may be made orally or in writing. In both cases, the complete name and office and the adverse party of his counsel/representative properly advised.

Any change in the address of counsel/representative should be filed with the records of the case and furnished the adverse party or counsel.

Any change or withdrawal of counsel/representative shall be made in accordance with the Rules of Court.

SEC. 3. Action on Motions. The OE Adjudicator have the authority to rule on motions which may be done in writing or orally during the proceedings/conferences.

SEC. 4. Consolidation of Cases. Where there are two (2) or more cases pending before different OE Adjudicators, involving the same respondent/s and issues, the case which was filed last may be consolidated with the first to avoid unnecessary cost or delay. Such cases shall be handled by the OE Adjudicator to whom the first case was assigned.

SEC. 5. Discovery of Another Offense. When in the course of investigation on the alleged recruitment violation/s on pre-employment cases, another offense is uncovered, the Administration may issue the necessary show cause order or inform the respondent/s of the charge/s during the investigation and enter the same in the minutes. The Administration shall allow the parties the requisite period within which to file an Answer.

SEC. 6. Discovery of Another Respondent. When in the course of the investigation on recruitment violation/s alleged and/or uncovered, another agency or person is found to have committed a violation, the OE Adjudicator shall
automatically implead said agency or person in the records of case pending, subject of investigation. For this purpose, show cause order shall be issued to the agency or person in accordance with the Rules.

SEC. 7. Prescription. All recruitment violation cases enumerated in these Rules shall be barred if not commenced or filed with the Administration within three (3) years after such cause of action accrued.

Likewise, disciplinary action shall be barred if not commenced or filed with the Administration within three (3) years after such cause of action occurred.

SEC. 8. Applicability of the Rules of Court. The Revised Rules of Court of the Philippines shall, whenever practicable, supplement these Rules in similar or analogous character in proceedings brought before the Administration.

PART VIII
WELFARE SERVICES

Rule I
ASSISTANCE TO WORKERS

SECTION 1. Responsibility to Workers. The Administration shall ensure that workers deployed overseas are amply protected and that their interest, well-being and welfare are promoted. Agencies shall be responsible for the faithful compliance by their foreign principals of all obligations under the employment contract.

SEC. 2. Request for Assistance. The Administration shall take cognizance of any request for assistance from the worker and/or his family on matters relating to overseas employment.

SEC. 3. Call for Action and Submission of Reports. The Administration shall require an agency to act on complaints or problems brought to its attention or to submit reports on the status or condition of the worker.

SEC. 4. Administrative Sanctions. Deliberate failure by agencies and/or employers to act on requests for assistance and/or complaints of workers and/or families shall warrant imposition by the Administration of such sanctions as it may deem appropriate.

SEC. 5. Welfare Programs and Activities. The Administration, in coordination with other institutions, shall initiate and undertake such projects and activities that will enhance the welfare and promote the interest of workers and their families including those that will facilitate the psychosocial and economic reintegration of OFWs who have decided to return home for good.

Rule II
CONCILIATION OF COMPLAINTS

SECTION 1. Conciliation of Complaints. The Administration may conciliate any complaint involving a worker, licensed agency, or foreign principal/employer relating to overseas employment.
SEC. 2. **Conciliation Proceedings.** Within 5 days upon receipt of the complaint, the Administration shall notify the respondent and schedule a conference between the parties to discuss the possibility of arriving at an amicable settlement.

Where an amicable settlement is reached, the Administration shall approve the same and the settlement shall be final and binding upon the parties.

Where efforts for amicable settlement fail, the conciliation proceedings shall be terminated and the complaint shall be referred to the appropriate office immediately.

Likewise, if after evaluation of complaints and supporting documents, the employer or principal is found to be remiss in the performance of its contractual obligations to its workers, the Administration shall disqualify said employer or principal from participating in the overseas employment program.

SEC. 3. **Administrative Sanction.** Unjustifiable failure by agencies to appear or make proper representations during conciliation proceedings, or to abide by the terms of the approved settlement shall warrant the suspension of documentary processing until compliance.

Rule III

**REPATRIATION OF WORKERS**

SECTION 1. **Repatriation of Workers.** The repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation shall be borne or be charged to the agency concerned and/or its principal. Likewise, the repatriation of remains and transport of the personal belongings of the deceased worker and all costs attendant thereto shall be borne by the principal and/or the local agency. However, in cases where termination of employment is due solely to the fault of the worker, the principal/employer or agency shall not in any manner be responsible for the repatriation of the former and/or his belongings.

SEC. 2. **Repatriation Costs When Employment is Terminated.** The principal or agency shall advance the cost of plane fare without a prior determination of the cause of the termination of the worker’s employment. However, the principal/agency may recover the cost of repatriation from the worker upon his return to the Philippines if termination of employment is due solely to worker’s fault.

SEC. 3. **Repatriation Procedure.** When the need for repatriation arises and the principal fails to provide for the costs, the Philippine Embassy/Consulate/Overseas Labor Office at worksite shall simultaneously notify the Administration and OWWA of such need. The Administration shall require the agency to provide the plane ticket or a pre-paid ticket advice to the Philippine Embassy/Consulate/Overseas Labor Office and to report its compliance to the Administration which shall advise OWWA accordingly.

SEC. 4. **Administrative Sanction for Non-Compliance.** If the employment agency fails to provide the ticket or pre-paid ticket advice within 48-hours from receipt of notice, the Administration shall suspend the documentary processing of the agency
or impose such sanctions, as it may deem necessary. The Administration may request OWWA to advance the costs of repatriation with recourse to the agency and/or employer. The administrative sanction shall be lifted after the agency or employer shall have reimbursed OWWA of the costs of repatriation.

Rule IV
WAR RISK AREAS AND INSURANCE

SECTION 1. Declaration of War Risk Areas. In order to protect landbased workers from the hazards of war or war-like operations, the Administration shall, pursuant to prior declaration by the competent authorities, declare specific areas as war risk.

SEC. 2. Mandatory War Risk Insurance for Landbased Workers. All landbased workers bound for areas declared as war risk areas shall be provided with war risk insurance coverage of not less than ₱200,000.00. This war risk insurance shall be provided by the employer at no cost to the worker.

Rule V
EDUCATION PROGRAM ON OVERSEAS EMPLOYMENT

SECTION 1. Workers Education Program. In accordance with the policy of full disclosure, the Administration shall provide a comprehensive and integrated education program on overseas employment and shall be undertaken in partnership with other relevant organizations and government entities. Such education program shall cover all stages of recruitment and employment and provide information useful for overseas workers.

SEC. 2. Program Development Administration and Linkages. The Administration shall develop and administer the program in partnership with concerned government agencies, industry associations, civic-oriented groups and non-government organizations.

SEC. 3. Orientation Programs. The Administration shall conduct regular orientation programs that are country and skills-specific.

SEC. 4. Information Campaign. The Administration shall conduct a nationwide, multi-media and sustainable grassroots information campaign to create public awareness on the realities of overseas employment.

SEC. 5. Orientation of Licensed Agencies Representatives. The Administration shall provide continuing orientation programs to officers and staff of licensed agencies.

SEC 6. Orientation of Foreign Employers. The Administration shall provide orientation to foreign employers on the requirements, standards, laws and regulations in the recruitment and employment of Filipino workers.
IMPLEMENTING RULES

Rule VI
MANPOWER REGISTRATION

SECTION 1. Manpower Registry. The Administration shall adopt a system of registration of landbased workers and maintain a registry of qualified applicants in accordance with the requirements of their occupations.

SEC. 2. Manpower Sourcing from the Registry. Aside from the in-house placement facility of the Administration, private recruitment agencies may source their manpower requirements from the POEA registry.

SEC. 3. Referral of Qualified Applicants. The Administration may refer qualified applicants from the registry to agencies for possible placement.

SEC. 4. Agency Manpower Pool. An agency may maintain its own manpower pool provided no fee shall be charged to the applicant nor services be required of him in consideration of membership in the manpower pool.

Rule VII
MANPOWER RESEARCH AND DEVELOPMENT

SECTION 1. Research Studies. The Administration, in coordination with other entities, shall conduct periodic researches and studies on labor supply especially as it relates to the monitoring of the outflow of critical skills.

SEC. 2. Manpower Development Program for Overseas Workers. The Administration shall extend technical support and establish linkages with government agencies and other concerned sectors in the development and provision of assistance programs in the training of overseas workers for overseas jobs as well as in enabling them to transfer their skills and learning, upon their return.

SEC. 3. Training Program and Standards. The Administration shall coordinate with private entities, government agencies, and employers concerned in the formulation of training programs and standards.

PART IX
TRANSITORY PROVISIONS

SECTION 1. Transfer of Welfare Services Provisions to OWWA. All provisions pertaining to the welfare of migrant workers, shall be transferred to OWWA within three (3) months from the effectivity of these rules. In the meantime, POEA shall continue to perform welfare services.

PART X
GENERAL AND MISCELLANEOUS PROVISIONS

SECTION 1. Authority to Administer Oaths. The Administrator, or any person authorized under existing laws, shall have the authority to administer oaths
and require the attendance of witnesses or the production of any book, paper, correspondence, memoranda and other documents relevant or material to the case or injury.

SEC. 2. Construction. These Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and the Laws pertaining to overseas employment and to assist the parties in obtaining just, expeditious and inexpensive settlement of disputes.

All doubts in the implementation or interpretation of these Rules shall be resolved in favor of labor.

SEC. 3. Transfer of Cash Bond. Placement agencies shall be allowed to withdraw their existing cash bonds so that the same may be used to comply with the escrow deposit requirement under Section 4, Rule II, Part II of these rules.

SEC. 4. Separability Clause. The provisions of these Rules and Regulations are cleared to be separable and if any provision or the application thereof is held invalid or unconstitutional, the validity of the other provisions shall not be affected.

SEC. 5. Repealing Clause. All policies, issuances, rules and regulations inconsistent with these Rules are hereby repealed or modified accordingly.

SEC. 6. Effectivity. These Rules shall take effect fifteen (15) days from publication in a newspaper of general circulation.

Done in the City of Mandaluyong, Republic of the Philippines, this 4th day of February 2002.

APPROVED:

(Sgd.) PATRICIA A. STO. TOMAS
Chairperson

(Sgd.) ROSALINDA DIMAPILIS-BALDOZ
Board Member

(Sgd.) LUZVIMINDA L. ELBINIAS
Board Member

(Sgd.) EZEKIEL T. ALUNEN
Board Member

(Sgd.) VICENTE F. ALDANESE, JR.
Board Member

GREGORIO S. OCA
Board Member

ANNEX “A”

POEA INSPECTION MANUAL

PART I. GENERAL POLICY

Inspection Program

A. Scope and Importance of Inspection: Among the priority program thrusts of the Philippine Overseas Employment Administration is the protection of Overseas
Filipino Workers (OFWs) and the promotion of their interest and welfare. To ensure that this thrust is met by licensed recruitment agencies, compliance is monitored through inspection activities.

Inspection functions include assistance to both agencies and applicants and enforcement of existing labor laws, rules and regulations on overseas employment.

By way of accurate information, advice and explanation during the conduct of inspection, POEA inspectors are able to assist both agencies and applicants to fully understand existing rules and regulations and other pertinent issuances on overseas recruitment procedures.

More importantly, through inspection, the Administration enforces existing labor laws, rules and regulations on overseas employment. Deviant practices and irregularities are closely observed, monitored, documented and reported to concerned authorities for appropriate action.

B. Qualifications of Inspectors

To efficiently and effectively discharge their sensitive tasks, the following qualities and qualifications are required of inspectors:

1. As public officer, the POEA inspector must possess a great sense of dedication and commitment in carrying out his assigned tasks/functions. He is expected to observe fairness, tact and diplomacy in the conduct of inspection activities to likewise command the respect and courtesy of the client.

2. The POEA inspector must be impartial to ensure that no prejudice is committed. The result of every assignment must be clear and transparent.

3. As a rule of thumb, the POEA inspector must strictly observe the rule on confidentiality. An inspector’s report can be made public only if his superiors find valid reasons for its disclosure.

PART II. INSPECTION PROPER

A. Preparation

The primary consideration in a tour of inspection is the preparation of an effective and reliable inspection program. To achieve this goal, priorities are determined and a program is designed to determine compliance of agencies/entities and accredited training centers with related labor laws, issuances, rules and regulations on overseas recruitment.

Planning for an inspection tour is aimed at maximizing manpower and resources. Agencies/entities for inspection are scheduled on a per zone basis to ensure that offices within the area requiring inspection can be attended to.

B. Types of Inspection

1) Regular Inspection — This entails the conduct of ocular inspection on the office premises of agencies and entities with applications for:
a. Issuance of license
b. Renewal of license
c. Accreditation of studios, PDOS venues
d. Renewal of authority to operate a training center
e. Establishment of branch office (agency and training centers), extension office and/or request for occupancy of additional room within address/building
f. Transfer of business address of main and branch office, studio, training center and PDOS venue
g. One-Year of operation after renewal of license

2) Spot Inspection — This kind of inspection is undertaken in the following instances:
   a. Suspension and/or cancellation of license or authority
   b. Delisting of an agency from the roster of licensed agencies
   c. Possible conduct of recruitment at the old address
   d. Documented reports on illegal recruitment activities of a person/agency/entity
   e. Reported violation/non-compliance of agency/entity with POEA Rules and Regulations and other related issuances
   f. Giving up of room/additional space
   g. Monitoring recruitment activities outside acknowledged office address

3) Salvo Inspection — This peculiar type of inspection is conducted to determine compliance of agencies/training centers with the rules and regulations on overseas employment and to validate reported violations and malpractices committed in the course of their operations.

4) Regional Inspection — This entails simultaneous spot inspection of private recruitment agencies/entities including training centers located in the regions.

PART III. INSPECTION PROCEDURES

A. Inspection zoning and scheduling — To fully maximize the time and effort in the conduct of inspection and to ensure the quality and reliability of inspection results, proper scheduling and zoning of agencies/entities should be observed.

   The list of agencies/entities to be inspected for the day is the responsibility of the Chief of the Inspection Division with the assistance of the Supervising Labor and Employment Officer and a Senior Labor and Employment Officer designated as an Account Officer.

   Inspection schedules are planned in advance and the following are carefully prepared and identified:

   1) Registered Business address of the agency;
2) All pertinent data and information on the agencies/entities which are the subject for inspection;

3) A team of two inspectors who shall conduct inspection during office hours;

4) Inspection Authority clearly stating the name and address of the agency to be inspected, the names of the inspectors and the purpose and nature of inspection;

5) Inspection authority bearing the signature/s of POEA official signatories, as follows:

   a. Regular Inspection — Inspection authority shall bear the signature of the Director II, Licensing Branch or his duly authorized representative.
   
   b. Spot Inspection — Inspection authority shall bear the signature of the Director, Licensing and Regulation Office or his duly authorized representative.
   
   c. Salvo Inspection — Inspection authority shall bear the signature of the Deputy Administrator for Licensing and Adjudication or his duly authorized representative.
   
   d. Regional Inspection — A special order shall bear the signature of the Administrator or his duly authorized representative.

B. Conduct of Inspection

1) Limitation — Inspection shall be conducted only in the premises of agencies/entities named in the Inspection Authority. The Authority, on the other hand, shall be valid only on the date specified therein.

2) Frequency — Except when necessity requires, inspection shall be conducted periodically as provided for in the Section II, Rule IV of the Rules and Regulations Governing Overseas Employment as amended.

   As a general rule, conduct of inspection shall be discreet to guarantee maximum effectivity. POEA inspectors are to observe the actual operations of the agencies/entities concerned.

3) Entry to the Office Premises — Inspection shall be done during the regular working hours except when ordered otherwise.

   Inspectors should be in proper office attire and should at all times observe the tenets of good conduct in the course of their assignment.

   During inspection, the inspectors must present their inspection authority, introduce themselves and state the purpose of their visit. Whenever possible, the inspectors must meet the President/Proprietor/Manager of the Agency/entity, or in his absence seek a responsible officer to discuss matters affecting their operation.

   Inspectors should not enter the premises of an agency/entity without the approval of any of its responsible officers.

640
4) Refusal to allow entry — Rule II, g(a) of the Implementing Rules and Regulations of the Labor Code of the Philippines as amended, provides for the access of the Labor/POEA inspectors to the agency/entity premises anytime of the regular working days within the regular working hours.

When the President/Proprietor/Manager or any responsible officer of the agency/entity refuses the entry of inspectors after presentation of an inspection authority, or allows entry but refuses to allow conduct of inspection, the team must withdraw and submit a report stating that they were refused entry or that they were prevented from conducting the inspection after entry to the office was allowed. A recommendation to refer the matter to the Adjudication Office can be made.

C. Conduct of Actual Ocular Inspection

1) Opening Conference — The POEA inspector shall inform the representative of the agency/entity the purpose of the inspection and shall request permission to move around the office premises for an ocular inspection in his presence or with any of his representative. The meeting must be as brief as possible. Conditions of the office operation should be assessed, all facts pertinent to apparent irregularities/violations should be recorded. Likewise, inspectors should ascertain if subject agency/entity has maintained its compliance with the space, facilities and operational requirements of the Administration.

2) Sources of Information — Notwithstanding the facts gathered in the course of interview with the office representative and the actual observations noted during the ocular inspection, other information regarding agency operations can be gathered from prospective applicants and employees of the agency. Interviews must be objective since this can disclose matters which may be used as a source of information regarding the agency’s day-to-day operations. As much as possible, interviews must not be done in the presence of the agency head to enable applicants and/or employees to freely answer questions and provide the information that may validate facts gathered in the course of inspection. Information provided by applicants and agency personnel should be clearly reflected in the inspection report form with their signatures affixed on it.

3) Documenting/Recording Information — It is a must that all information be reduced in writing in either English or Pilipino. This shall be attached and/or reflected in the Inspection Report Form for documentation and reference.

4) Examination of Books of Accounts, Official Receipts and other pertinent documents/records — The POEA inspectors shall inspect/examine records which are pertinent to the purpose of inspection (i.e., Books of Accounts, Official Receipts, Deployment Reports, Payroll Receipts, etc.). Where the results of examination indicate violations involving illegal
exaction (charging of fees beyond the allowable amount prescribed by the Administration), non-submission of payroll and deployment reports as required, copies of the documents reflecting the irregularities noted must be reproduced and serve as evidence in cases where legal proceedings are to be pursued.

5) Completion of Inspection — Upon completion of the inspection, the inspector shall accomplish the Inspection Report Form clearly stating the information and observations made. Any violations discovered in the course of inspection should also be reflected and should not be subjected to any compromise or agreement. The inspector shall give the agency/entity representative an opportunity to read and go over the contents of the inspection report. If the agency representative/owner contests the inspection results, the inspectors must indicate with clarity that the agency officer concerned refused to acknowledge the results of the activity.

The inspection report, together with signed statements, and all other pertinent materials relevant to substantiate the inspection findings, if any, shall be submitted to the Chief, Inspection Division within 24 hours from the date the ocular inspection was conducted for review and possible course of action if it so requires.

Where findings involve violations of recruitment rules and regulations, proper endorsement to the Adjudication Office shall be prepared.

6) Evaluation of Inspection Report — Submitted inspection reports shall be evaluated by the Chief, Inspection Division through the assistance of the Supervising Labor and Employment Officer. Such evaluation is aimed at checking the reliability and accurateness of the inspection report.

Likewise, evaluation of inspection report shall be the basis in identifying problems encountered in the course of inspection and assessing the efficiency of inspection procedures.

Spot inspection, on certain instances, may be conducted to validate inspection results whenever there is a need to verify the accuracy of reports submitted by the inspectors.
IMPLEMENTING RULES OF BOOK II

BOOK II
NATIONAL MANPOWER DEVELOPMENT PROGRAMS

Rule VI
APPRENTICESHIP TRAINING AND EMPLOYMENT
OF SPECIAL WORKERS

SECTION 1. Objectives. — The promotion, development and maintenance of apprenticeship programs shall have the following objectives:

(a) To meet the needs of the economy for trained manpower in the widest possible range of employment;

(b) To establish a national apprenticeship program through the participation of employers, workers, government, civic and other groups; and

(c) To establish apprenticeship standards for the protection of apprentices and upgrading of skills.

SEC. 2. Definition of terms. — (a) “Apprenticeship” means any training on the job supplemented by related theoretical instruction involving apprenticeable occupations and trades as may be approved by the Secretary of Labor and Employment.

(b) “Apprentice” is a worker who is covered by a written apprenticeship agreement with an employer.

(c) “Apprenticeship agreement” is a written employment contract wherein the employer binds himself to train the apprentice and the latter in turn agrees to work for the employer.

(d) “Apprenticeable occupation” means any trade, form of employment or occupation approved for apprenticeship by the Secretary of Labor, which requires for proficiency more than three months of practical training on the job supplemented by related theoretical instruction.

(e) “Apprenticeship standards” means the written implementing plans and conditions of an apprenticeship program.

(f) “Bureau” means the Bureau of Apprenticeship.

(g) “Employer” means the individual firm or any other entity qualified to hire apprentices under the Code.

1Rules I to V are rendered obsolete by the rules implementing the TESDA law. See footnote to Art. 45. The TESDA Act of 1994 and its Implementing Rules are reproduced in the Appendix.
(h) “On-the-job training” is the practical work experience through actual participation in productive activities given to or acquired by an apprentice.

(i) “Related theoretical instructions” means technical information based on apprenticeship standards approved by the Bureau which provides the apprentice theoretical competence in his trade.

(j) “Highly technical industries” means trade, business, enterprise, industry, or other activity, which is engaged in the application of advanced technology.

SEC. 3. Voluntary nature of apprenticeship program. — The organization of apprenticeship programs shall be primarily a voluntary undertaking of employers except as otherwise provided.

SEC. 4. Venues of on-the-job training. — The practical aspect or on-the-job training of apprentices may be undertaken:

(a) In the plant, shop or premises of the employer or firm concerned if the apprenticeship program is organized by an individual employer or firm;

(b) In the premises of one or several firms designated for the purpose by the organizer of the program if such organizer is an association of employers, civic group or the like; and

(c) In a Department of Labor Training Center or other public training institutions with which the Bureau has made appropriate arrangements.

SEC. 5. On-the-job training to be explicitly described. — The manner in which practical or on-the-job training shall be provided must be specifically described in the apprenticeship standards of a particular program.

SEC. 6. Recognition of apprenticeship programs. — To enjoy the benefits which the Bureau or other government agencies may extend to duly recognized apprenticeship programs, an employer shall submit in quadruplicate to the Training Section of the appropriate Apprenticeship Division of the appropriate Regional Office the apprenticeship standards of the proposed program prepared in accordance with guidelines set by the Bureau.

If the apprenticeship standards are found in order, a certificate of recognition shall be issued by the Apprenticeship Division concerned within five (5) days from receipt thereof.

SEC. 7. Benefits accruing to recognition. — An entity with a recognized apprenticeship program shall be entitled to technical and other assistance from the Bureau, and other government agencies and to the corresponding training expenses deductions from its income tax. The rate of such tax deduction incentive and the procedure of availing itself thereof are provided in Section 42 of this Rule.

SEC. 8. Trades to be included in apprenticeship programs. — Only trades and occupations declared apprenticeable by the Secretary of Labor may be included in apprenticeship programs.

SEC. 9. Who may establish programs. — Any entity, whether or not organized for profit, may establish or sponsor apprenticeship programs and employ apprentices.

SEC. 10. Assistance by nonprofit entities. — In lieu of organizing programs, nonprofit entities may:
(a) Execute an agreement with firms of their choice with ongoing apprenticeship programs directly or through the Department of Labor assuming responsibility for training deserving apprentices selected by an employer who shall pay the apprentices;

(b) Give financial and other contributions for the promotion of apprenticeship programs; or

(c) Provide other forms of assistance.

Apprentices who train under such programs shall be properly identified in apprenticeship agreements with the employer. However, responsibility for compliance with workmen’s compensation, social security, medicare and other labor laws shall remain with the employer who benefits from the productive efforts of the apprentices.

SEC. 11. Qualifications of apprentices. — To qualify as an apprentice, an applicant shall:

(a) Be at least fifteen years of age, provided those who are at least fifteen years of age but less than eighteen may be eligible for apprenticeship only in nonhazardous occupations;

(b) Be physically fit for the occupation in which he desires to be trained;

(c) Possess vocational aptitude and capacity for the particular occupation as established through appropriate tests; and

(d) Possess the ability to comprehend and follow oral and written instructions.

Trade and industry associations may, however, recommend to the Secretary of Labor appropriate educational qualifications for apprentices in certain occupations. Such qualifications, if approved, shall be the educational requirements for apprenticeship in such occupations unless waived by an employer in favor of an applicant who has demonstrated exceptional ability. A certification explaining briefly the ground for such waiver, and signed by the person in charge of the program shall be attached to the apprenticeship agreement of the applicant concerned.

SEC. 12. Aptitude tests. — An employer who has a recognized apprenticeship program shall provide aptitude tests to apprentice-applicants. However, if the employer does not have adequate facilities, the Department of Labor may provide the service free of charge.

SEC. 13. Physical fitness. — Total physical fitness need not be required of an apprentice-applicant unless it is essential to the expeditious and effective learning of the occupation. Only physical defects which constitute real impediments to effective performance as determined by the plant apprenticeship committee may disqualify an applicant.

SEC. 14. Free physical examination. — Physical examination of apprentice-applicants preparatory to employment shall be provided free of charge by the Department of Health or any government hospital. If this is not feasible, the firm or entity screening the applicant shall extend such services free of charge.

All entities with an apprenticeship program may elect to assume the responsibility for physical examination provided its facilities are adequate and all expenses are borne exclusively by it.
SEC. 15. **Apprenticeable trades.** — The Bureau shall evaluate crafts and operative, technical, nautical, commercial, clerical, technological, supervisory service, and managerial activities which may be declared apprenticeable by the Secretary of Labor and shall have exclusive jurisdiction to formulate model national apprenticeship standards therefor.

SEC. 16. **Model standards.** — Model apprenticeship standards to be set by the Bureau shall include the following:

(a) Those affecting employment of apprentices under different occupational conditions;

(b) Those involving the theoretical and proficiency tests for apprentices during their training;

(c) Areas and duration of work and study covered by on-the-job training and theoretical instruction of apprenticeable trades and occupations; and

(d) Those referring to the qualifications of trainers of apprentices.

SEC. 17. **Participation in standards settings.** — The Bureau may request any legitimate workers’ and employers’ organizations, civic and professional groups, and other entities, whether public or private, to assist in the formulation of national apprenticeship standards.

SEC. 18. **Contents of agreement.** — Every apprenticeship agreement shall include the following:

(a) The full names and addresses of the contracting parties;

(b) Date of birth of the apprentice;

(c) Name of the trade, occupation or job in which the apprentice will be trained and the dates on which such training will begin and will approximately end;

(d) The approximate number of hours of on-the-job training as well as of supplementary theoretical instructions which the apprentice shall undergo during his training;

(e) A schedule of the work processes of the trade/occupation in which the apprentice shall be trained and the approximate time to be spent on the job in each process;

(f) The graduated scale of wages to be paid the apprentice;

(g) The probationary period of the apprentice during which either party may summarily terminate their agreement; and

(h) A clause that if the employer is unable to fulfill his training obligation, he may transfer the agreement, with the consent of the apprentice, to any other employer who is willing to assume such obligation.

SEC. 19. **Apprenticeship period.** — The period of apprenticeship shall not exceed six (6) months.

SEC. 20. **Hours of work.** — Hours of work of the apprenticeship shall not exceed the maximum number of hours of work prescribed by law, if any, for a worker of his age and sex. Time spent in related theoretical instructions shall be considered as hours
of work and shall be reckoned jointly with on-the-job training time in computing in the agreement the appropriate periods for giving wage increases to the apprentice.

An apprentice not otherwise barred by law from working eight hours a day may be requested by his employer to work overtime and paid accordingly, provided there are no available regular workers to do the job, and the overtime work thus rendered is duly credited toward his training time.

SEC. 21. Previous training or experience. — A prospective apprentice who has completed or otherwise attended a vocational course in a duly recognized trade or vocational school or training center or who has had previous experience in the trade or occupation in which he desires to be apprenticed shall be given due credit therefor.

Both practical and theoretical knowledge shall be evaluated and the credit shall appear in the apprenticeship agreement which shall have the effect of shortening the training and serving as a basis for promoting him to a higher wage level. Such credit shall be expressed in terms of hours.

SEC. 22. Parties to agreement. — Every apprenticeship agreement shall be signed by the employer or his duly authorized representative and by the apprentice.

An apprenticeship agreement with a minor shall be signed in his behalf by his parent or guardian, or if the latter is not available, by an authorized representative of the Department of Labor.

SEC. 23. Bureau and Apprenticeship Division of Regional Office concerned to be furnished copy of agreement. — The employer shall furnish a copy of the apprenticeship agreement to the Bureau and Apprenticeship Division of Regional Office concerned and the agency which shall provide related theoretical instructions if the employer is not the one who will give such instruction. The copies shall be sent by the employer within five (5) working days from the date of execution thereof. If the agreement is found defective and serious damage would be sustained by either party if such defect is not corrected, the Apprenticeship Division shall advise the employer within five (5) working days not to implement the agreement pending amendments thereof. Other defects may be corrected without suspending the effectivity of the agreement.

SEC. 24. Enforcement of agreement. — No person shall institute any action for the enforcement of any apprenticeship agreement or for damages for breach thereof, unless he has exhausted all available administrative remedies. The plant apprenticeship committee shall have initial responsibility for settling differences arising out of apprenticeship agreements.

SEC. 25. Valid cause to terminate agreement. — Either party to an agreement may terminate the same after the probationary period only for a valid cause. The following are valid causes for termination:

By the employer — (a) Habitual absenteeism in on-the-job training and related theoretical instructions;

(b) Willful disobedience of company rules or insubordination to lawful order of a superior;
IMPLEMENTING RULES

(c) Poor physical condition, permanent disability or prolonged illness which incapacitates the apprentice from working;
(d) Theft or malicious destruction of company property and/or equipment;
(e) Poor efficiency of performance on the job or in the classroom for a prolonged period despite warnings duly given to the apprentice; and
(f) Engaging in violence or other forms of gross misconduct inside the employer’s premises.

By the apprentice — (a) Substandard or deleterious working conditions within the employer’s premises;
(b) Repeated violations by the employer of the terms of the apprenticeship agreement;
(c) Cruel or inhuman treatment by the employer or his subordinates;
(d) Personal problems which in the opinion of the apprentice shall prevent him from a satisfactory performance of his job; and
(e) Bad health or continuing illness.

SEC. 26. Procedure of termination. — The procedure for effecting termination shall be embodied in appropriate instructions to be prepared by the Bureau and approved by the Secretary of Labor.

SEC. 27. Theoretical instructions by employer. — Related theoretical instructions to apprentices may be undertaken by the employer himself if he has adequate facilities and qualified instructors for the purpose. He shall indicate his intention to assume such responsibility in the apprenticeship standards of his program. The course outline and the bio-data of the instructors who will conduct the course shall conform with the standards set by the Department.

SEC. 28. Ratio of theoretical and on-the-job training. — The normal ratio is one hundred (100) hours of theoretical instructions for every two thousand (2,000) hours of practical or on-the-job training. Theoretical instruction time for occupations requiring less than two thousand hours for proficiency shall be computed on the basis of such ratio.

SEC. 29. Wages. — The wage rate of the apprentice shall start at seventy-five (75) percent of the statutory minimum wage for the first six (6) months; thereafter, he shall be paid the full minimum wage, including the full cost-of-living allowance.

SEC. 30. Tripartite apprenticeship committees. — The creation of a plant apprenticeship committee for every apprenticeship program shall be necessary. The Department shall encourage the organization of apprenticeship committees at trade, industry or other levels. As much as possible these committees shall consist of management, labor and government representatives.

SEC. 31. Nontriptartite committees. — Where tripartism is not feasible, the apprenticeship committee may be composed of:
(a) Technical personnel in the plant, trade or industry concerned;
(b) Labor and management representatives.
Representatives of cooperative, civic and other groups may also participate in such committees.

SEC. 32. Duties of apprenticeship committees. — An apprenticeship committee at any level shall be responsible for the following duties:

(a) Act as liaison between the apprentice and the employer;
(b) Mediate and/or settle in the first instance differences between the employer and the apprentices arising out of an apprenticeship agreement;
(c) Maintain a constant follow-up on the technical progress of the program and of the apprentices in particular;
(d) Recommend to the Apprenticeship Division of the Regional Office concerned the issuance of certificates of completion to apprentices.

SEC. 33. Creation of ad hoc advisory committees. — The Secretary of Labor may create ad hoc committees consisting of representatives of management, labor and government on the national, regional and local levels to advise and assist him in the formulation of policy, promotion of apprenticeship and other matters he may deem appropriate to refer to them.

SEC. 34. Use of training centers. — The Department may utilize the facilities and services of the National Manpower and Youth Council, the Department of Education and Culture and other public training institutions for the training of apprentices.

SEC. 35. Coordination of training activities. — The Apprenticeship Division shall coordinate with the above training centers all activities relating to apprenticeship. The Bureau, through the Apprenticeship Division, shall provide technical guidance and advice to the centers.

SEC. 36. Priority in use of training centers. — Priority in the use of training centers shall be given to recognized apprenticeship programs in skills which are highly in demand in specific regions or localities as determined through surveys. The Bureau shall recommend to the Secretary of Labor the establishment of priorities based on data supplied by the Bureau of Employment Services, Labor Statistics and Information Service, the National Manpower and Youth Council, and its own findings. The Secretary of Labor may, however, also act on the basis of petitions presented by qualified entities which are willing to bear the costs of training.

SEC. 37. Issuance of certificates. — Upon completion of his training the apprentice shall be issued a certificate of completion of apprenticeship by the Apprenticeship Division of the Regional Office concerned.

SEC. 38. Certificate of meritorious service. — A certificate of meritorious service may be awarded by the Secretary of Labor to apprenticeship committees or other entities which have rendered outstanding service to the cause of apprenticeship.

SEC. 39. Certificate, evidence of skills. — A certificate of completion of apprenticeship shall be evidence of the skills specified therein in accordance with national skills standards established by the Department.
SEC. 40. Apprenticeship without compensation. — The Secretary of Labor through the Apprenticeship Division may authorize the hiring of apprentices without compensation whose training on the job is required by the school curriculum as a prerequisite for graduation or for taking a government board examination.

SEC. 41. Compulsory apprenticeship. — (a) When grave national emergencies, particularly those involving the security of the State, arise or particular requirements of economic development so demand, the Secretary of Labor may recommend to the President of the Philippines the compulsory training of apprentices required in certain trades, occupations, jobs or employment levels where shortage of trained manpower is deemed critical.

(b) Where services of foreign technicians are utilized by private companies in apprenticeable trades said companies are required to set up appropriate apprenticeship programs.

SEC. 42. Certification from Apprenticeship Division. — An employer desiring to avail of the tax deduction provided under the Code shall secure from the Apprenticeship Division a certification that his apprenticeship program was operational during the taxable year concerned. Such certification shall be attached to the employer’s income tax return for the particular year. Guidelines for the issuance of such certifications shall be prepared by the Bureau and approved by the Secretary of Labor.

Rule VII

LEARNERS

SECTION 1. Definition of terms. — (a) “Learner” is a person hired as a trainee in industrial occupations which are nonapprenticeable and which may be learned through practical training on the job for a period not exceeding three (3) months, whether or not such practical training is supplemented by theoretical instructions.

(b) “Learnership agreement” refers to the employment and training contract entered into between the employer and the learner.

SEC. 2. When learners may be employed. — Learners may be employed when no experienced workers are available, the employment of learners being necessary to prevent curtailment of employment opportunities, and such employment will not create unfair competition in terms of labor costs or impair working standards.

SEC. 3. Approval of learnership program. — Any employer who intends to employ learners shall submit in writing to the Apprenticeship Division of the Regional Office concerned, copy furnished to the Bureau, his learnership program which the Division shall evaluate to determine if the occupation involved is learnable and the program sufficient for the purpose of training. Within five (5) working days from receipt of the program, the Division shall make known its decision to the employer concerned. A learnership program shall be subject to periodic inspection by the Secretary of Labor or his duly authorized representative.

SEC. 4. Contents of learnership agreement. — A learnership agreement shall include:
(a) The names and addresses of the employer and the learner;
(b) The occupation to be learned and the duration of the training period which shall not exceed three (3) months;
(c) The wage of the learner which shall be at least 75% of the applicable minimum wage; and
(d) A commitment to employ the learner, if he so desires, as a regular employee upon completion of training.

A learner who has worked during the first two months shall be deemed a regular employee if training is terminated by the employer before the end of the stipulated period through no fault of the learner.

SEC. 5. Parties to learnership agreement.—Every learnership agreement shall be signed by the employer or his duly authorized agent and by the learner. A learnership agreement with a minor shall be signed by the learner with the conformity of his parent or guardian.

The employer shall furnish a copy of each of the learnership agreement to the learner, the Bureau, and the Apprenticeship Division of the appropriate Regional Office within five (5) working days following its execution by the parties.

SEC. 6. Employment of minors as learners.—A minor below fifteen (15) years of age shall not be eligible for employment as a learner. Those below eighteen (18) years of age may only be employed in nonhazardous occupations.

SEC. 7. Cancellation of learnership programs.—The Secretary of Labor may cancel any learnership program if upon inquiry, it is found that the justification for the program no longer exists.

Rule VIII
HANDICAPPED WORKERS

SECTION 1. Definition of terms.—(a) “Handicapped workers” are those whose earning capacity is impaired by age or physical or mental deficiency or injury.

(b) “Employment agreement” is the contract of employment entered into between the employed and the handicapped worker.

SEC. 2. When handicapped workers may be employed.—Handicapped workers may be employed when their employment is necessary to prevent curtailment of employment opportunities and when it does not create unfair competition in labor costs or impair working standards.

SEC. 3. Contents of employment agreement.—An employer who hires a handicapped worker shall enter into an employment agreement with the latter which shall include:

(a) The names and addresses of the employer and the handicapped worker;
(b) The rate of pay of the handicapped worker which shall not be less than seventy-five percent (75%) of the legal minimum wage;
(c) The nature of work to be performed by the handicapped worker; and
(d) The duration of the employment.

SEC. 4. Copy of agreement to be furnished to Division. — A copy each of the employment agreement shall be furnished by the employer to the handicapped worker and the Apprenticeship Division involved. The Secretary of Labor or duly authorized representative may inspect from time to time the working conditions of handicapped workers to verify compliance by the parties with their employment agreement.

SEC. 5. Eligibility for apprenticeship. — Handicapped workers shall not be precluded from employment as apprentices or learners if their handicap is not such as to effectively impede the performance of job operations in the particular trade or occupation which is the subject of the apprenticeship or learnership program.
IMPLEMENTING RULES OF BOOK III

BOOK III
CONDITIONS OF EMPLOYMENT

Rule I
HOURS OF WORK

SECTION 1. General statement on coverage. — The provisions of this Rule shall apply to all employees in all establishments and undertakings, whether operated for profit or not, except to those specifically exempted under Section 2 hereof.

SEC. 2. Exemption. — The provisions of this Rule shall not apply to the following persons if they qualify for exemption under the condition set forth herein:

(a) Government employees whether employed by the National Government or any of its political subdivisions, including those employed in government-owned and/or controlled corporations.

(b) Managerial employees, if they meet all of the following conditions, namely:

1. Their primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof;
2. They customarily and regularly direct the work of two or more employees therein;
3. They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight.

(c) Officers or members of a managerial staff if they perform the following duties and responsibilities:

1. The primary duty consists of the performance of work directly related to management policies of their employer;
2. Customarily and regularly exercise discretion and independent judgment;
3. (i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or (iii) execute under general supervision special assignments and tasks; and
4. who do not devote more than 20 percent of their hours worked in a workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2), and (3) above.

(d) Domestic servants and persons in the personal service of another if they perform such services in the employer’s home which are usually necessary or desirable for the maintenance and enjoyment thereof, or minister to the personal comfort, convenience, or safety of the employer as well as the members of his employer’s household.

(e) Workers who are paid by results, including those who are paid on piece-work, takay, pakyaw, or task basis, if their output rates are in accordance with the standards prescribed under Section 8, Rule VII, Book III, of these regulations, or where such rates have been fixed by the Secretary of Labor in accordance with the aforesaid Section.

(f) Nonagricultural field personnel if they regularly perform their duties away from the principal or branch office or place of business of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

SEC. 3. Hours worked. — The following shall be considered as compensable hours worked:

(a) All time during which an employee is required to be on duty or to be at the employer’s premises or to be at a prescribed workplace; and

(b) All time during which an employee is suffered or permitted to work.

SEC. 4. Principles in determining hours worked. — The following general principles shall govern in determining whether the time spent by an employee is considered hours worked for purposes of this Rule:

(a) All hours are hours worked which the employee is required to give to his employer, regardless of whether or not such hours are spent in productive labor or involve physical or mental exertion;

(b) An employee need not leave the premises of the workplace in order that his rest period shall not be counted, it being enough that he stops working, may rest completely and may leave his workplace, to go elsewhere, whether within or outside the premises of his workplace;

(c) If the work performed was necessary, or it benefited the employer, or the employee could not abandon his work at the end of his normal working hours because he had no replacement, all time spent for such work shall be considered as hours worked, if the work was with the knowledge of his employer or immediate supervisor;

(d) The time during which an employee is inactive by reason of interruptions in his work beyond his control shall be considered time either if the imminence of the resumption of work requires the employee’s presence at the place of work or if the interval is too brief to be utilized effectively and gainfully in the employee’s own interest.
SEC. 5. **Waiting time.** — (a) Waiting time spent by an employee shall be considered as working time if waiting is an integral part of his work or the employee is required or engaged by the employer to wait.

(b) An employee who is required to remain on call in the employer’s premises or so close thereto that he cannot use the time effectively and gainfully for his own purpose shall be considered as working while on call. An employee who is not required to leave word at his home or with company officials where he may be reached is not working while on call.

SEC. 6. **Lectures, meetings, training programs.** — Attendance at lectures, meetings, training programs, and other similar activities shall not be counted as working time if all of the following conditions are met:

(a) attendance is outside of the employee’s regular working hours;
(b) attendance is in fact voluntary; and
(c) the employee does not perform any productive work during such attendance.

SEC. 7. **Meal and rest periods.** — Every employer shall give his employees, regardless of sex, not less than one (1) hour time-off for regular meals, except in the following cases when a meal period of not less than twenty (20) minutes may be given by the employer provided that such shorter meal period is credited as compensable hours worked of the employee:

(a) Where the work is nonmanual work in nature or does not involve strenuous physical exertion;
(b) Where the establishment regularly operates not less than sixteen hours a day;
(c) In cases of actual or impending emergencies or there is urgent work to be performed on machineries, equipment or installations to avoid serious loss which the employer would otherwise suffer; and
(d) Where the work is necessary to prevent serious loss of perishable goods.

Rest periods or coffee breaks running from five (5) to twenty (20) minutes shall be considered as compensable working time.

SEC. 8. **Overtime pay.** — Any employee covered by this Rule who is permitted or required to work beyond eight (8) hours on ordinary working days shall be paid an additional compensation for the overtime work in an amount equivalent to his regular wage plus at least twenty-five percent (25%) thereof.

SEC. 9. **Premium and overtime pay for holiday and rest day work.** — (a) Except employees referred to under Section 2 of this Rule, an employee who is permitted or suffered to work on special holidays or on his designated rest days not falling on regular holidays, shall be paid with an additional compensation as premium pay of not less than thirty percent (30%) of his regular wage. For work performed in excess of eight (8) hours on special holidays and rest days not falling on regular holidays, an employee shall be paid an additional compensation for the overtime work equivalent to his rate for the first eight hours on a special holiday or rest day plus at least thirty percent (30%) thereof.
(b) Employees of public utility enterprises as well as those employed in nonprofit institutions and organizations shall be entitled to the premium and overtime pay provided herein, unless they are specifically excluded from the coverage of this Rule as provided in Section 2 hereof.

(c) The payment of additional compensation for work performed on regular holidays shall be governed by Rule IV, Book III, of these Rules.

SEC. 10. Compulsory overtime work. — In any of the following cases, an employer may require any of his employees to work beyond eight (8) hours a day, provided that the employee required to render overtime work is paid the additional compensation required by these regulations:

(a) When the country is at war or when any other national or local emergency has been declared by the National Assembly or the Chief Executive;

(b) When overtime work is necessary to prevent loss of life or property or in case of imminent danger to public safety due to actual or impending emergency in the locality caused by serious accident, fire, floods, typhoons, earthquake, epidemic or other disaster or calamities;

(c) When there is urgent work to be performed on machines, installations, or equipment, or in order to avoid serious loss or damage to the employer or some other causes of similar nature;

(d) When the work is necessary to prevent loss or damage to perishable goods;

(e) When the completion or continuation of work started before the 8th hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer;

(f) When overtime work is necessary to avail of favorable weather or environmental conditions where performance or quality of work is dependent thereon.

In cases not falling within any of these enumerated in this Section, no employee may be made to work beyond eight hours a day against his will.

SEC. 11. Computation of additional compensation. — For purposes of computing the additional compensation required by this Rule, the “regular wage” of an employee shall include the cash wage only, without deduction on account of facilities provided by the employer.

Rule I-A

HOURS OF WORK OF HOSPITAL AND CLINIC PERSONNEL

SECTION 1. General statement on coverage. — This Rule shall apply to:

(a) all hospitals and clinics, including those with a bed capacity of less than one hundred (100) which are situated in cities or municipalities with a population of 1 million or more; and

(b) all hospitals and clinics with a bed capacity of at least one hundred (100), irrespective of the size of the population of the city or municipality where they may be situated.
SEC. 2. Hospitals or clinics within the meaning of this Rule. — The terms “hospitals” and “clinic” as used in this Rule shall mean a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from illness, disease, injury, or deformity, or in need of obstetrical or other medical and nursing care. Either term shall also be construed as any institution, building, or place where there are installed beds, or cribs, or bassinets for twenty-four (24) hours use or longer by patients in the treatment of diseases, injuries, deformities, or abnormal physical and mental states, maternity cases or sanitorial care; or infirmaries, nurseries, dispensaries, and such other similar names by which they may be designated.

SEC. 3. Determination of bed capacity and population. — (a) For purposes of determining the applicability of this Rule, the actual bed capacity of the hospital or clinic at the time of such determination shall be considered, regardless of the actual or bed occupancy. The bed capacity of hospital or clinic as determined by the Bureau of Medical Services pursuant to Republic Act No. 4226, otherwise known as the Hospital Licensure Act, shall prima facie be considered as the actual bed capacity of such hospital or clinic.

(b) The size of the population of the city or municipality shall be determined from the latest official census issued by the Bureau of the Census and Statistics.

SEC. 4. Personnel covered by this Rule. — This Rule applies to all persons employed by any private or public hospital or clinic mentioned in Section 1 hereof, and shall include, but not be limited to, resident physicians, nurses, nutritionists, dieticians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, and attendants.

SEC. 5. Regular working hours. — The regular working hours of any person covered by this Rule shall not be more than eight (8) hours in any one day nor more than forty hours in any one week.

For purposes of this Rule, a “day” shall mean a workday of 24 consecutive hours beginning at the same time each calendar day. A “week” shall mean the workweek of 168 consecutive hours, or seven consecutive 24-hour workdays, beginning at the same hour and on the same calendar day each calendar week.

SEC. 6. Regular working days. — The regular working days of covered employees shall not be more than five days in a workweek. The workweek may begin at any hour and on any day, including Saturday or Sunday, designated by the employer.

Employers are not precluded from changing the time at which the workday or workweek begins, provided that the change is not intended to evade the requirements of this Rule.

SEC. 7. Overtime work. — Where the exigencies of the service so require as determined by the employer, any employee covered by this Rule may be scheduled to work for more than five (5) days or forty (40) hours a week, provided that the employee is paid for the overtime work an additional compensation equivalent to his regular wage plus at least thirty percent (30%) thereof, subject to the provisions of this Book on the payment of additional compensation for work performed on special and regular holidays and on rest days.
SEC. 8. **Hours worked.** — In determining the compensable hours of work of hospital and clinic personnel covered by this Rule, the pertinent provisions of Rule 1 of this Book shall apply.

SEC. 9. **Additional compensation.** — Hospital and clinic personnel covered by this Rule, with the exception of those employed by the Government, shall be entitled to an additional compensation for work performed on regular and special holidays and rest days as provided in this Book. Such employees shall also be entitled to overtime pay for services rendered in excess of forty hours a week, or in excess of eight hours a day, whichever will yield the higher additional compensation to the employee in the workweek.

SEC. 10. **Relation to Rule I.** — All provisions of Rule I of this Book which are not inconsistent with this Rule shall be deemed applicable to hospital and clinic personnel.

---

**Rule II**

**NIGHT SHIFT DIFFERENTIAL**

SECTION 1. **Coverage.** — This Rule shall apply to all employees, except:

(a) Those of the government and any of its political subdivisions, including government-owned and/or -controlled corporations;

(b) Those of retail and service establishments regularly employing not more than five (5) workers;

(c) Domestic helpers and persons in the personal service of another;

(d) Managerial employees as defined in Book III of this Code;

(e) Field personnel and other employees whose time and performance is unsupervised by the employer, including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.

SEC. 2. **Night shift differential.** — An employee shall be paid night shift differential of no less than ten percent (10%) of his regular wage for each hour of work performed between ten o’clock in the evening and six o’clock in the morning.

SEC. 3. **Additional compensation.** — Where an employee is required or suffered to work on the period covered after his work schedule, he shall be entitled to his regular wage plus at least twenty-five percent (25%) and an additional amount of no less than ten percent (10%) of such overtime rate for each hour of work performed between 10 p.m. to 6 a.m.

SEC. 4. **Additional compensation on scheduled rest day/special holiday.** — An employee who is required or permitted to work on the period covered during rest days and/or special holidays not falling on regular holidays, shall be paid a compensation equivalent to his regular wage plus at least thirty percent (30%) and an additional amount of not less than ten percent (10%) of such premium pay rate for each hour of work performed.
SEC. 5. **Additional compensation on regular holidays.** — For work on the period covered during regular holidays, an employee shall be entitled to his regular wage during these days plus an additional compensation of no less than ten percent (10%) of such premium rate for each hour of work performed.

SEC. 6. **Relation to agreements.** — Nothing in this Rule shall justify an employer in withdrawing or reducing any benefits, supplements or payments as provided in existing individual or collective agreements or employer practice or policy.

**Rule III**

**WEEKLY REST PERIODS**

SECTION 1. **General statement on coverage.** — This Rule shall apply to all employers whether operating for profit or not, including public utilities operated by private persons.

SEC. 2. **Business on Sundays/holidays.** — All establishments and enterprises may operate or open for business on Sundays and holidays provided that the employees are given the weekly rest day and the benefits as provided in this Rule.

SEC. 3. **Weekly rest day.** — Every employer shall give his employees a rest period of not less than twenty-four (24) consecutive hours after every six consecutive normal work days.

SEC. 4. **Preference of employee.** — The preference of the employee as to his weekly day of rest shall be respected by the employer if the same is based on religious grounds. The employee shall make known his preference to the employer in writing at least seven (7) days before the desired effectivity of the initial rest day so preferred.

Where, however, the choice of the employees as to their rest day based on religious grounds will inevitably result in serious prejudice or obstruction to the operations of the undertaking and the employer cannot normally be expected to resort to other remedial measures, the employer may so schedule the weekly rest day of their choice for at least two (2) days in a month.

SEC. 5. **Schedule of rest day.** — (a) Where the weekly rest is given to all employees simultaneously, the employer shall make known such rest period by means of a written notice posted conspicuously in the workplace at least one week before it becomes effective.

(b) Where the rest period is not granted to all employees simultaneously and collectively, the employer shall make known to the employees their respective schedules of weekly rest through written notices posted conspicuously in the workplace at least one week before they become effective.

SEC. 6. **When work on rest day authorized.** — An employer may require any of his employees to work on his scheduled rest day for the duration of the following emergency and exceptional conditions:

(a) In case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity, to prevent loss of life or property, or in cases of *force majeure* or imminent danger to public safety;
IMPLEMENTING RULES

(b) In case of urgent work to be performed on machineries, equipment or installations, to avoid serious loss which the employer would otherwise suffer;

(c) In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;

(d) To prevent serious loss of perishable goods;

(e) Where the nature of the work is such that the employees have to work continuously for seven (7) days in a week or more, as in the case of the crew members of a vessel to complete a voyage and in other similar cases; and

(f) When the work is necessary to avail of favorable weather or environmental conditions where performance or quality of work is dependent thereon.

No employee shall be required against his will to work on his scheduled rest day except under circumstances provided in this section, Provided, however, That where an employee volunteers to work on his rest day under other circumstances, he shall express such desire in writing, subject to the provisions of Section 7 hereof regarding additional compensation.

SEC. 7. Compensation on rest day/Sunday/holiday. — (a) Except those employees referred to under Section 2, Rule I, Book III, an employee who is made or permitted to work on his scheduled rest day shall be paid with an additional compensation of at least 30% of his regular wage. An employee shall be entitled to such additional compensation for work performed on a Sunday only when it is his established rest day.

(b) Where the nature of the work of the employee is such that he has no regular workdays and no regular rest days can be scheduled, he shall be paid an additional compensation of at least 30% of his regular wage for work performed on Sundays and holidays.

(c) Work performed on any special holiday shall be paid with an additional compensation of at least 30% of the regular wage of the employee. Where such holiday work falls on the employee’s scheduled rest day, he shall be entitled to additional compensation of at least 50% of his regular wage.

(d) The payment of additional compensation for work performed on regular holiday shall be governed by the Rule IV, Book III, of these regulations.

(e) Where the collective bargaining agreement or other applicable employment contract stipulates the payment of a higher premium pay than that prescribed under this Section, the employer shall pay such higher rate.

SEC. 8. Paid off-days. — Nothing in this Rule shall justify an employer in reducing the compensation of his employees for the unworked Sundays, holidays, or other rest days which are considered paid off-days or holidays by agreement or practice subsisting upon the effectivity of the Code.

SEC. 9. Relation to agreement. — Nothing herein shall prevent the employer and his employees or their representatives from entering into any agreement with terms more favorable to the employees than those provided herein, or be used to diminish any benefit granted to the employees under existing laws, agreements, and voluntary employer practices.
Rule IV
HOLIDAYS WITH PAY

SECTION 1. Coverage. — This Rule shall apply to all employees except:

(a) Those of the government and any of the political subdivisions, including government-owned and -controlled corporation;

(b) Those of retail and service establishments regularly employing less than ten (10) workers;

(c) Domestic helpers and persons in the personal service of another;

(d) Managerial employees as defined in Book III of the Code;

(e) Field personnel and other employees whose time and performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof.

SEC. 2. Status of employees paid by the month. — Employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wage shall be presumed to be paid for all days in the month whether worked or not. For this purpose, the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve.

SEC. 3. Holiday pay. — Every employer shall pay his employees their regular daily wage for any unworked regular holiday.

As used in the Rule, the term “holiday” shall exclusively refer to: New Year’s Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth and thirtieth of December and the day designated by law for a general election or national referendum or plebiscite. (See comments under Articles 93 and 94 in this volume — CAA)

SEC. 4. Compensation for holiday work. — Any employee who is permitted or suffered to work on any regular holiday, not exceeding eight (8) hours, shall be paid at least two hundred percent (200%) of his regular daily wage. If the holiday work falls on the scheduled rest day of the employee, he shall be entitled to an additional premium pay of at least 30% of his regular holiday rate of 200% based on his regular wage rate.

SEC. 5. Overtime pay for holiday work. — For work performed in excess of eight hours on a regular holiday, an employee shall be paid an additional compensation for the overtime work equivalent to his rate for the first eight hours on such holiday work plus at least 30% thereof.

Where the regular holiday work exceeding eight hours falls on the scheduled rest day of the employee, he shall be paid an additional compensation for the overtime work equivalent to his regular holiday-rest day for the first 8 hours plus 30% thereof. The regular holiday-rest day rate of an employee shall consist of 200% of his regular wage rate plus 30% thereof.
SEC. 6. Absences. — (a) All covered employees shall be entitled to the benefit provided herein when they are on leave of absence with pay. Employees who are on leave of absence without pay on the day immediately preceding a regular holiday may not be paid the required holiday pay if he has not worked on such regular holiday.

(b) Employees shall grant the same percentage of the holiday pay as the benefit granted by competent authority in the form of employee’s compensation or social security payment, whichever is higher, if they are not reporting for work while on such benefits.

(c) Where the day immediately preceding the holiday is a nonworking day in the establishment or the scheduled rest day of the employee, he shall not be deemed to be on leave of absence on that day, in which case he shall be entitled to the holiday pay if he worked on the day immediately preceding the nonworking day or rest day.

SEC. 7. Temporary or periodic shutdown and temporary cessation of work. — (a) In cases of temporary or periodic shutdown and temporary cessation of work of an establishment, as when a yearly inventory or when the repair or cleaning of machineries and equipment is undertaken, the regular holidays falling within the period shall be compensated in accordance with this Rule.

(b) The regular holiday during the cessation of operation of an enterprise due to business reverses as authorized by the Secretary of Labor may not be paid by the employer.

SEC. 8. Holiday pay of certain employees. — (a) Private school teachers, including faculty members of colleges and universities, may not be paid for the regular holidays during semestral vacations. They shall, however, be paid for the regular holidays during Christmas vacation.

(b) Where a covered employee is paid by results or output, such as payment on piece-work, his holiday pay shall not be less than his average daily earnings for the last seven (7) actual working days preceding the regular holiday: Provided, however, That in no case shall the holiday pay be less than the applicable statutory minimum wage rate.

(c) Seasonal workers may not be paid the required holiday pay during off-season where they are not at work.

(d) Workers who have no regular working days shall be entitled to the benefits provided in this Rule.

SEC. 9. Regular holiday falling on rest days or Sundays. — (a) A regular holiday falling on the employee’s rest day shall be compensated accordingly.

(b) Where a regular holiday falls on a Sunday, the following day shall be considered a special holiday for purposes of the Labor Code, unless said day is also a regular holiday.

[Note: This rule is rendered obsolete by Letter of Instruction No. 1087, issued on 26 November 1980, which in part states: “When a legal holiday falls on a Sunday, the following Monday shall not be a holiday, unless a proclamation is issued declaring it a special holiday.”]
SEC. 10. Successive regular holidays. — Where there are two (2) successive regular holidays, like Holy Thursday and Good Friday, an employee may not be paid for both holidays if he absents himself from work on the day immediately preceding the first holiday, unless he works on the first holiday, in which case he is entitled to his holiday pay on the second holiday.

SEC. 11. Relation to agreements. — Nothing in this Rule shall justify an employer in withdrawing or reducing any benefits, supplements or payments for unworked holidays as provided in existing individual or collective agreement or employer practice or policy.

Rule V

SERVICE INCENTIVE LEAVE

SECTION 1. Coverage. — This Rule shall apply to all employees except:
(a) Those of the government and any of its political subdivisions, including government-owned and -controlled corporations;
(b) Domestic helpers and persons in the personal service of another;
(c) Managerial employees as defined in Book III of this Code;
(d) Field personnel and other employees whose performance is unsupervised by the employer including those who are engaged on task or contract basis, purely commission basis, or those who are paid in a fixed amount for performing work irrespective of the time consumed in the performance thereof;
(e) Those who are already enjoying the benefit herein provided;
(f) Those enjoying vacation leave with pay of at least five days; and
(g) Those employed in establishments regularly employing less than ten employees.

SEC. 2. Right to service incentive leave. — Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

SEC. 3. Definition of certain terms. — The term “at least one year service” shall mean service within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contract is less than 12 months, in which case said period shall be considered as one year.

SEC. 4. Accrual of benefit. — Entitlement to the benefit provided in this Rule shall start December 16, 1975, the date the amendatory provision of the Code took effect.

SEC. 5. Treatment of benefit. — The service incentive leave shall be commutable to its money equivalent if not used or exhausted at the end of the year.
SEC. 6. **Relation to agreements.** — Nothing in the Rule shall justify an employer from withdrawing or reducing any benefits, supplements or payments as provided in existing individual or collective agreements or employer’s practices or policies.

**Rule VI**  
**SERVICE CHARGES**

**SECTION 1. Coverage.** — This Rule shall apply only to establishments collecting service charges such as hotels, restaurants, lodging houses, night clubs, cocktail lounge, massage clinics, bars, casinos and gambling houses, and similar enterprises, including those entities operating primarily as private subsidiaries of the Government.

**SEC. 2. Employees covered.** — This Rule shall apply to all employees of covered employers, regardless of their positions, designations or employment status, and irrespective of the method by which their wages are paid, except to managerial employees.

As used herein, a managerial employee shall mean one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign, or discipline employees or to effectively recommend such managerial actions. All employees not falling within this definition shall be considered rank-and-file employees.

**SEC. 3. Distribution of service charges.** — Effective December 16, 1975, all service charges collected by covered employers shall be distributed at the rate of 85% percent for the employees and 15% percent for the management. The 85% percent shall be distributed equally among the covered employees. The 15% shall be for disposition by management to answer for losses and breakages and distribution to employees receiving more than P2,000.00 a month, at the discretion of the management in the latter case.

**SEC. 4. Frequency of distributions.** — The shares referred to herein shall be distributed and paid to the employees not less than once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days.

**SEC. 5. Permanency of service charges.** — In case the service charge is abolished, the share of covered employees shall be considered integrated in their wages. The basis of the amount to be integrated shall be the average monthly share of each employee for the past twelve (12) months immediately preceding the abolition or withdrawal of such charges.

**SEC. 6. Relation to agreements.** — Nothing in this Rule shall prevent the employer and his employees from entering into any agreement with terms more favorable to the employees than those provided herein, or be used to diminish any benefit granted to the employees under existing laws, agreement and voluntary employer practice.

**SEC. 7.** This Rule shall be without prejudice to existing and future collective bargaining agreements.
Nothing in this Rule shall be construed to justify the reduction or diminution of any benefit being enjoyed by any employee at the time of effectiveness of this Rule.

**Rule VII**

**WAGES**

**SECTION 1. Minimum wages.** — (a) The minimum wage rates for agricultural and nonagricultural employees shall be as follows, unless otherwise revised by a duly issued wage order or other authoritative issuance by a competent authority:

1. Eight pesos a day for nonagricultural workers;
2. Four pesos and seventy-five centavos for agricultural employees;
3. Six pesos a day for employees of retail or service enterprises that do not regularly employ more than the five employees;
4. Eight pesos a day for employees of the National government and all government-owned and/or -controlled corporations;
5. Five pesos a day for employees of provinces, municipalities and cities or the minimum wages being paid to them at the time of the approval of R.A. No. 6129 on 17 June 1970.

The minimum wage rates in industries prescribed by duly issued wage orders shall remain effective unless otherwise revised by competent authority.

(b) The basis of the minimum wage rates prescribed herein is understood to be not more than eight hours of work in a day.

[Note: Minimum wage rates are prescribed in wage orders issued periodically by regional wage boards; see R.A. No. 6727, June 9, 1989. – CAA]

**SEC. 2. Minimum wages in depressed areas.** — To the extent necessary to relieve serious unemployment situation in welfare areas, such as squatter relocation centers, the Secretary of Labor may, on his own initiative or upon petition of any interested party, authorize the payment of subminimum wages by enterprises and institutions that may be established in such areas to provide employment opportunities to the residents therein. The authorization of the Secretary of Labor shall be subject to such terms and conditions as he may prescribe to insure the protection and welfare of the workers as well as the industries that may be affected thereby.

**SEC. 3. Coverage.** — This Rule shall not apply to the following persons:

(a) Household or domestic helpers, including family drivers and persons in the personal service of another;
(b) Homeworkers engaged in needlework;
(c) Workers employed in any establishment duly registered with the National Cottage Industries and Development Authority in accordance with R.A. No. 3470, provided that such workers perform the work in their respective homes;
(d) Workers in any duly registered cooperative when so recommended by the Bureau of Cooperative Development and upon approval of the Secretary...
of Labor; *Provided, however,* That such recommendation shall be given only for the purpose of making the cooperative viable and upon finding and certification of said Bureau, supported by adequate proof, that the cooperative cannot resort to other remedial measures without serious loss or prejudice to its operation except through its exemption from the requirements of this Rule. The exemption shall be subject to such terms and conditions and for such period of time as the Secretary of Labor may prescribe.

**Rule VII-A**  
**WAGES**  
*(Memorandum Circular No. 2, November 4, 1992)*

**SECTION. 1. Cash wage.** — The minimum wage rates prescribed in Section 1 hereof shall be basic, cash wages without deducting therefrom whatever benefits, supplements or allowances which the employees enjoy free of charge aside from the basic pay. An employer may provide subsidized meals and snacks to his employees provided that the subsidy shall not be less than 30% of the fair and reasonable value of such facilities. In such case, the employer may deduct from the wages of the employees not more than 70% of the value of the meals and snacks enjoyed by the employees, provided that such deduction is with the written authorization of the employees concerned.

**SEC. 2. Facilities.** — The term “facilities” as used in this Rule shall include articles or services for the benefit of the employee or his family but shall not include tools of the trade or articles or services primarily for the benefit of the employer or necessary to the conduct of the employer’s business.

**SEC. 3. Value of facilities.** — The Secretary of Labor may from time to time fix in appropriate issuances the fair and reasonable value of board, lodging, and other facilities customarily furnished by an employer to his employees both in agricultural and non-agricultural enterprises.

The fair and reasonable value of facilities is hereby determined to be the cost of operation and maintenance, including adequate depreciation plus reasonable allowance (but not more than 5 1/2 % interest on the depreciated amount of capital invested by the employer); provided that if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale) the fair rental value shall be the reasonable cost of the operation and maintenance. The rate of depreciation and depreciated amount computed by the employer shall be those arrived at under good accounting practices.

The term “good accounting practices” shall not include accounting practices which have been rejected by the Bureau of Internal Revenue for income tax purposes. The term “deprecations” shall include obsolescence.

**SEC. 4. Acceptance of facilities.** — In order that the cost of facilities furnished by the employer may be charged against an employee, his acceptance of such facilities must be voluntary.
SEC. 5. Payment by results. — On petition of any interested party, or upon its initiative, the Department of Labor shall use all available devises, including the use of time and motion studies and consultation with representatives of employers’ and workers’ organizations, to determine whether the employees in any industry or enterprise are being compensated in accordance with the minimum wage requirements of this Rule.

(b) The basis for the establishment of rates for piece, output or contract work shall be the performance of an ordinary worker of minimum skill or ability.

(c) An ordinary worker of minimum skill or ability is the average worker of the lowest producing group representing 50% of the total number of employees engaged in similar employment in a particular establishment, excluding learners, apprentices and handicapped workers employed therein.

(d) Where the output rates established by the employer do not conform with the standards prescribed herein, or with the rates prescribed by the Department of Labor in an appropriate order, the employees shall be entitled to the difference between the amount to which they are entitled to receive under such prescribed standards or rates and that actually paid them by the employer.

SEC. 6. Payment by results in government projects. — In government projects, payment of wages by results, such as payment on pakiau, task, or piece-work basis, may be used by employers: Provided, however, That the output rates shall be in accordance with the standards prescribed in the immediately preceding Section, whenever applicable, or with such rates as may be established by the Department of Labor.

Rule VIII
PAYMENT OF WAGES

SECTION 1. Manner of wage payment. — As a general Rule, wages shall be paid in legal tender and the use of tokens, promissory notes, vouchers, coupons, or any other form alleged to represent legal tender is absolutely prohibited even when expressly requested by the employee.

SEC. 2. Payment by check. — Payment of wages by bank checks, postal checks or money orders is allowed where such manner of wage payment is customary on the date of the effectivity of the Code, where it is stipulated in a collective agreement, or where all of the following conditions are met:

1. There is a bank or other facility for encashment within a radius of one (1) kilometer from the workplace;
2. The employer, or any of his agents or representatives, does not receive any pecuniary benefit directly or indirectly from the arrangement;
3. The employees are given reasonable time during banking hours to withdraw their wages from the bank which time shall be considered as compensable hours worked if done during working hours; and
4. The payment by check is with the written consent of the employees concerned if there is no collective agreement authorizing the payment of wages by bank checks.
SEC. 3. **Time of payment.** — (a) Wages shall be paid not less often than once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days, unless payment cannot be made with such regularity due to *force majeure* or circumstances beyond the employer’s control, in which case the employer shall pay the wages immediately after such *force majeure* or circumstances have ceased.

(b) In case of payment of wages by results involving work which cannot be finished in two (2) weeks, payment shall be made at intervals not exceeding sixteen (16) days in proportion to the amount of work completed. Final settlement shall be made immediately upon completion of the work.

SEC. 4. **Place of payment.** — (a) As a general Rule, the place of payment shall be at or near the place of undertaking. Payment in a place other than the workplace shall be permissible only under the following circumstances:

(1) When payment cannot be effected at or near the place of work by reason of the deterioration of peace and order conditions, or by reason of actual or impending emergencies caused by fire, flood epidemic or other calamity rendering payment thereat impossible;

(2) When the employer provides free transportation to the employees back and forth; and

(3) Under any other analogous circumstances; provided that the time spent by the employees in collecting their wages shall be considered as compensable hours worked.

(b) No employer shall pay his employees in any bar, night or day club, drinking establishment, massage clinic, dance hall or other similar places or in places where games are played with stakes of money or things representing money except in the case of persons employed in said places.

SEC. 5. **Direct payment of wages.** — Payment of wages shall be made direct to the employee entitled thereto except in the following cases:

(a) Where the employer is authorized in writing by the employee to pay his wages to a member of his family;

(b) Where payment to another person of any part of the employee’s wages is authorized by existing law, including payments for the insurance premiums of the employee and union dues where the right to check-off has been recognized by the employer in accordance with a collective agreement or authorized in writing by the individual employees concerned; or

(c) In case of death of the employee as provided to the succeeding section.

SEC. 6. **Wages of deceased employee.** — The payment of the wages of a deceased employee shall be made to his heirs without the necessity of intestate proceedings. When the heirs are of age, they shall execute an affidavit attesting to their relationship to the deceased and the fact that they are his heirs to the exclusion of all other persons. In case any of the heirs is a minor, such affidavit shall be executed in his behalf by his natural guardian or next of kin. Upon presentation of the affidavit to the employer, he shall make payment to the heirs as representative of the Secretary of Labor.
SEC. 7. Payment of wages and other monetary claims in case of bankruptcy. — In case of bankruptcy or liquidation of the employer’s business, the unpaid wages and other monetary claims of the employees shall be given first preference and shall be paid in full before the claims of government and other creditors may be paid.¹

SEC. 8. Attorney’s fees. — Attorney’s fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

SEC. 9. Noninterference in disposal of wages. — No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages and no employer shall in any manner oblige any of his employees to patronize any store or avail of the services offered by any person.

SEC. 10. Wage deduction. — Deductions from the wages of the employees may be made by the employer in any of the following cases:

(a) When the deductions are authorized by law, including deductions for the insurance premiums advanced by the employer in behalf of the employee as well as union dues where the right to check-off has been recognized by the employer or authorized in writing by the individual employee himself;

(b) When the deductions are with the written authorization of the employees for payment to a third person and the employer agrees to do so, provided that the latter does not receive any pecuniary benefit, directly or indirectly, from the transaction.

SEC. 11. Deductions for loss or damages. — Where the employer is engaged in a trade, occupation or business where the practice of making deductions or requiring deposits is recognized, to answer for the reimbursement of loss or damage to tools, materials, or equipment supplied by the employer to the employee, the employer may make wage deductions or require the employees to make deposits from which deductions shall be made, subject to the following conditions:

(a) That the employee concerned is clearly shown to be responsible for the loss of damage;

(b) That the employee is given reasonable opportunity to show cause why deduction should not be made;

(c) That the amount of such deductions is fair and reasonable and shall not exceed the actual loss or damage; and

(d) That the deduction from the wages of the employee does not exceed 20% of the employee’s wages in a week.

[The following Department Order No. 18-A, Series of 2011 supersedes D.O. No. 18-02 of November 2002.]

¹As amended by Section 1 of the Rules and Regulations Implementing R.A. No. 6715, approved by Secretary of Labor and Employment Franklin M. Drilon on May 24, 1989.
By virtue of the power vested in the Secretary of Labor and Employment under Articles 5 and 106 to 109 of the Labor Code of the Philippines, as amended, the following regulations governing contracting and subcontracting arrangements are hereby issued:

SECTION 1. Guiding principles. Contracting and subcontracting arrangements are expressly allowed by law and are subject to regulations for the promotion of employment and the observance of the rights of workers to just and humane conditions of work, security of tenure, self-organization and collective bargaining. Labor-only contracting as defined herein shall be prohibited.

SECTION 2. Coverage. These Rules shall apply to all parties of contracting and subcontracting arrangements where employer-employee relationships exist. It shall also apply to cooperatives engaging in contracting or subcontracting arrangements.

Contractors and subcontractors referred to in these Rules are prohibited from engaging in recruitment and placement activities as defined in Article 13(b) of the Labor Code, whether for local or overseas employment.

SECTION 3. Definition of terms. The following terms as used in these Rules, shall mean:

(a) “Bond/s” refers to the bond under Article 108 of the Labor Code that the principal may require from the contractor to be posted equal to the cost of labor under contract. The same may also refer to the security or guarantee posted by the principal for the payment of the services of the contractors under the Service Agreement.

(b) “Cabo” refers to a person or group of persons or to a labor group which, in 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.

(c) “Contracting” or “Subcontracting” refers to 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.

(d) “Contractor” refers to any person or entity, including a cooperative, engaged in a legitimate contracting or subcontracting arrangement providing either services, skilled workers, temporary workers, or a combination of services to a principal under a Service Agreement.
(e) “Contractor’s employee” includes one employed by a contractor to perform or complete a job, work, or service pursuant to a Service Agreement with a principal.

It shall also refer to regular employees of the contractor whose functions are not dependent on the performance or completion of a specific job, work or service within a definite period of time, i.e., administrative staff.

(f) “In-house agency” refers to a contractor which is owned, managed, or controlled directly or indirectly by the principal or one where the principal owns/repsents any share of stock, and which operates solely or mainly for the principal.

(g) “Net Financial Contracting Capacity (NFCC)” refers to the formula to determine the financial capacity of the contractor to carry out the job, work or services sought to be undertaken under a Service Agreement. NFCC is current assets minus current liabilities multiplied by K, which stands for contract duration equivalent to: 10 for one year or less; 15 for more than one (1) year up to two (2) years; and 20 for more than two (2) years, minus the value of all outstanding or ongoing projects including contracts to be started.

(h) “Principal” refers to any employer, whether a person or entity, including government agencies and government-owned and controlled-corporations, who/which puts out or farms out a job, service or work to a contractor.

(i) “Right to control” refers to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

(j) “Service Agreement” refers to the contract between the principal and contractor containing the terms and conditions governing the performance or completion of a specific job, work or service being farmed out for a definite or predetermined period.

(k) “Solidary liability” refers to the liability of the principal, pursuant to the provision of Article 109 of the Labor Code, as direct employer together with the contractor for any violation of any provision of the Labor Code.

It also refers to the liability of the principal, in the same manner and extent that he/she is liable to his/her direct employees, to the extent of the work performed under the contract when the contractor fails to pay the wages of his/her employees, as provided in Article 106 of the Labor Code, as amended.

(l) “Substantial capital” refers to paid-up capital stocks/shares of at least Three Million Pesos (P3,000,000.00) in the case of corporations, partnerships and cooperatives; in the case of single proprietorship, a net worth of at least Three Million Pesos (P3,000,000.00).

(m) “Trilateral Relationship” refers 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

---

1Refers to the formula set out in the Implementing Rules and Regulations of R.A. No. 9184, or An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and For Other Purposes.
between the contractor and its workers. There are three (3) parties involved in these 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 contractual workers engaged by the contractor to accomplish the job, work or service.

SECTION 4. **Legitimate contracting or subcontracting.** Contracting or subcontracting shall be legitimate if all the following circumstances concur:

(a) The contractor must be registered in accordance with these Rules and carries a distinct and independent business and undertakes to perform the job, work or service on its own responsibility, according to its own manner and method, and free from control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;

(b) The contractor has substantial capital and/or investment; and

(c) The Service Agreement ensures compliance with all the rights and benefits under Labor Laws.

SECTION 5. **Trilateral relationship in contracting arrangements; Solidary liability.** In legitimate contracting or subcontracting arrangement there exists:

(a) An employer-employee relationship between the contractor and the employees it engaged to perform the specific job, work or service being contracted; and

(b) A contractual relationship between the principal and the contractor as governed by the provisions of the Civil Code.

In the event of any violation of any provision of the Labor Code, including the failure to pay wages, there exists a solidary liability on the part of the principal and the contractor for purposes of enforcing the provisions of the Labor Code and other social legislation, to the extent of the work performed under the employment contract.

However, the principal shall be deemed the direct employer of the contractor’s employee in cases where there is a finding by a competent authority of labor-only contracting, or commission of prohibited activities as provided in Section 7 or a violation of either Sections 8 or 9 hereof.

SECTION 6. **Prohibition against labor-only contracting.** Labor-only contracting is hereby declared prohibited. For this purpose, labor only contracting shall refer to an arrangement where:

(a) The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal 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; or
(b) The contractor does not exercise the right to control over the performance of the work of the employee.

SECTION 7. **Other Prohibitions.** Notwithstanding Section 6 of these Rules, the following are hereby declared prohibited for being contrary to law or public policy:

A. Contracting out of jobs, works or services when not done in good faith and not justified by the exigencies of the business such as the following:

(1) Contracting out of jobs, works or services when the same results in the termination or reduction of regular employees and reduction of work hours or reduction or splitting of the bargaining unit.

(2) Contracting out of work with a “Cabo.”

(3) Taking undue advantage of the economic situation or lack of bargaining strength of the contractor’s employees, or undermining their security of tenure or basic rights, or circumventing the provisions of regular employment, in any of the following instances:

   (i) Requiring them to perform functions which are currently being performed by the regular employees of the principal; and

   (ii) Requiring them to sign, as a precondition to employment or continued employment, an antedated resignation letter; a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal, contractor or from any liability as to payment of future claims.

(4) Contracting out of a job, work or service through an in-house agency.

(5) Contracting out of a job, work or service that is necessary or desirable or directly related to the business or operation of the principal by reason of a strike or lockout whether actual or imminent.

(6) Contracting out of a job, work or service being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization as provided in Art. 248(c) of the Labor Code, as amended.

(7) Repeated hiring of employees under an employment contract of short duration or under a Service Agreement of short duration with the same or different contractors, which circumvents the Labor Code provisions on Security of Tenure.

(8) Requiring employees under a 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.

(9) Refusal to provide a copy of the Service Agreement and the employment contracts between the contractor and the employees deployed to work in the bargaining unit of the principal’s certified bargaining agent to the sole and exclusive bargaining agent (SEBA).

(10) Engaging or maintaining by the principal of subcontracted employees in excess of those provided for in the applicable Collective Bargaining Agreement (CBA) or as set by the Industry Tripartite Council (ITC).
IMPLEMENTING RULES

B. Contracting out of jobs, works or services analogous to the above when not done in good faith and not justified by the exigencies of the business.

SECTION 8. Rights of contractor’s employees. All contractor’s employees, whether deployed or assigned as reliever, seasonal, week-ender, temporary, or promo jobbers, shall be entitled to all the rights and privileges as provided for in the Labor Code, as amended, to include the following:

(a) Safe and healthful working conditions;
(b) Labor standards such as but not limited to service incentive leave, rest days, overtime pay, holiday pay, 13th month pay, and separation pay as may be provided in the Service Agreement or under the Labor Code;
(c) Retirement benefits under the SSS or retirement plans of the contractor, if there is any;
(d) Social security and welfare benefits;
(e) Self-organization, collective bargaining and peaceful concerted activities; and
(f) Security of tenure.

SECTION 9. Required contracts under these Rules.

(a) Employment contract between the contractor and its employee. Notwithstanding any oral or written stipulations to the contrary, the contract between the contractor and its employee shall be governed by the provisions of Articles 279 and 280 of the Labor Code, as amended. It shall include the following terms and conditions:

i. The specific description of the job, work or service to be performed by the employee;
ii. The place of work and terms and conditions of employment, including a statement of the wage rate applicable to the individual employee; and
iii. The term or duration of employment that must be co-extensive with the Service Agreement or with the specific phase of work for which the employee is engaged.

The contractor shall inform the employee of the foregoing terms and conditions of employment in writing on or before the first day of his/her employment.

(b) Service Agreement between the principal and the contractor. The Service Agreement shall include the following:

i. The specific description of the job, work or service being subcontracted.
ii. The place of work and terms and conditions governing the contracting arrangement, to include the agreed amount of the services to be rendered, the standard administrative fee of not less than ten percent (10%) of the total contract cost.
iii. Provisions ensuring compliance with all the rights and benefits of the employees under the Labor Code and these Rules on: provision for safe and healthful working conditions; labor standards such as, service incentive leave, rest days, overtime pay, 13th month pay and separation pay; retirement benefits; contributions and
remittance of SSS, Philhealth, Pag-Ibig Fund, and other welfare benefits; the right to self-organization, collective bargaining and peaceful concerted action; and the right to security of tenure.

iv. A provision on the Net Financial Contracting Capacity of the contractor, which must be equal to the total contract cost.

v. A provision on the issuance of the bond/s as defined in Section 3(m) renewable every year.

vi. The contractor or subcontractor shall directly remit monthly the employers’ share and employees’ contribution to the SSS, ECC, Philhealth and Pag-Ibig.

vii. The term or duration of engagement.

The Service Agreement must conform to the DOLE Standard Computation and Standard Service Agreement, which form part of these Rules as Annexes “A” and “B”.

SECTION 10. Duties of the principal. Pursuant to the authority of the Secretary of Labor and Employment to restrict or prohibit the contracting of labor to protect the rights of the workers and to ensure compliance with the provisions of the Labor Code, as amended, the principal, as the indirect employer or the user of the services of the contractor, is hereby required to observe the provisions of these Rules.

SECTION 11. Security of tenure of contractor’s employees. It is understood that all contractor’s employees enjoy security of tenure regardless of whether the contract of employment is co-terminus with the service agreement, or for a specific job, work or service, or phase thereof.

SECTION 12. Observance of required standards of due process; requirements of notice. In all cases of termination of employment, the standards of due process laid down in Article 277(b) of the Labor Code, as amended, and settled jurisprudence on the matter must be observed. Thus, the following is hereby set out to clarify the standards of due process that must be observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code, the requirement of two written notices served on the employee shall observe the following:

(A) The first written notice should contain:

(1) The specific causes or grounds for termination;

(2) Detailed narration of the facts and circumstances that will serve as basis for the charge against the employee. A general description of the charge will not suffice;

(3) The company rule, if any, that is violated and/or the ground under Article 282 that is being charged against the employee; and

IMPLEMENTING RULES

(4) A directive that the employee is given opportunity to submit a written explanation within a reasonable period.

“Reasonable period” should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employee an opportunity to study the accusation, consult a union official or lawyer, gather data and evidence, and decide on the defenses against the complaint.

(B) After serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative if he/she so desires, as provided in Article 277(b) of the Labor Code, as amended.

“Ample opportunity to be heard” means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him/her and submit evidence in support of his/her defense, whether in a hearing, conference or some other fair, just and reasonable way. A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(C) After determining that termination of employment is justified, the employer contractor shall serve the employee a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) the grounds have been established to justify the severance of their employment.

The foregoing notices shall be served on the employee’s last known address.

II. For termination of employment based on authorized causes defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate regional office of the Department of Labor and Employment at least thirty days before the effectivity of the termination, specifying the ground or grounds for termination.

III. If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required. If the termination is brought about by the failure of a probationary employee to meet the reasonable standards of the employer, which was made known to the employee at the time of his/her employment, it shall be sufficient that a written notice is served upon the employee within a reasonable time prior to the expiration of the probationary period.

SECTION 13. Effect of termination of employment. The termination of employment of the contractor employee prior to the expiration of the Service Agreement shall be governed by Articles 282, 283 and 284 of the Labor Code.
In case the termination of employment is caused by the pre-termination of the Service Agreement not due to authorized causes under Article 283, the right of the contractor employee to unpaid wages and other unpaid benefits including unremitted legal mandatory contributions, e.g., SSS, Philhealth, Pag-Ibig, ECC, shall be borne by the party at fault, without prejudice to the solidary liability of the parties to the Service Agreement.

Where the termination results from the expiration of the service agreement, or from the completion of the phase of the job, work or service for which the employee is engaged, the latter may opt for payment of separation benefits as may be provided by law or the Service Agreement, without prejudice to his/her entitlement to the completion bonuses or other emoluments, including retirement benefits whenever applicable.

SECTION 14. Mandatory Registration and Registry of Legitimate Contractors. Consistent with the authority of the Secretary of Labor and Employment to restrict or prohibit the contracting out of labor to protect the rights of workers, it shall be mandatory for all persons or entities, including cooperatives, acting as contractors, to register with the Regional Office of the Department of Labor and Employment (DOLE) where it principally operates.

Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.

Accordingly, the registration system governing contracting arrangements and implemented by the Regional Offices of the DOLE is hereby established, with the Bureau of Working Conditions (BWC) as the central registry.

SECTION 15. Requirements for registration. The application for registration as a contractor shall be filed at the DOLE Regional Office in the region where it seeks to principally operate. The applicant shall provide in the application form the following information:

(a) The name and business address of the applicant and the areas where it seeks to operate;
(b) The names and addresses of officers, if the applicant is a corporation, partnership, cooperative or a labor organization;
(c) The nature of the applicant’s business and the industry or industries where the applicant seeks to operate;
(d) The number of regular workers and the total workforce;
(e) The list of clients, if any, the number of personnel assigned to each client, if any, and the services provided to the client;
(f) The description of the phases of the contract, including the number of employees covered in each phase, where appropriate; and

(g) Proof of compliance with substantial capital requirement as defined in Section 3(l) of these Rules.
IMPLEMENTING RULES

The application shall be supported by:

(a) A certified true copy of a certificate of registration of firm or business name from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI), Cooperative Development Authority (CDA), or from the DOLE if the applicant is a labor organization;

(b) A certified true copy of the license or business permit issued by the local government unit or units where the contractor operates;

(c) A certified listing, with proof of ownership or lease contract, of facilities, tools, equipment, premises implements, machineries and work premises, that are actually and directly used by the contractor in the performance or completion of the job, work or service contracted out. In addition, the applicant shall submit a photo of the office building and premises where it holds office;

(d) A copy of audited financial statements if the applicant is a corporation, partnership, cooperative or a labor organization, or copy of the latest ITR if the applicant is a sole proprietorship; and

(e) A sworn disclosure that the registrant, its officers and owners or principal stockholders or anyone of them, has not been operating or previously operating as a contractor under a different business name or entity or with pending cases of violations of these Rules and/or labor standards, or with a cancelled registration. In case any of the foregoing has a pending case, a copy of the complaint and the latest status of the case shall be attached.

The application shall be verified. It shall include a DOLE certification of attendance to orientation seminar on these Rules and an undertaking that the contractor shall abide by all applicable labor laws and regulations.

SECTION 16. Filing and processing of application. The application with all supporting documents shall be filed in triplicate in the Regional Office where the applicant principally operates. No application for registration shall be accepted unless all the requirements in the preceding Section are complied with.

SECTION 17. Verification inspection. Within two (2) working days upon receipt of the application with complete supporting documents, the authorized representative of the Regional Director shall conduct a verification inspection of the facilities, tools, equipment, and work premises of the applicant.

SECTION 18. Approval or denial of the application. The Regional Office shall deny or approve the application within one (1) working day after the verification inspection.

Applications that fail to meet the requirements set forth in Section 15 of these Rules shall be denied.

SECTION 19. Registration fee. Payment of registration fee of Twenty-Five Thousand Pesos (P25,000.00) shall be required upon approval of the application.

Upon registration, the Regional Office shall return one set of the duly-stamped application documents to the applicant, retain one set for its file, and transmit the remaining set to the Bureau of Working Conditions (BWC) within five (5) days from registration.
SECTION 20. *Validity of certificate of registration of contractors.* The contractor shall be deemed register only on the date of issuance of its Certificate of Registration.

The Certificate of Registration shall be effective for three (3) years, unless cancelled after due process. The same shall be valid in the region where it is registered.

In case the contractor has Service Agreements or operates outside the region where it is registered, it shall request a duly authenticated copy of its Certificate of Registration from the registering Regional Office and submit the same to the DOLE Regional Office where it seeks to operate, together with a copy of its Service Agreements in the area, for purposes of monitoring compliance with these Rules.

SECTION 21. *Renewal of registration.* All registered contractors shall apply for renewal of their Certificates of Registration thirty (30) days before the expiration of their registration to remain in the roster of legitimate service contractors. The applicant shall pay a registration renewal fee of Twenty-Five Thousand Pesos (P25,000.00) to the DOLE Regional Office.

Copies of all the updated supporting documents in letters (a) to (e) of Section 15 hereof shall be attached to the duly accomplished application form, including the following:

(a) Certificate of membership and proof of payment of SSS, Philhealth, BIR, ECC and Pag-Ibig contributions for the last three (3) years, as well as loan amortizations; and

(b) Certificate of pending or no pending labor standards violation case/s with the National Labor Relations Commission (NLRC) and Department of Labor and Employment (DOLE). The pendency of a case will not prejudice the renewal of the registration, unless there is a finding of violation of labor standards by the DOLE Regional Director.

SECTION 22. *Semi-annual reporting.* The contractor shall submit in triplicate its subscribed semi-annual report using a prescribed form to the appropriate Regional Office. The report shall include:

(a) A list of contracts entered with the principal during the subject reporting period;

(b) The number of workers covered by each contract with the principal;

(c) Proof of payment of remittances to the Social Security System (SSS), the Pag-Ibig Fund, Philhealth, Employees Compensation Commission (ECC), and Bureau of Internal Revenue (BIR) due its employees during the subject reporting period and of amortization of declared loans due from its employees; and

(d) A certified listing of all cases filed against the contractor before the NLRC and DOLE.

The Regional Office shall return one set of the duly-stamped report to the contractor, retain one set for its file, and transmit the remaining set to the Bureau of Working Conditions (BWC) within five (5) days from receipt thereof.

SECTION 23. *Grounds for cancellation of registration.* The Regional Director shall, upon a verified complaint, cancel or revoke the registration of a contractor after due process, based on any of the following grounds:
IMPLEMENTING RULES

(a) Misrepresentation of facts in the application;
(b) Submission of a falsified or tampered application or supporting documents to the application for registration;
(c) Non-submission of Service Agreement between the principal and the contractor when required to do so;
(d) Non-submission of the required semi-annual report as provided in Section 22 (Semi-annual reporting) hereof;
(e) Findings through arbitration that the contractor has engaged in labor-only contracting and/or the prohibited activities as provided in Section 7 (Other Prohibitions) hereof;
(f) Non-compliance with labor standards and working conditions;
(g) Findings of violation of Section 8 (Rights of contractor’s employees) or Section 9 (Required contracts) of these Rules;
(h) Non-compliance with SSS, the HDMF, Pag-Ibig, Philhealth, and ECC laws; and
(i) Collecting any fees not authorized by law and other applicable rules and regulations.

SECTION 24. Due process in cancellation of registration. Complaint/s based on any of the grounds enumerated in the preceding Section against the contractor shall be filed in writing and under oath with the Regional Office which issued the Certificate of Registration.

The complaint/s shall state the following:
(a) The name/s and address/es of the complainant/s;
(b) Name and address of the contractor;
(c) The ground/s for cancellation;
(d) When and where the action complained of happened;
(e) The amount of money claim, if any; and
(f) The relief/s sought.

Upon receipt of the complaint, the Regional Director shall direct the contractor, with notice to the complainant, to file a verified answer/counter affidavit within ten (10) calendar days without extension, incorporating therein all pertinent documents in support of his/her defenses, with proof of service of a copy to the complainant. Failure to file an answer/counter affidavit shall constitute a waiver on the part of the respondent. No motion to dismiss shall be entertained.

The Regional Director or his duly authorized representative may conduct a clarificatory hearing within the prescribed ten (10) calendar days within which to file a verified answer/counter affidavit.

Within the said ten (10) calendar days period, the contractor shall make the necessary corrections/rectifications on the violations that are immediately rectifiable upon its own initiative in order to be fully compliant.
The Regional Director may avail himself of all reasonable means to ascertain the facts of the case, including conduct of inspection, where appropriate, and examination of informed persons.

The proceedings before the Regional Office shall be summary in nature.

The conduct of hearings shall be terminated within fifteen (15) calendar days from the first scheduled clarificatory hearing. The Regional Director shall resolve the case within ten (10) working days from the date of the last hearing. If there is no necessity to conduct a hearing, the case shall be resolved within ten (10) working days from receipt of the verified answer/counter affidavit.

Any motion for reconsideration from the Order of the Regional Director shall be treated as an appeal.

SECTION 25. Appeal. The Order of the Regional Director is appealable to the Secretary within ten (10) working days from receipt of the copy of the Order. The appeal shall be filed with the Regional Office which issued the cancellation Order. The Office of the Secretary shall have thirty (30) working days from receipt of the records of the case to resolve the appeal. The Decision of the Secretary shall become final and executory after ten (10) days from receipt thereof by the parties. No motion for reconsideration of the Decision shall be entertained.

SECTION 26. Effects of cancellation of registration. A final Order of cancellation shall divest the contractor of its legitimate status to engage in contracting/subcontracting.

Such Order of cancellation shall be a ground to deny an application for renewal of registration to a contractor under the Rules.

The cancellation of the registration of the contractor for engaging in labor-only contracting or for violation of any of the provisions of these Rules involving a particular Service Agreement will not, however, impair the validity of existing legitimate job-contracting arrangements the contractor may have entered into with other principals prior to the cancellation of its registration. Any valid and subsisting Service Agreement shall be respected until its expiration; thereafter, contracting with a delisted contractor shall make the principal direct employer of all employees under the Service Agreement pursuant to Articles 106 and 109 of the Labor Code.

SECTION 27. Effects of finding of labor-only contracting and/or violation of Sections 7, 8 or 9 of the Rules. A finding by competent authority of labor-only contracting shall render the principal jointly and severally liable with the contractor to the latter’s employees, in the same manner and extent that the principal is liable to employees directly hired by him/her, as provided in Article 106 of the Labor Code, as amended.

A finding of commission of any of the prohibited activities in Section 7, or violation of either Sections 8 or 9 hereof, shall render the principal the direct employer of the employees of the contractor or subcontractor, pursuant to Article 109 of the Labor Code, as amended.

SECTION 28. Retaliatory measures. Pursuant to Article 118 of the Labor Code, as amended, it shall be unlawful for the principal, contractor, or any party privy to the contract or services provided to refuse to pay or reduce the wages and benefits,
and discharge or in any manner discriminate against any worker who has filed any complaint or instituted any proceeding on wages (under Title II, Book III of the Labor Code), labor standards violation, or has testified or is about to testify in such proceedings.

SECTION 29. Enforcement of labor standards and working conditions. Consistent with Article 128 (Visitorial and Enforcement Power) of the Labor Code, as amended, the Regional Director through his/her duly authorized representatives, shall conduct routine inspection of establishments engaged in contracting arrangement regardless of the number of employees engaged by the principal or by the contractor. They shall have access to employer’s records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of the Labor Code and of any labor law, wage order, or rules and regulations issued pursuant thereto.

The findings of the duly authorized representative shall be referred to the Regional Director for appropriate action as provided for in Article 128, and shall be furnished the collective bargaining agent, if any.

Based on the visitorial and enforcement power of the Secretary of Labor and Employment in Article 128 (a), (b), (c), and (d), the Regional Director shall issue compliance orders to give effect to the labor standards provisions of the Labor Code, other labor legislation, and these Rules.

SECTION 30. Duty to produce copy of contract between the principal and the contractor. The principal or the contractor shall be under an obligation to produce a copy of the Service Agreement in the ordinary course of inspection. The contractor shall likewise be under an obligation to produce a copy of any contract of employment when directed to do so by the Regional Office Director or his/her authorized representative.

SECTION 31. Tripartite implementation and monitoring of compliance; Use of registration fees. A region-based tripartite monitoring team on the observance of labor standards in contracting and subcontracting arrangements shall be constituted as a subcommittee of the Regional Tripartite Industrial Peace Council (RTIPC) within fifteen (15) days from the effectivity of these Rules. It shall submit a quarterly regional monitoring report to the DOLE Secretary and to the National Tripartite Industrial Peace Council (NTIPC). The Bureau of Working Conditions (BWC) shall ensure the implementation of this provision, and shall conduct capacity building to the members of the regional tripartite monitoring team.

For this purpose, a portion of the collected registration fees shall be used in the operation of the region-based tripartite monitoring team, including in the development of an internet-based monitoring system and database. It shall likewise be used for transmittal of the monthly report of all registered contractors to the Bureau of Local Employment (BLE), and in generating labor market information.

SECTION 32. Oversight function of the NTIPC. The National Tripartite Industrial Peace Council (NTIPC) as created under Executive Order No. 49, Series of 1998, as amended, shall serve as the oversight committee to verify and monitor the following:
(a) Engagement in allowable contracting activities; and
(b) Compliance with administrative reporting requirements.

SECTION 33. Collective bargaining and/or Industry Tripartite Council (ITC).
Nothing herein shall preclude the parties in collective bargaining agreements (CBAs) to determine the functions that can or cannot be farmed out or contracted out to a legitimate contractor, including the terms and conditions of the workers’ engagement under the arrangement, provided the provisions of these Rules are observed.

In industries with established Industry Tripartite Councils (ITCs), the tripartite partners may agree, through a voluntary code of good practices, on the functions or processes that can or cannot be contracted out to a legitimate contractor.

SECTION 34. Financial Relief Program; Tripartite Co-Regulation Engagement. A Financial Relief Program or Unemployment Assistance Fund shall be established for employees under a Service Agreement or employees in transition from one Service Agreement to the next. For this purpose, the National Tripartite Industrial Peace Council (NTIPC), upon the effectivity of this issuance, shall constitute a Local Service Provider Tripartite Working Group (LSP-TWG) composed of representatives of the stakeholders in the industry. The LSP-TWG shall:
(a) Recommend the mechanics and details in setting up the Financial Relief Program or Unemployment Assistance Fund with proposed funding sources before end of June 2012; and
(b) Draw-up the terms of a Tripartite Co-Regulation Engagement in ensuring full compliance with labor laws for approval/endorsement by the NTIPC, including a proposed Table of Progressive Rate of Increases in the minimum capitalization requirement at reasonable intervals to ensure that only legitimate contractors can engage in subcontracting arrangement.

SECTION 35. Enrollment in DOLE programs on improving compliance with labor standards. For purposes of ensuring compliance with labor standards, the principal and subcontractors covered by these Rules are encouraged to enroll and participate in the DOLE Kapatairan Work Improvement for Small Enterprise (WISE)-TAV Program (Department Advisory No. 06, dated 07 March 2011) and/or in the Incentivizing Compliance Program (Department Order No. 115-11).

SECTION 36. Contracting or subcontracting arrangements in the Construction and Other Industries. Contracting or subcontracting arrangements in the Construction Industry, under the licensing coverage of the Philippine 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).
IMPLEMENTING RULES

In 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.

SECTION 37. Prohibition on DOLE officials or employees. Any official or employee of the DOLE or its attached agencies is prohibited from engaging or having any interest in any contracting or subcontracting business.

SECTION 38. Non-impairment of existing contracts; Non-diminution of benefits. Subject to the provisions of Articles 106 to 109 of the Labor Code as amended, the applicable provisions of the Civil Code and existing jurisprudence, nothing herein shall impair the rights or diminish the benefits being enjoyed by the parties to existing contracting or subcontracting arrangements.

The effectivity of Certificates of Registration acquired under Department Order No. 18, Series of 2002, issued on 21 February 2002, shall be respected until expiration.

SECTION 39. Supersession. All rules and regulations issued by the Secretary of Labor and Employment inconsistent with the provisions of these Rules are hereby superseded.

SECTION 40. Separability Clause. If any provision or portion of these Rules are declared void or unconstitutional, the remaining portions or provisions hereof shall continue to be valid and effective.

SECTION 41. Effectivity. This Department Order shall be effective fifteen (15) days after completion of its publication in a newspaper of general circulation.

Manila, Philippines, 14 November 2011.

ROSALINDA DIMAPILIS-BALDOZ
Secretary
**ANNEX “A”: STANDARD COMPUTATION**  
(For Skilled or Unskilled Workers)

### STANDARD COMPUTATION  
(For Skilled or Unskilled Workers)

<table>
<thead>
<tr>
<th>Daily Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Day Shift</strong></td>
</tr>
</tbody>
</table>

**Daily Basic Salary Rate**  
**Number of Days per Month**

**REIMBURSABLE COSTS:**

(A) **Payable Directly to Servicemen**

a. Basic Salary — at daily rate for the equivalent of No. of days per month  
b. Night Differential Premium Pay – 10% of basic salary  
c. Emergency cost of living allowance  
d. 13th month pay – 1/12 of basic salary  
e. Service Incentive Leave Pay – 5 days per year at basic salary rate  

Subtotal A  
Subtotal B

(B) **Payable to the government Employee Share of:**

a. Social Security Premiums  
b. Philhealth Premiums  
c. ECC Insurance Premiums  
d. Pag-ibig Fund Contribution  

Subtotal C

**TOTAL REIMBURSABLE COSTS = B+C**  
**ADMINISTRATIVE COST 10%**

**CONTRACT / BILLING RATE – per month**  
**CONTRACT / BILLING RATE – per day**  
**CONTRACT / BILLING RATE – per hour**

1. **ABOVE RATES ARE EXCLUSIVE OF VALUE ADDED TAX**  
2. **UNWORKED REGULAR HOLIDAYS WILL BE BILLED AT ABOVE RATE FOR 8 HOURS REGULAR WORK DAY AS AND WHEN SUCH HOLIDAY DO OCCUR**
KNOW All MEN BY THESE PRESENTS:
This agreement made and entered into by and between:

________________________________, a corporation / partnership / sole proprietorship/cooperative duly organized and existing under Philippines laws, with plant addresses at __________________________________________ represented by its President, _____________________, hereinafter referred to as the “PRINCIPAL.”

- and-

___________________________________, a corporation / partnership / sole proprietorship/cooperative duly organized and existing under Philippine laws, with office address at __________________________ represented by __________________________, hereinafter referred to as the “SERVICE PROVIDER or CONTRACTOR.”

WITNESSETH

WHEREAS, the CONTRACTOR, duly registered with Certificate of Registration No. ________________ issued by DOLE Regional Office No.______ on ______________, is an independent service provider with substantial capital, equipment, and expertise, primarily engaged in the business of providing __________________ services;

WHEREAS, the PRINCIPAL is in need of a SERVICE PROVIDER or CONTRACTOR to __________________

WHEREAS, the CONTRACTOR has offered its service and expertise to perform specific and/or specialized jobs/services/work for the PRINCIPAL and the PRINCIPAL has accepted the offer;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed as follows:

A. Description of the Job, Work or Service

The Service Agreement should state in as much detail as necessary what the Principal/User enterprise expects the subcontractor to do. The work description should include all relevant requirements, such as any time periods involved, deadlines, contingencies and milestones.

B. Place of Work; Compliance with Labor Standards and Occupational Health and Safety, and Administrative Fee

The place of work and terms and conditions governing the contracting arrangement, to include the agreed amount of the services to be rendered, the standard administrative fee of not less than ten percent (10%) of the total contract cost shall be provided.

Compliance with all the rights and benefits of the employees under the Labor Code and Department Order No. 18-A, Series of 2011, on: safe and healthful working conditions; labor standards such as, service incentive leave, rest days, overtime pay, 13th month pay and separation
pay; retirement benefits; contributions and remittance of SSS, Philhealth, Pag-Ibig Fund, and other welfare benefits; the right to self-organization, collective bargaining and peaceful concerted action; and the right to security of tenure, must be provided.

The contractor or subcontractor shall directly remit monthly the employers’ share and employees’ contribution to the SSS, ECC, Philhealth and Pag-Ibig.

C. Capacity to Carry Out the Contract

The Net Financial Contracting Capacity of the contractor, which must be equal to the total contract cost as defined in Section 3(g) of Department Order No. 18-A, Series of 2011, must be stated.

D. Payment

The Service Agreement should state in detail the terms of payment. In case of periodic payment, the agreement should state the dates payments are due and the amount due at each date. The Agreement can also include the method of payment and the applicable charges/penalty in case of delay by either party.

E. Bond

The issuance of the bond/s as defined in Section 3(m) of D.O. 18-A, Series of 2011, renewable every year, as agreed upon by the parties, shall be stated.

F. Term or duration of the Service Agreement

IN WITNESS WHEREOF, the parties have signed these presents at ______________ on _____________.

ANNEX “B”: SERVICE AGREEMENT
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 D.O. 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 D.O. 18-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 [sic] 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.
IMPLEMENTING RULES

4. **Applicability of D.O. 18-A, Series of 2011 to the Construction Industry; Coordination with PCAS-CIAP.**

4.1 Licensing and the exercise of regulatory powers over the construction industry is lodged with the Philippine Contractors Accreditation Board (PCAS), which is under the Construction Industry Authority of the Philippines (CIAP), pursuant to the provisions of Presidential Decree No. 1746, Series of 1980, and not with the Department of Labor and Employment or any of its regional offices.

PCAB registers all contractors, whether general or subcontractors, in the Construction Industry and regulates the same including ensuring compliance with DOLE 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).

Thus, the DOLE, through its regional offices, shall not require contractors licensed by PCAS in the Construction Industry to register under D.O. 18-A, Series of 2011. Moreover, findings of violation/s on labor standards and occupational health and safety standards shall be coordinated with PCAB for its appropriate action, including the possible cancellation/suspension of the contractor’s license.

5. **Effectivity.** This Circular shall take effect immediately after its publication in a newspaper of general circulation.

Manila, Philippines, 13 March 2012.

(Sgd.) ROSALINDA DIMAPILIS-BALDOZ
Secretary
Rule IX
WAGE STUDIES AND DETERMINATION

SECTION 1. Definition of terms. — (a) “Industry” shall mean any identifiable group of productive units or enterprises, whether operated for profit or not, engaged in similar or allied economic activities in which individuals are gainfully employed.

(b) A “branch” of an industry is a work, product or service grouping thereof which can be considered a distinct division for wage-fixing purposes.

(c) “Substantial number” shall mean such an appreciable number of employees in an industry as, in the Commission’s opinion, considering all relevant facts, requires action under Art. 121 of the Code to effectuate the purposes of wage determination regardless of the proportion of such employees to the total number of employees in the industry.

SEC. 2. Wage studies. — The Wage Commission established under R.A. No. 6129 shall conduct a continuing study of wage rates and other economic conditions in all industries, agricultural and nonagricultural. The results of such study shall be periodically disseminated to the government, labor and management sectors for their information and guidance.

[The reference to the Wage Commission in this Rule IX is rendered obsolete by the Wage Rationalization Act (R.A. No. 6727, approved on June 9, 1989) which created the National Wage and Productivity Commission together with the regional wage boards. This entire Rule IX should be deemed accordingly modified by R.A. No. 6727 and its implementing rules. — CAA]

SEC. 3. Wage recommendation. — If after such study, the Commission is of the opinion that a substantial number of employees in any given industry or branch thereof are receiving wages, which although complying with the minimum provided by law, are less than sufficient to maintain them in health, efficiency and general well-being, taking into account, among others, the peculiar circumstances of the industry and its geographical location, the Commission shall with the approval of the Secretary of Labor, proceed to determine whether a wage recommendation should be issued.

SEC. 4. Criteria for wage-fixing. — (a) In addition to the criteria established by Art. 123 of the Code for minimum wage-fixing, the Commission shall consider, among other factors, social services and benefits given free to workers and the possible effect of a given increase in the minimum wage on prices, money supply, employment, labor mobility and productivity, labor organization efficacy, domestic and foreign trade, and other relevant indicators of social and economic development.

(b) Where fair return to capital invested cannot be reasonably determined, or where the industry concerned is not operated for profit, its capacity to pay, taking into account all resources available to it, shall be considered.

SEC. 5. Quorum. — Three (3) members of the Commission, including the chairman, shall constitute a quorum to transact the Commission’s business.
SEC. 6. Commission actions, number of votes required. — The votes of at least three (3) members of the Commission shall be necessary to effect any decision or recommendation it is authorized to issue under the Code and these Rules: Provided, That in the internal regulation and direction of the functions of the Commission’s staff including the conduct of administrative processes and the maintenance of proper liaison and coordination with other organizations, the Chairman shall not need the consent of the Commission or any member thereof.

SEC. 7. Outside assistance. — The Commission may call upon the assistance and cooperation of any government agency or official, and may invite any private person or organization to furnish information in connection with industry studies and wage-fixing hearings or in aid of the Commission’s deliberations.

SEC. 8. Schedule of hearings and notices. — The Commission shall prepare a schedule of hearings for the reception of evidence necessary for wage-fixing in an industry, including a list of witnesses that it will invite and the date, time and place of the hearings. A notice thereof to all sectors of the industry shall be given in the most expeditious manner. It may have prior consultations with labor and management leaders in the industry for the above purpose.

SEC. 9. Unsolicited testimony. — Persons who offer to testify before the Commission shall be heard only after the Commission is satisfied, upon brief preliminary examination, that they are in possession of facts relevant to the subject of inquiry. The Chairman or, in proper cases the person conducting the hearing, shall revise the schedule of hearings whenever necessary to achieve logical sequence of testimony.

SEC. 10. Compulsory processes. — Recourse to compulsory processes under the Revised Administrative Code to ensure the attendance of witnesses and/or the production of relevant documentary evidence shall be used only on occasions of extreme importance and after other means shall have failed, subject to the approval of the Secretary of Labor.

SEC. 11. Hearings; where, by whom conducted. — Commission hearings may be conducted by the Commission en banc, or when authorized by the Commission, by any member or hearing officer designated by the Chairman. The hearings may be held whenever the industry or branches thereof are situated; otherwise, they shall be held in the Greater Manila Area. The hearings shall be open to the public.

SEC. 12. Hearings before single member or hearing officer. — Hearings conducted by a duly authorized member or hearing officer shall be considered as hearings before the Commission. The records of such hearings shall be submitted to the Commission as soon as they are completed, indicating the time and place of the hearings and the appearances thereat, together with a brief statement of the findings and recommendations of the member or hearing officer concerned.

SEC. 13. Testimony under oath. — The testimony of all witnesses shall be made under oath or affirmation and shall be taken down and transcribed by a duly appointed stenographic reporter.
SEC. 14. Nonapplicability of technical rules. — The technical rules of evidence applied by the courts in proceedings at law or equity shall not strictly apply in any proceedings conducted before the Commission.

SEC. 15. Stipulations of fact. — Stipulations of fact may be admitted with respect to any matter at issue in the proceedings.

SEC. 16. Documentary evidence. — Written evidences submitted to the Commission or any member or hearing officer shall be properly marked to facilitate identification.

SEC. 17. Submission of industry report. — Within sixty (60) working days from the date of the first hearing the Commission shall submit to the Secretary of Labor an “Industry Report” which shall relate in brief the operations that led thereto, the basic findings of economic facts about the industry and the recommendations made on the basis thereof.

SEC. 18. Action by Secretary of Labor. — Within thirty (30) working days after the submission of the Industry Report, the Secretary of Labor shall either reject or approve the recommendation of the Commission in accordance with Article 122 of the Code. If he approves the recommendation, he shall issue a Wage Order adopting the same, subject to the approval of the President of the Philippines, prescribing the minimum wage or wages for the industry concerned.

SEC. 19. Wage Order. — The Wage Order shall specify the industry or branch to which the minimum wages prescribed therein shall apply: Provided, That no definite rates shall be prescribed for specific job titles in the industry.

SEC. 20. Varying minimum wages. — To justify different minimum wages for different localities, the economic and other conditions found in a particular locality must not only be more or less uniform therein but also different from those prevailing in other localities.

SEC. 21. Publication of Wage Order. — Only such portions of a Wage Order shall be published as shall effectively give notice to all interested parties that such an Order has been issued, the industry affected, the minimum wages prescribed and the date of its effectivity.

SEC. 22. Effectivity. — A Wage Order shall become effective after fifteen (15) days from its publication as provided in Article 124 of the Code.

SEC. 23. Internal Rules of Commission. — Subject to the approval of the Secretary of Labor, the Wage Commission may issue rules and regulations governing its internal procedure.

Rule X

ADMINISTRATION AND ENFORCEMENT

[Note: In the Rules and Regulations Implementing the Labor Code and Related Laws published in 2001 (page 384) by the Institute for Labor Studies (ILS) of the Department of Labor and Employment, Sections 1, 2, and 3 of this Rule are removed]
from the text and instead a note is written which reads: “Amended by Department Order No. 7-A, series of 1995, issued on 12 March 1995.” Sections 4 to 15, on the other hand, are retained without remarks, indicating evidently that they may remain despite the Rule X-A (see below) issued by D.O. No. 7-A, series of 1995. – CAA]

SECTION 1. **Visitorial power.** — The Secretary of Labor or his duly authorized representatives, including Labor Regulation Officers or Industrial Safety Engineers, shall have access to employer’s records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee, and to investigate any fact, condition or matter relevant to the enforcement of any provision of the Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

SEC. 2. **Enforcement power.** — (a) The Regional Director, in cases where employer-employee relations still exist, shall have the power to order and administer, after due notice and hearing, compliance with the labor standards provisions of the Code and other labor legislations based on the findings of Labor Regulations Officers or Industrial Safety Engineers (Labor Standard and Welfare Officers) and made in the course of inspection, and to issue writs of execution to the appropriate authority for the enforcement of his order, in line with the provisions of Article 128 in relation to Articles 289 and 290 of the Labor Code, as amended. In cases, however, where the employer contests the findings of the Labor Standard and Welfare Officers and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection, the Regional Director concerned shall indorse the case to the appropriate arbitration branch of the National Labor Relations Commission for adjudication.

[The reference to Articles 289 and 290 should now mean 288 and 289 in view of the renumbering directed by the Implementing Rules (dated March 26, 1987) of E.O. No. 111 issued on December 24, 1986. – CAA]

(b) The Regional Director shall give the employer fifteen (15) days within which to comply with his order before issuing a writ of execution. Copy of such order or writ of execution shall immediately be furnished the Secretary of Labor.

SEC. 3. **Enforcement power on health and safety of workers.** — (a) The Regional Director may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when noncompliance with the law, safety order or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace.

(b) Within 24 hours from issuance of the order of stoppage or suspension, a hearing shall be conducted to determine whether the order for the stoppage of work or suspension of operation shall be lifted or not. The proceedings shall be terminated within seventy-two (72) hours and a copy of such order or resolution shall be immediately furnished the Secretary of Labor. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

SEC. 4. **Power to review.** — (a) The Secretary of Labor, at his own initiative or upon request of the employer, may review the order of the Regional Director.
The order of the Regional Director shall be immediately final and executory unless
stayed by the Secretary of Labor upon posting by the employer of a reasonable cash
or surety bond as fixed by the Regional Director.

(b) In aid of his power of review, the Secretary of Labor may direct the Bureau
of Labor Standards to evaluate the findings or orders of the Regional Director. The
decision of the Secretary of Labor shall be final and executory.

SEC. 5. Interference and injunctions prohibited. — It shall be unlawful for
any person or entity to obstruct, impede, delay or otherwise render ineffective the
exercise of the enforcement power of the Secretary of Labor, Regional Director or
their duly authorized representatives pursuant to the authority granted by the Code
and its implementing rules and regulations, and no inferior court or entity shall
issue temporary or permanent injunction or restraining order to otherwise assume
jurisdiction over any case involving the enforcement orders issued in accordance
with the Code. In addition to the penalties provided for by the Labor Code, any
government employee found guilty of violation or abuse of authority, shall be subject
to the provisions of Presidential Decree No. 6.

SEC. 6. Payrolls. — (a) Every employer shall pay his employees by means of
payroll wherein the following information and data shall be individually shown:

1. length of time to be paid;
2. the rate of pay per month, week, day or hours, piece, etc.;
3. the amount due for regular work;
4. the amount due for overtime work;
5. deductions made from the wages of the employees; and
6. amount actually paid.

(b) Every employee in the payroll shall sign or place his thumbmark as
the case may be, at the end of the line opposite his name where a blank space shall
be provided for the purpose. His signature shall be made in ink or his thumbmark
placed with the use of the regular stamping ink and pad.

SEC. 7. Time records. — Every employer shall keep an individual time record
of all his employees bearing the signature or thumbmark of the employee concerned
for each daily entry therein by means of any of the following methods:

(a) through the use of bundy clock by means of which each one can punch
his individual card the time of arrival for and departure from work;

(b) through the employment of a timekeeper whose duty is to time in and
out each and every employee in a record book; and

(c) by furnishing them individually with a daily time record form wherein
they can note the time of their respective arrivals for and departure from work.

SEC. 8. Entries in the filing of time records. — All entries in time books and
daily time records shall be accomplished in ink. All filled-up bundy clock cards,
timekeeper’s books and daily time records form shall be kept on file in chronological
order by the employer in or about the premises where the employee is employed
and open to inspection and verification by the Department of Labor as provided in
these Rules.
SEC. 9. **Time records of executives.** — Managerial employees, officers or members of the managerial staff, as well as nonagricultural field personnel, need not be required to keep individual time records, provided, that a record of their daily attendance or the days they actually reported for work is kept and maintained by the employer.

SEC. 10. **Records of workers paid by results.** — Where the employees are paid on piece, *pakiaw, takay, task*, commission or other nontime basis, the employer shall keep and maintain their production records showing their daily output, gross earning and the actual number of working hours spent by the employees on the job bearing the signature or thumbmark of the employee concerned. Where, however, the minimum output rates of nontime workers have been fixed by the Department of Labor or through certified collective agreements, or are in compliance with the standards prescribed in Section 8, Rule VII of this Book, the employer may dispense with the keeping of time records, except the daily production records showing their output or the work accomplished and gross earnings.

SEC. 11. **Place of records.** — All employment records of the employees of an employer shall be kept and maintained in or about the premises of the workplace. The premises of a workplace shall be understood to mean the main or branch office or establishment, if any, depending upon where the employees are regularly assigned. The keeping of the employee’s records in another place is prohibited.

SEC. 12. **Preservation of records.** — All employment records required to be kept and maintained by employers shall be preserved for at least three (3) years from the date of the last entry in the records.

SEC. 13. **False reporting.** — It shall be unlawful for any employer or any person to make any false statement, report or record on matters required to be kept or maintained pursuant to the provisions of this Rule.

SEC. 14. **Working scholars.** — There is no employer-employee relationship between students on the one hand, and schools, colleges or universities on the other, where students work for the latter in exchange for the privilege to study free of charge, provided the students are given real opportunity, including such facilities as may be reasonable and necessary to finish their chosen courses under such arrangement.

SEC. 15. **Resident physicians in training.** — There is employer-employee relationship between resident physicians and the training hospitals unless:

1. there is a training agreement between them; and
2. the training program is duly accredited or approved by the appropriate government agency.

Nothing herein shall sanction the diminution or withdrawal of any existing allowances, benefits and facilities being enjoyed by training resident physicians at the time of the effectivity of this Rule.
Rule X-A
ADMINISTRATION AND ENFORCEMENT
(Department Order No. 7-A, Series of 1995)

SECTION 1. **Visitorial power.** — The Secretary of Labor and Employment or his duly authorized representative shall have access to employment records and premises of the employer at any time of the day or night, whenever work is being undertaken therein, and the right to copy therefrom, to question any employee, and to investigate any fact, condition or matter relevant to the determination of compliance with any provision of the Labor Code of the Philippines, as amended, and of any other labor, law, wage order or rules and regulations issued pursuant thereto.

SEC. 2. **Compliance order.** — Notwithstanding the provisions of Articles 129 and 217 of the Labor Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary or the Regional Director as his duly authorized representative shall have the power to issue compliance orders to give effect to the labor standards provisions of the Code and other labor legislations based on the findings of labor and employment officers made in the course of a routine or complaint inspection, regardless of the amount of money claims involved, and to issue writs of execution for the enforcement of the compliance orders, except in cases where the employer contests the findings of the Labor and Employment Officer and raises issues supported by documentary proofs which were not considered in the course of inspection. In such cases the Regional Director shall endorse the dispute to the appropriate regional branch of the National Labor Relations Commission (NLRC) for proper action.

SEC. 3. **Enforcement of occupational safety and health standards.** — (a) The Secretary or the Regional Director may, upon recommendation of the labor and employment officer, order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with occupational safety and health standards or regulations poses grave and imminent danger to the workers.

(b) Within twenty-four (24) hours from the issuance of the order of stoppage or suspension of operations, the Secretary or the Regional Director shall cause the conduct of a hearing to determine whether the order for the stoppage of work or suspension of operations shall be lifted or not. The proceedings shall be terminated within seventy-two (72) hours from receipt of a copy of the order by the employer. In case the violation is attributable to the fault of the employer, he shall pay the employees affected their salaries and wage-related benefits during the period of such stoppage of work or suspension of operations.

SEC. 4. **Inspection results.** — Immediately after the inspection has been completed, whether routine or in relation to a complaint, the labor and employment officer shall furnish both the employer or his representative(s) and the workers or their representative(s) a copy of the inspection results. A copy of the report shall be posted in two (2) conspicuous places inside company premises.
SEC. 5. Field investigation and hearing. — (a) In case of complaint inspection where no proof of compliance is submitted by the employer after seven (7) calendar days from receipt of the inspection results, the Regional Director shall summon the employer and the employees/complainants to a summary hearing at the Regional Office.

(b) Where no complete field investigation can be made for reason attributable to the fault of the employer or his representative(s) including but not limited to instances when labor and employment officers are denied access to the premises, employment records or workers of the employer, the investigation may be completed in the Regional Office.

SEC. 6. Nature of proceedings. — The proceedings shall be summary and non-litigious in character. Subject to the requirements of due process, the technicalities of law and procedure and the rules governing admissibility and sufficiency of evidence obtaining in the courts of law shall not strictly apply. The Regional Director or his designated representative may, however, avail of all reasonable means to ascertain the facts of the controversy speedily and objectively, including the conduct of ocular inspection and examination of well-informed persons. Substantial evidence shall be sufficient to support a decision or order.

SEC. 7. Failure to appear. — (a) Where the employer or the complainant, despite proper notice, fails or refuses to appear during the investigation for two consecutive hearings without justifiable reasons, the Secretary or the Regional Director may issue a compliance order or otherwise dismiss the complaint based on the evidence on record.

(b) Where the employer fails or refuses to present satisfactory proof that he has corrected the violations which are declared unlawful by the Code, the case shall be endorsed to the proper prosecutor’s office for prosecution. The same action shall be taken when the employer refuses, without any justifiable reason, to allow a duly authorized labor and employment officer access or entry into company premises.

SEC. 8. Appeal. — (a) The Order of the Regional Director shall be final and executory unless appealed to the Secretary within ten (10) calendar days from receipt thereof.

(b) The appeal shall be filed with the Regional Office where the case originated together with the memorandum of the appealing party. The appellee may file his answer within ten (10) calendar days from receipt of the appellant’s memorandum.

SEC. 9. Cash or surety bond; when required. — In case the order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a duly accredited bonding company. The bond should be in the amount equivalent to the monetary awards indicated in the order.

SEC. 10. Writ of execution. — (a) If no appeal is perfected within the reglementary period, the Regional Director shall, motu proprio or upon motion by any interested party, issue a writ of execution to enforce the order. In the enforcement of the writ, the assistance of the law enforcement authorities may be sought.
(b) A writ of execution may be recalled subsequent to its issuance, if it is shown that an appeal has been perfected in accordance with this Rule.

SEC. 11. Effect on other issuances. — The provisions of existing rules and administrative issuances not otherwise repealed, modified or inconsistent with this Order shall continue to have full force and effect. This Order supersedes Department Order No. 7, series of 1995.

SEC. 12. Effectivity. — This Rule shall take effect fifteen days after its publication in a newspaper of general circulation.

[Dated 12 March 1995, signed by DOLE Acting Secretary Jose S. Brillantes. — CAA]

Rule XI

ADJUDICATORY POWERS

SECTION 1. Recovery of wages, simple money claims and other benefits. — (a) The Regional Director or any duly authorized Hearing Officer of the Department of Labor and Employment shall have the power through summary proceedings and after due notice to hear and decide any complaint involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper arising from employer-employee relations; Provided, That such complaint does not include a claim for reinstatement and; Provided further, That the aggregate money claims of each employee or househelper does not exceed Five thousand pesos (P5,000.00), inclusive of legal interest.

(b) When the claims of two or more claimants, each not exceeding Five thousand pesos (P5,000.00), arising out of or involving the same cause of action and against the same respondent, are subject of separate complaints, the complaints may, upon motion of either party, be consolidated into one for purposes of the hearing and reception of evidence.

(c) When the evidence shows that the claim amounts to more than Five thousand pesos (P5,000.00), the Regional Director or Hearing Officer shall advise the complainant to amend the complaint if the latter so desires and file the same with the appropriate regional branch of the National Labor Relations Commission.

SEC. 2. The complaint shall be in writing, under oath and shall substantially comply with the form prescribed by the Department. Within two (2) working days from receipt of the complaint, the Regional Director or Hearing Officer shall serve a copy of the complaint and all pertinent documents to the respondents who may, within five (5) calendar days, file an answer thereto.

SEC. 3. Any sum recovered on behalf of an employee or househelper pursuant to this Rule shall be held in a special deposit account by, and shall be paid, on order of the Secretary of Labor and Employment or the Regional Director, directly to the employee or househelper concerned or to his heirs, successors or assigns. Any such sum not paid to the employee or househelper, because he cannot be located after
IMPLEMENTING RULES

diligent and reasonable effort to locate him within a period of three (3) years, shall be held as a special fund of the Department of Labor and Employment to be used exclusively for the amelioration and benefit of workers; Provided, however, That thirty (30) calendar days before any sum is turned over to the fund, a notice of entitlement shall be posted conspicuously in at least two (2) public places in the locality where he is last known to have resided.

The Secretary of Labor and Employment or his duly authorized representative may supervise the payment of unpaid wages and other monetary claims and benefits, including legal interests, found owing to any employee or househelper.

SEC. 4. Any decision or resolution of the Regional Director or any of the duly authorized Hearing Officers of the Department of Labor and Employment may be appealed on the same grounds and following the procedure for perfecting an appeal provided in Article 223 of the Labor Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from submission of the last pleading required or allowed under its Rules.

Rule XII
EMPLOYMENT OF WOMEN AND MINORS

SECTION 1. General statement on coverage. — This Rule shall apply to all employers whether operating for profit or not, including educational, religious and charitable institutions, except to the Government and to government-owned or -controlled corporations and to employers of household helpers and persons in their personal service insofar as such workers are concerned.

SEC. 2. Employable age. — Children below fifteen (15) years of age may be allowed to work under the direct responsibility of their parents or guardians in any nonhazardous undertaking where the work will not in any way interfere with their schooling. In such cases, the children shall not be considered as employees of the employer or their parents or guardians.

SEC. 3. Eligibility for employment. — Any person of either sex, between 15 and 18 years of age, may be employed in any nonhazardous work. No employer shall discriminate against such person in regard to terms and conditions of employment on account of his age.

For purposes of this Rule, a nonhazardous work or undertaking shall mean any work or activity in which the employee is not exposed to any risk which constitutes an imminent danger to his safety and health. The Secretary of Labor shall from time to time publish a list of hazardous work and activities in which persons 18 years of age and below cannot be employed.

SEC. 4. Status of women workers in certain workplaces. — Any woman who is permitted or suffered to work with or without compensation, in any night club, cocktail lounge, beer house, massage clinic, bar or similar establishments, under the effective control or supervision of the employer for a substantial period of time
as determined by the Secretary of Labor, shall be considered as an employee of such establishments for purposes of labor and social legislation. No employer shall discriminate against such employees or in any manner reduce whatever benefits they are now enjoying by reason of the provisions of this Section.

SEC. 5. **Night work of women employees.** — Any woman employed in any industrial undertaking may be allowed to work beyond 10 o’clock at night, or beyond 12 o’clock midnight in the case of women employees of commercial or nonagricultural enterprises, in any of the following cases:

(a) in cases of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquakes, epidemic or other disaster or calamity, to prevent loss of life or property or in cases of *force majeure* or imminent danger to public safety;

(b) in case of urgent work to be performed on machineries, equipment or installation, to avoid serious loss which the employer would otherwise suffer;

(c) where the work is necessary to prevent serious loss of perishable goods;

(d) where the woman employee holds a responsible position of a managerial or technical nature or where the woman employee has been engaged to provide health and welfare services;

(e) where the nature of the work requires the manual skill and dexterity of women workers and the same cannot be performed with equal efficiency by male workers or where the employment of women is the established practice in the enterprises concerned on the date these Rules become effective; and

(f) where the women employees are immediate members of the family operating the establishment or undertaking.

The Secretary of Labor shall from time to time determine cases analogous to the foregoing for purposes of this Section.

SEC. 6. **Agricultural work.** — No woman, regardless of age, shall be permitted or suffered to work, with or without compensation, in any agricultural undertaking at nighttime unless she is given a rest period of not less than nine (9) consecutive hours, subject to the provisions of Section 5 of this Rule.

SEC. 7. **Maternity leave benefits.** — Every employer shall grant to any of his pregnant women employees who has rendered an aggregate service of at least six (6) months for the last twelve (12) months immediately preceding the expected date of delivery, or the complete abortion or miscarriage, maternity leave of at least two (2) weeks before and four (4) weeks after the delivery, miscarriage or abortion, with full pay based on her regular or average weekly wages. [See comments under Article 131. — CAA]

SEC. 8. **Accretion of leave credits.** — Where the pregnant woman employee fails to avail of the two-week predelivery leave, or any part thereof, the same shall be added to her post-delivery leave with pay.

SEC. 9. **Payment of extended maternity leave.** — When so requested by the woman employee, the extension of her maternity leave beyond the four-week post-delivery leave shall be paid by the employer from her unused vacation and/or sick leave credits, if any, or allowed without pay in the absence of such leave credits, where
the extended leave is due to illness medically certified to arise out of her pregnancy, delivery, complete abortion or miscarriage which renders her unfit for work.

SEC. 10. Limitation on leave benefits. — The maternity benefits provided herein shall be paid by an employer only for the first four (4) deliveries, miscarriages, and/or complete abortions of the employee from 13 March 1973, regardless of the number of employers and deliveries, complete abortions or miscarriages the woman employee had before said date. For purposes of determining the entitlement of a woman employee to the maternity leave benefits as delimited herein, the total number of her deliveries, complete abortions/or miscarriages after said date shall be considered regardless of the identity or number of employers she has had at the time of such determination, provided that she enjoyed the minimum benefits therefor as provided in these regulations.

SEC. 11. Family planning services. — Employers who habitually employ more than two hundred (200) workers in any locality shall provide free family planning service to their employees and their spouses which shall include, but not be limited to, the application or use of contraceptives.

Subject to the approval of the Secretary of Labor, the Bureau of Women and Minors shall, within thirty (30) days from the effective date of these Rules, prescribe the minimum requirements of family planning services to be given by employer to their employees.

SEC. 12. Relation to agreements. — Nothing herein shall prevent the employer and his employees or their representatives from entering into any agreement with terms more favorable to the employees than those provided herein, or be used to diminish any benefit granted to the employees under existing laws, agreements, and voluntary employer practices.

SEC. 13. Prohibited acts. — It shall be unlawful for any employer:

(a) to discharge any woman employed by him for the purpose of preventing such woman from enjoying the maternity leave, facilities and other benefits provided under the Code;

(b) to discharge such woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy;

(c) to discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant;

(d) to discharge any woman or any other employee for having filed a complaint or having testified or being about to testify under the Code; and

(e) to require as a condition for or continuation of employment that a woman employee shall not get married or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

SEC. 14. Facilities for women employees. — Subject to the approval of the Secretary of Labor, the Bureau of Women and Minors shall, within thirty (30) days from the effective date of these regulations, determine in an appropriate issuance
the work situations for which the facilities enumerated in Article 131 of the Code shall be provided, as well as the appropriate minimum age and other standards for retirement or termination of employment in special occupations in which women are employed.

Rule XIII

EMPLOYMENT OF HOUSEHELPERS

SECTION 1. General statement on coverage. — (a) The provisions of this Rule shall apply to all househelpers whether employed on full or part-time basis.

(b) The term “househelper” as used herein is synonymous to the term “domestic servant” and shall refer to any person, whether male or female, who renders services in and about the employer’s home and which services are usually necessary or desirable for the maintenance and enjoyment thereof, and ministers exclusively to the personal comfort and enjoyment of the employer’s family.

SEC. 2. Method of payment not determinant. — The provisions of this Rule shall apply irrespective of the method of payment of wages agreed upon by the employer and househelper, whether it be hourly, daily, weekly, or monthly, or in piece or output basis.

SEC. 3. Children of househelpers. — The children and relatives of a househelper who live under the employer’s roof and who share the accommodations provided for the househelpers by the employer shall not be deemed as househelpers if they are not otherwise engaged as such and are not required to perform any substantial household work.

SEC. 4. Employment contract. — The initial contract for household service shall not last for more than two (2) years. However, such contract may be renewed from year to year.

SEC. 5. Minimum monthly wage. — The minimum compensation of househelpers shall not be less than the following rates: [See Article 143. — CAA]

(a) sixty pesos (P60.00) a month for those employed in the cities of Manila, Quezon, Pasay and Caloocan, and in the municipalities of Makati, San Juan, Mandaluyong, Muntinlupa, Navotas, Malabon, Parañaque, Las Piñas, Pasig and Marikina, in the Province of Rizal;

(b) forty-five pesos (P45.00) a month for those employed in other chartered cities and first-class municipalities; and

(c) thirty pesos (P30.00) a month for those in other municipalities.

SEC. 6. Equivalent daily rate. — The equivalent minimum daily wage rate of househelpers shall be determined by dividing the applicable minimum monthly rate by thirty (30) days.

SEC. 7. Payment by results. — Where the method of payment of wages agreed upon by the employer and the househelper is on piece or output basis, the piece of output rates shall be such as will assure the househelper of the minimum monthly or the equivalent daily rate as provided in this issuance.
SEC. 8. Minimum cash wage. — The minimum wage rates prescribed under this Rule shall be basic cash wages which shall be paid to the househelpers in addition to lodging, food and medical attendance.

SEC. 9. Time and manner of payment. — Wages shall be paid directly to the househelper to whom they are due at least once a month. No deductions therefrom shall be made by the employer unless authorized by the househelper himself or by existing laws.

SEC. 10. Assignment to nonhousehold work. — No househelper may be assigned to work in a commercial, industrial or agricultural enterprise at a wage or salary rate lower than that provided for agricultural and nonagricultural workers.

SEC. 11. Opportunity for education. — If the househelper is under the age of eighteen years, the employer shall give him or her an opportunity for at least elementary education. The cost of such education shall be part of the househelper’s compensation, unless there is a stipulation to the contrary.

SEC. 12. Treatment of househelper. — The employer shall treat the househelper in a just and humane manner. In no case shall physical violence be used upon the househelper.

SEC. 13. Board, lodging and medical attendance. — The employer shall furnish the househelper free of charge suitable and sanitary living quarters as well as adequate food and medical attendance.

SEC. 14. Indemnity for unjust termination of service. — If the period for household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.

If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days.

SEC. 15. Employment certification. — Upon the severance of the household service relationship, the househelper may demand from the employer a written statement of the nature and duration of the service and his or her efficiency and conduct as househelper.

SEC. 16. Funeral expenses. — In case of death of the household helper the employer shall bear the funeral expenses commensurate to the standards of life of the deceased.

SEC. 17. Disposition of househelper’s body. — Unless so desired by the househelper or by his or her guardian with court approval, the transfer or use of the body of a deceased househelper for purposes other than burial is prohibited. When so authorized by the househelper, the transfer, use and disposition of the body shall be in accordance with the provisions of Republic Act No. 349.

SEC. 18. Employment records. — The employer may keep such records as he may deem necessary to reflect the actual terms and conditions of employment of his househelper which the latter shall authenticate by signature or thumbmark upon request of the employer.
SEC. 19. **Prohibited reduction of pay.** — When the compensation of the househelper before the promulgation of these regulations is higher than that prescribed in the Code and in this issuance, the same shall not be reduced or diminished by the employer on or after said date.

SEC. 20. **Relation to other laws and agreements.** — Nothing in these rules and regulations shall deprive a househelper of the right to seek higher wages, shorter working hours and better working conditions than those prescribed herein, nor justify an employer in reducing any benefit or privilege granted to the househelper under existing laws, agreements or voluntary employer practices, with terms more favorable to the househelper than those prescribed in this Rule.

**Rule XIV**

**EMPLOYMENT OF HOMEWORKERS**

**SECTION 1. General statement on coverage.** — This Rule shall apply to any person who performs industrial homework for an employer, contractor or subcontractor.

**SEC. 2. Definitions.** — As used in this Rule, the following terms shall have the meanings indicated hereunder:

(a) “Industrial Homework” is a system of production under which work for an employer or contractor is carried out by a homeworker at his/her home. Materials may or may not be furnished by the employer or contractor.

   It differs from regular factory production principally in that, it is a decentralized form of production where there is ordinarily very little supervision or regulation of methods of work.

(b) “Industrial Homeworker” means a worker who is engaged in industrial homework.

(c) “Home” means any room, house, apartment or other premises used regularly, in whole or in part, as a dwelling place, except those situated within the premises or compound of an employer, contractor or subcontractor and the work performed therein is under the active or personal supervision by or for the latter.

(d) “Employer” means any natural or artificial person who, for his own account or benefit, or on behalf of any person residing outside the Philippines, directly or indirectly, or through any employee, agent, contractor, subcontractor or any, other person:

1. delivers or causes to be delivered any goods, articles or materials to be processed or fabricated in or about a home and thereafter to be returned or to be disposed of or distributed in accordance with his direction; or
2. sells any goods, articles or materials for the purpose of having such goods or articles processed in or about a home and then repurchases them himself or through another after such processing.

(e) “Contractor” or “subcontractor” means any person who, for the account or benefit of an employer, delivers or causes to be delivered to a homeworker goods or articles to be processed in or about his home and thereafter to be returned, disposed of or distributed in accordance with the direction of the employer.

(f) “Processing” means manufacturing, fabricating, finishing, repairing, altering, packing, wrapping or handling in any way connected with the production or preparation of an article or material.

(g) “Cooperative” is an association registered under the Cooperative Code of the Philippines.

(h) “Department” means the Department of Labor and Employment.

SEC. 3. Self-organization. — Homeworkers shall have the right to form, join or assist organizations of their own choosing, in accordance with law.

SEC. 4. Registration of homeworkers’ organization. — Any applicant homeworker organization or association shall acquire legal personality, and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty-five pesos (P55.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the homeworkers’ organization, the minutes of the organizational meetings and the list of workers who participated in such meetings;

(c) The names of all its members comprising at least 20 percent of all the workers in the bargaining unit where it seeks to operate, if applicable;

(d) If the applicant has been in existence for one or more years, copies of its annual financial reports; and

(e) Four copies of the constitution and by-laws of the applicant organization, the minutes of its adoption or ratification and the list of members who participated in it.

SEC. 5. Registration of employer, contractor and subcontractor. — The Department shall, as soon as possible, conduct consultation meetings with government agencies requiring registration of employers and determine if the data being supplied by the registration forms of such agencies are the same as or similar to those needed by the Department in the implementation of these regulations. If the registration forms of other agencies do not provide the data needed by DOLE, it shall inquire into the possibility of adopting a common registration form with other agencies that will provide the data needed by all the agencies concerned.

SEC. 6. Payment for homework. — Immediately upon receipt of the finished goods or articles, the employer shall pay the homeworker or the contractor or subcontractor, as the case may be, for the work performed less the corresponding
homeworker’s share of SSS, MEDICARE and ECC premium contributions which shall be remitted by the contractor/subcontractor or employer to the SSS with the employers’ share. However, where payment is made to a contractor or subcontractor, the homeworker shall likewise be paid immediately after the goods or articles have been collected from the workers.

SEC. 7. Standard rates. — At the initiative of the Department or upon petition of any interested party, the Secretary of Labor and Employment or his authorized representative shall establish the standard output rate or standard minimum rate in appropriate orders for the particular work or processing to be performed by the homeworkers.

The standard output rates or piece rates shall be determined through any of the following procedures:

(a) time and motion studies;

(b) an individual/collective agreement between the employer and its workers as approved by the Secretary or his authorized representative;

(c) consultation with representatives of employers and workers organizations in a tripartite conference called by the Secretary.

The time and motion studies shall be undertaken by the Regional Office having jurisdiction over the location of the premise/s used regularly by the homeworker/s. However, where the job operation or activity is being likewise performed by regular factory workers at the factory or premises of the employer, the time and motion studies shall be conducted by the Regional Office having jurisdiction over the location of the main undertaking or business of the employer. Piece rates established through time and motion studies conducted at the factory or main undertaking of the employer shall be applicable to the homeworkers performing the same job activity. The standard piece rate shall be issued by the Regional Office within one month after a request has been made at said office.

Upon request of the Regional Office, the Bureau of Working Conditions shall provide assistance in the conduct of such studies.

Noncompliance with the established standard rates can be the subject of complaint which shall be filed at the Regional Office.

SEC. 8. Deductions. — No employer, contractor, or subcontractor shall make any deduction from the homeworker’s earnings for the value of materials which have been lost, destroyed, soiled or otherwise damaged unless the following conditions are met:

(a) the homeworker concerned is clearly shown to be responsible for the loss or damage;

(b) the homeworker is given reasonable opportunity to show cause why deductions should not be made;

(c) the amount of such deduction is fair and reasonable and shall not exceed the actual loss or damage; and
IMPLEMENTING RULES

(d) the deduction is made at such rate that the amount deducted does not exceed 20% of the homeworker’s earnings in a week.

SEC. 9. Conditions for payment of work.

(a) The employer may require the homeworker to redo the work which has been improperly executed without having to pay the stipulated rate again.

(b) An employer, contractor, or subcontractor need not pay the homeworker for any work which has been done on goods and articles which have been returned for reasons attributable to the fault of the homeworker.

SEC. 10. Enforcement Power. — The Regional Director shall have the power to order and administer compliance with the provisions of the law and regulations affecting the terms and conditions of employment of homeworkers and shall have the jurisdiction in cases involving violations of this Rule.

Complaints for violations of labor standards and the terms and conditions of employment involving money claims of homeworkers in an amount of not more than P5,000 per homeworker shall be heard and decided by the Regional Director. He shall have the power to order and administer, after due notice and hearing, compliance with the provisions of this Rule.

In cases where the findings of the Regional Office show that the money claims due a homeworker exceed P5,000, the same shall be endorsed to the appropriate Regional Arbitration Branch of the National Labor Relations Commission.

Noncompliance with the order issued by the Regional Director can be the subject of prosecution in accordance with the penal provisions of the Labor Code.

In cases of disagreement between the homeworker and the employer, contractor, or subcontractor on a matter falling under this Rule, either party may refer the case to the Regional Office having jurisdiction over the workplace of the homeworker. The Regional Office shall decide the case within ten (10) working days from receipt of the case. Its decision shall be final and executory.

SEC. 11. Duties of employer, contractor and subcontractor. — Whenever an employer shall contract with another for the performance of the employer’s work, it shall be the duty of such employer to provide in such contract that the employees or homeworkers of the contractor and the latter’s subcontractor shall be paid in accordance with the provisions of this Rule. In the event that such contractor or subcontractor fails to pay the wages or earnings of his employees or homeworkers as specified in this Rule, such employer shall be jointly and severally liable with the contractor or subcontractor to the workers of the latter, to the extent that such work is performed under such contract, in the same manner as if the employees or homeworkers were directly engaged by the employer. The employer, contractor or subcontractor shall assist the homeworkers in the maintenance of basic safe and healthful working conditions at the homeworkers’ place of work.

SEC. 12. Employment of minors as homeworkers. — The provisions governing the employment of minors under this Code as well as the provisions on working children under the Child and Youth Welfare Code shall govern the employment of minors as homeworkers.
SEC. 13. **Prohibitions for homework.** — No homework shall be performed on the following: (1) explosives, fireworks and articles of like character; (2) drugs and poisons; and (3) other articles, the processing of which requires exposure to toxic substances.

SEC. 14. **Assistance to registered homeworkers’ organizations, employers, contractors and subcontractors.** — The Regional Office shall provide technical assistance to registered homeworkers organizations, employers, contractors and subcontractors relative to the following:

(a) Information on wages and other benefits;
(b) Conduct of time and motion studies to ensure fair and reasonable output rates;
(c) Skills training;
(d) Maintenance of safe and healthful conditions at the workplace;
(e) Information on entitlement to social security and employees compensation benefits;
(f) Facilitation of loans with government and nongovernment financial institutions; and
(g) Information on availment of housing programs under PAG-IBIG.

SEC. 15. **Effect on other regulations.** — This Department Order shall be known as Rule XIV, Book III of the Rules Implementing the Labor Code entitled Employment of Homeworkers and shall not be construed as authorizing the withdrawal or reduction of any existing benefit of homeworkers provided under any law, order, agreement, and employer practice or policy.

SEC. 16. **Effectivity.** — This Rule shall take effect fifteen (15) days after publication of its adoption in two (2) newspapers of general circulation.

(SGD.) RUBEN D. TORRES
Secretary

DEPARTMENT ORDER NO. 119-12
Series of 2012

RULES IMPLEMENTING REPUBLIC ACT NO. 10151

Pursuant to Section 7 of Republic Act No. 10151 entitled “An Act Allowing the Employment of Night Workers Thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as the Labor Code of the Philippines,” the following Rules are hereby issued and shall form part of Book III of the Omnibus Rules Implementing the Labor Code, to ensure the protection, safety and welfare of night workers:
IMPLEMENTING RULES

RULE XV
EMPLOYMENT OF NIGHT WORKERS

SECTION 1. Coverage. — This Rule shall apply to all persons who shall be employed or permitted or suffered to work at night, except those employed in agriculture, stock raising, fishing, maritime transport and inland navigation.

SEC. 2. Definition. — As used herein, “night worker” means any employed person whose work covers the period from 10 o’clock in the evening to 6 o’clock the following morning provided that the worker performs no less than seven (7) consecutive hours of work.

SEC. 3. Health assessment. — At their request, workers shall have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work:

(a) Before taking up an assignment as a night worker;
(b) At regular intervals during such an assignment;
(c) If they experience health problems during such an assignment.

With the exception of a finding of unfitness for night work, the findings of such assessments shall be confidential and shall not be used to their detriment, subject however to applicable company policies.

SEC. 4. Mandatory facilities. — Mandatory facilities shall be made available for workers performing night work which include the following:

(a) Suitable first-aid and emergency facilities as provided for under Rule 1960 (Occupational Health Services) of the Occupational Safety and Health Standards (OSHS);
(b) Lactation station in required companies pursuant to Republic Act No. 10028 (The Expanded Breastfeeding Promotion Act of 2009);
(c) Separate toilet facilities for men and women;
(d) Facility for eating with potable drinking water; and
(e) Facilities for transportation and/or properly ventilated temporary sleeping or resting quarters, separate for male and female workers, shall be provided except where any of the following circumstances is present:

i. Where there is an existing company guideline, practice or policy, collective bargaining agreement (CBA) or any similar agreement between management and workers providing for an equivalent or superior benefit; or
ii. Where the start or end of the night work does not fall within 12 midnight to 5 o’clock in the morning; or
iii. Where the workplace is located in an area that is accessible twenty-four (24) hours to public transportation;
iv. Where the number of employees does not exceed a specified number as may be provided for by the Secretary of labor and Employment in subsequent issuances.
SEC. 5. **Transfer.** — Night workers who are certified by competent physician, as unfit to render night work, due to health reasons, shall be transferred to a job for which they are fit to work whenever practicable. The transfer of the employee must be to a similar or equivalent position and in good faith.

If such transfer is not practicable or the workers are unable to render night work for a continuous period of not less than six (6) months upon the certification of a competent public health authority, these workers shall be granted the same company benefits as other workers who are unable to work due to illness.

A night worker certified as temporarily unfit for night work for a period of less than six (6) months shall be given the same protection against dismissal or notice of dismissal as other workers who are prevented from working for health reasons.

SEC. 6. **Alternative measures to night work for pregnant and nursing employees.** — Employers shall ensure that measures shall be undertaken to provide an alternative to night work for pregnant and nursing employees who would otherwise be called upon to perform such work. Such measures may include the transfer to day work, where it is possible, as well as the provision of social security benefits or an extension of maternity leave.

(a) **Transfer to day work.** — As far as practicable, pregnant or nursing employees shall be assigned to day work, before and after childbirth for a period of at least sixteen (16) weeks which shall be divided between the time before and after childbirth.

Medical certificate issued by competent physician (*i.e.*, Obstetrician/Gynecologist, Pediatrician, etc.) is necessary for the grant of:

i. additional periods of assignment to day work during pregnancy or after childbirth other than the period mentioned in the foregoing paragraph, provided that the length of additional period should not be more than four (4) weeks or for a longer period as may be agreed upon by the employer and the worker;

ii. extension of maternity leave; and

iii. clearance to render night work.

(b) ** Provision of social security benefits.** — Social security benefits, such as paid maternity leave shall be provided to women workers in accordance with the provisions of Republic Act No. 8282 (Social Security Act of 1997) and other existing company policy or collective bargaining agreement.

(c) **Extension of maternity leave.** — Where transfer to day work is not possible, a woman employee may be allowed to extend, as recommended by a competent physician, her maternity leave without pay or using earned leave credits of the worker, if any.

SEC. 7. **Non-diminution of maternity leave benefits under existing laws.** — Nothing in this Rule shall be construed to authorize diminution or reduction of the protection and benefits connected with maternity leave under existing law.

SEC. 8. **Protection against dismissal and loss of benefits attached to employment status, seniority and access to promotion.** — Where no alternative work can be provided to a
A woman employee shall not be dismissed for reasons of pregnancy, childbirth and childcare responsibilities as defined under this Rule. She shall not lose the benefits regarding her employment status, seniority, and access to promotion which may attach to her regular night work position.

SEC. 9. Compensation. — The night workers’ compensation shall include but not be limited to working time, pay and benefits under the Labor Code, as amended and under existing laws, such as service incentive leave, rest day, night differential pay, 13th month pay, and other benefits as provided for by law, company policy or CSA.

SEC. 10. Night work schedules. — The employer shall at its own initiative, consult the recognized workers’ representatives or union in the establishment on the details of the night work schedules.

In establishments employing night workers, consultation shall take place regularly and appropriate changes of work schedule shall be agreed upon before it is implemented.

SEC. 11. Penalties. — Any violation of this Rule shall be punishable with a fine of not less than Thirty Thousand Pesos (P30,000.00) nor more than Fifty Thousand Pesos (P50,000.00) or imprisonment of not less than six (6) months or both, at the discretion of the court. If the offense is committed by a corporation, trust, firm, partnership or association or other entity, the penalty shall be imposed upon the guilty officer or officers of such corporation, trust, firm, partnership or association, or entity.

SEC. 12. Separability clause. — If any provision or portion of this Rule shall be declared unconstitutional or invalid, the remaining portions or provisions hereof shall continue to be in full force and effect.

SEC. 13. Effectivity. — This Rule shall take effect 15 days after the date of its complete publication in two national newspapers of general circulation.

Manila, Philippines, January 20, 2012

ROSALINDA DIMAPILIS-BALDOZ
Secretary
IMPLEMENTING RULES OF BOOK IV

BOOK IV
HEALTH, SAFETY AND WELFARE BENEFITS

Rule I
MEDICAL AND DENTAL SERVICES

SECTION 1. Coverage. — This Rule shall apply to all employers whether operating for profit or not, including the Government and any of its political subdivisions and government-owned or -controlled corporations, which employ in any workplace one or more workers.

The development and enforcement of dental standards shall continue to be under the responsibility of the Bureau of Dental Health Services of the Department of Health.

SEC. 2. Definition. — As used in this Rule, the following terms shall have the meanings indicated hereunder unless the context clearly indicates otherwise:

(a) “First-aid treatment” means adequate, immediate and necessary medical and dental attention or remedy given in case of injury or sudden illness suffered by a worker during employment, irrespective of whether or not such injury or illness is work-connected, before more extensive medical and/or dental treatment can be secured. It does not include continued treatment or follow-up treatment for any injury or illness.

(b) “Workplace” means the office, premises or worksite where the workers are habitually employed and shall include the office or place where the workers who have no fixed or definite worksite regularly report for assignment in the course of their employment.

(c) “First-aider” means any person trained and duly certified as qualified to administer first aid by the Philippine National Red Cross or by any other organization accredited by the former.

SEC. 3. Medicines and facilities. — Every employer shall keep in or about his workplace the first-aid medicines, equipment and facilities that shall be prescribed by the Department of Labor within 5 days from the issuance of these regulations. The list of medicine, equipment and facilities may be revised from time to time by the Bureau of Labor Standards, subject to the approval of the Secretary of Labor.

SEC. 4. Emergency medical and dental services. — Any employer covered by this Rule shall provide his employees medical and dental services and facilities in the following cases and manner:
(a) When the number of workers is from 10 to 50 in a workplace, the services of a graduate first-aider shall be provided who may be one of the workers in the workplace and who has immediate access to the first-aid medicines prescribed in Section 3 of this Rule.

(b) Where the number of workers exceeds 50 but not more than 200, the services of a full-time registered nurse shall be provided. However, if the workplace is nonhazardous, the services of a full-time first-aider may be provided if a nurse is not available.

(c) Where the number of workers in the workplace exceeds 200 but not more than 300, the services of a full-time registered nurse, a part-time physician and a part-time dentist, and an emergency clinic shall be provided, regardless of the nature of the undertaking therein. The physician and dentist engaged for such workplace shall stay in the premises for at least two (2) hours a day; Provided, however, That where the establishment has more than one (1) workshift a day, the required two-hour stay shall be devoted to the workshift which has the biggest number of workers and they shall, in addition to the requirements of this Rule, be subject to call at anytime during the other workshifts to attend to emergency cases.

(d) Where the number of workers in a hazardous workplace exceeds 300, the services of a full-time nurse, a full-time physician, a full-time dentist, a dental clinic and an infirmary or emergency hospital with one bed capacity for every 100 workers shall be provided. The physician and dentist shall stay in the premises of the workplace for at least eight (8) hours a day; Provided, however, That where the workplace has more than one (1) workshift a day, they shall be at the workplace during the workshift which has the biggest number of workers and they shall be subject to call at anytime during the other workshifts to attend to emergency cases. Where the undertaking in such a workplace is nonhazardous in nature, the employer may engage the services of a part-time physician and a part-time dentist who shall have the same responsibilities as those provided in subsection (c) of this Section, and shall engage the services of a full-time registered nurse.

(e) In all workplaces where there are more than one (1) workshift in a day, the employer shall, in addition to the requirements of this Rule, provide the services of a full-time first-aider for each workshift.

SEC. 5. Emergency hospital. — An employer need not put up an emergency hospital or dental clinic in the workplace as required in these regulations where there is a hospital or dental clinic which is not more than five (5) kilometers away from the workplace if situated in any urban area or which can be reached by motor vehicle in twenty-five (25) minutes of travel if situated in a rural area and the employer has facilities readily available for transporting a worker to the hospital or clinic in case of emergency; Provided, That the employer shall enter into a written contract with the hospital or dental clinic for the use thereof in the treatment of workers in case of emergency.

SEC. 6. Training and qualifications of medical and dental personnel. — The health personnel required to be hired by an employer pursuant to the Code and these Rules shall have the following minimum qualifications:
(a) A first-aider must be able to read and write and must have completed a course in first aid duly certified by the National Red Cross or any other organization accredited by the same.

(b) A nurse must have passed the examinations given by the Board of Examiners and duly licensed to practice nursing in the Philippines and preferably with at least fifty (50) hours of training in occupational nursing conducted by the Department of Health, the Institute of Public Health of the University of the Philippines or by any organization accredited by the former.

(c) A physician, whether permanent or part-time, must have passed the examinations given by the Board of Examiners for physicians, is licensed to practice medicine in the Philippines and preferably a graduate of a training course in occupational medicine conducted by the Bureau of Labor Standards, the Institute of Public Health of the University of the Philippines, or any organization duly accredited by the former.

(d) A dentist, whether permanent or part-time, must have passed the examinations given by the Board of Examiners for dentists, is licensed to practice dentistry in the Philippines, and preferably has completed a training course in occupational dentistry conducted by the Bureau of Dental Services of the Department of Health or any organization duly accredited by the former.

SEC. 7. Opportunity for training. — Nurses, physicians, and dentists employed by covered employers on the date the Code becomes effective and who do not possess the special training qualifications provided in this Rule may attend the respective training courses pertinent to their field of specialization. The Bureau of Labor Standards shall initiate the organization and carrying out of appropriate training programs for nurses, physicians and dentists in coordination with the government agencies or private organizations referred to in the preceding Section.

SEC. 8. Hazardous workplaces. — The Bureau of Labor Standards shall, with the approval of the Secretary of Labor, issue from time to time a detailed list of hazardous workplaces for purposes of this Rule, in addition to the following:

(a) Where the nature of the work exposes the workers to dangerous environmental elements, contaminants or work conditions including ionizing radiations, chemicals, fire, flammable substances, noxious components and the like.

(b) Where the workers are engaged in construction work, logging, firefighting, mining, quarrying, blasting, stevedoring, dock work, deep-sea fishing and mechanized farming.

(c) Where the workers are engaged in the manufacture or handling of explosives and other pyrotechnic products.

(d) Where the workers use or are exposed to heavy or power-driven machinery or equipment.

(e) Where workers use or are exposed to power-driven tools.

SEC. 9. Health program. — The physician engaged by an employer pursuant to this Rule shall, in addition to providing medical services to the workers in cases of emergency, perform among others the following duties:
IMPLEMENTING RULES

(a) Conduct pre-employment medical examination, free of charge, for the proper selection and placement of workers;
(b) Conduct free of charge annual physical examination of the workers;
(c) Collaborate closely with the safety and technical personnel of the establishment to assure selection and placement of workers from the standpoint of physical, mental, physiological and psychological suitability, including investigation of accidents where the probable causes are exposure to occupational health hazards; and
(d) Develop and implement a comprehensive occupational health program for the employees of the establishment. A report shall be submitted annually to the Bureau of Labor Standards describing the program established and the implementation thereof.

SEC. 10. Medical and dental records. — (a) The employer shall furnish the Bureau of Labor Standards with copies of all contracts of employment of medical personnel and contracts with hospitals or clinics as provided in Section 5 of this Rule.
(b) The employer shall maintain a record of all medical examinations, treatments and medical activities undertaken.
(c) The employer shall submit reports in such form and containing such information as the Bureau of Labor Standards may require from time to time.

Rule II
OCCUPATIONAL HEALTH AND SAFETY

SECTION 1. General statement on coverage. —
(a) This Rule shall apply to all establishments, workplaces, and other undertakings, including agricultural enterprises, whether operated for profit or not, except to: (1) those engaged in land, sea and air transportation; Provided, That their dry docks, garages, hangars, maintenance and repair shops and offices, shall be covered by this Rule; and (2) residential places exclusively devoted to dwelling purposes.
(b) Except as otherwise provided herein, all establishments, workplaces and undertakings located in all chartered cities as well as ordinary municipalities shall be subject to the jurisdiction of the Department of Labor in respect to the administration and enforcement of safety and health standards.
(c) Chartered cities may be allowed to assume responsibility for technical safety inspection by the Secretary of Labor upon compliance with such standards and guidelines as he may promulgate. As used herein, technical safety inspection includes inspection for purposes of safety determination of boilers, pressure vessels, internal combustion engines, elevators (passenger and freight), dumbwaiters, escalators, and electrical installation in all workplaces.

SEC. 2. General occupational health and safety standards. — Every employer covered by this Rule shall keep and maintain his workplace free from work hazards that are causing or likely to cause physical harm to the workers or damage to property.
Subject to the approval of the Secretary of Labor, the Bureau of Labor Standards shall from time to time issue guidelines for compliance with general occupational health and safety standards.

SEC. 3. Occupational Health and Safety Code; effectivity of the existing standards. —

(a) Within six (6) months from the date of effectivity of this Rule, the Bureau of Labor Standards shall prepare and adopt an Occupational Health and Safety Code, subject to the approval of the Secretary of Labor.

(b) Until the final adoption and approval of an Occupational Health and Safety Code as provided herein, existing safety orders issued by the Department of Labor shall remain effective and enforceable and shall apply in full force and effect to all employers covered by this Rule.

SEC. 4. Work condition not covered by standards. — Any specific standards applicable to a condition, practice, means, method, operation, or process shall also apply to other similar work situations for which no specific standards have been established.

SEC. 5. Training of personnel in safety and health. — Every employer shall take steps to train a sufficient number of his supervisors or technical personnel in occupational safety and health. An employer may observe the following of his personnel:

(a) In every nonhazardous establishment or workplace having from fifty to four hundred workers each shift, at least one of the supervisors or technical personnel shall be trained in occupational health and safety and shall be assigned as part-time safety man. Such safety man shall be the secretary of the safety committee.

(b) In every nonhazardous establishment or workplace having over four hundred workers per shift, at least two of its supervisors shall be trained and a full time safety man shall be provided.

(c) In every hazardous establishment or workplace having from 20 to 200 workers each shift, at least one of its supervisors or technical men shall be trained who shall work as part-time safety man. He shall be appointed as secretary of the safety committee therein.

(d) In every hazardous establishment or workplace having over 200 workers each shift, at least two of its supervisors or technical personnel shall be trained and one of them shall be appointed full-time safety man and secretary of the safety committee therein.

(e) The employment of a full-time safety man may not be required where the employer enters into a written contract with a qualified consulting organization which shall develop and carry out his safety and health activities; Provided, That the consultant shall conduct plant visits at least four hours a week and is subject to call any time to conduct accident investigations and is available during scheduled inspections or surveys by the Secretary of Labor or his authorized representatives.

The provisions of this Section shall be made mandatory upon orders of the Secretary of Labor as soon as he is satisfied that adequate facilities on training in
IMPLEMENTING RULES

occupational safety and health are available in the Department of Labor and other public or private entities duly accredited by the Secretary of Labor.

SEC. 6. General duties of workers. — (a) Every worker shall cooperate with the employer in carrying out the provisions of this Rule. He shall report to his supervisors any work hazard that he may discover in his workplace without prejudice to the right of the worker to report the matter to the Regional Office concerned.

(b) Every worker shall make proper use of all safeguards and safety devices furnished in accordance with the provisions of this Rule for his protection and the protection of others and shall follow all instructions made by the employer in compliance with the provisions of this Rule.

SEC. 7. Duties of other persons. — Any person, including builders or contractors, who visits, builds, innovates or installs devices in establishments or workplaces shall comply with the provisions of this Rule and all regulations issued by the employer in compliance with the provisions of this Rule and other subsequent issuances, of the Secretary of Labor.

SEC. 8. Administration and enforcement. — (a) Every employer shall give to the Secretary of Labor or his duly authorized representative access to its premises and records at any time of the day or night when there is a work being undertaken therein for the purpose of determining compliance with the provisions of this Rule.

(b) Every establishment or workplace shall be inspected at least once a year to determine compliance with the provisions of this Rule. Special inspection visits, however, may be authorized by the Regional Office to investigate accidents, conduct surveys requested by the Bureau of Labor Standards, follow-up inspection recommendation or to conduct investigations or inspections upon request of an employer, worker or a labor union in the establishment.

SEC. 9. Research. — (a) The Bureau of Labor Standards, on the basis of experiments, studies, and any other information available to it, shall develop criteria dealing with toxic materials and harmful substances which will establish safe exposure levels for various periods of employment. Such studies and researches may be requested by the Secretary of Labor through grants, contracts or as priority projects in the programs of nationally recognized research organizations.

(b) The Bureau of Labor Standards shall conduct continuing studies and surveys of workplaces to study new problems in occupational safety and health including those created by new technology as well as the motivational and behavioral factors involved therein. The employer shall provide all the necessary assistance and facilities to carry out these activities.

SEC. 10. Training. — a) The Bureau of Labor Standards shall conduct continuing program to increase the competence of occupational health and safety personnel and to keep them informed of the latest trends, practices and technology in accident prevention.

(b) The Bureau of Labor Standards shall conduct continuing programs of safety personnel in all establishments or workplaces and for this purpose every employer shall, in accordance with Section 7 hereof take steps as may be necessary for the participation in such programs of at least two of his supervisors or technical
personnel for every two hundred workers per shift, provided that in the establishments with less than 200 workers at least one shall be assigned to participate in the training program.

(c) The training may be conducted by the Bureau or any other organization or group of persons accredited by the Secretary of Labor.

(d) Every training program shall include information on the importance and the proper use of adequate safety and health equipment and government policies and programs in occupational health and safety.

**ECC RULES**

**AMENDED RULES ON EMPLOYEES’ COMPENSATION**

**STATEMENT OF AUTHORITY**

By virtue of the powers vested upon the Employees’ Compensation Commission under the Labor Code of the Philippines, the following Rules are hereby adopted to implement the provisions of Title II, Book IV of the Code.

**Rule I**

**COVERAGE**

**SECTION 1. Nature.** — Coverage shall be compulsory.

SEC. 2. **Scope.** — (a) Every employer shall be covered.

(b) Every employee not over 60 years of age shall be covered.

(c) An employee over 60 years of age shall be covered if he had been paying contributions to the System prior to age 60 and has not been compulsorily retired.

(d) An employee who is coverable by both the GSIS and SSS shall be compulsorily covered by both Systems.

SEC. 3. **Employer.** — (a) The term shall mean any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment.

(b) An employer shall belong to either:

(1) The public sector covered by the GSIS, comprising the National Government, including government-owned or -controlled corporations, the Philippine Tuberculosis Society, the Philippine National Red Cross and the Philippine Veterans Bank; or

(2) The private sector covered by the SSS, comprising all employers other than those defined in the immediately preceding paragraph.

SEC. 4. **Employee.** — (a) The term shall mean any person who performs services for an employer as defined in Section 3 hereof.

(b) An employee shall belong to either:
IMPLEMENTING RULES

(1) The public sector comprising the employed workers who are covered by the GSIS, including the members of the Armed Forces of the Philippines, elective officials who are receiving regular salary, and any person employed as casual, emergency, temporary, substitute or contractual.

(2) The private sector comprising the employed workers who are covered by the SSS.

SEC. 5. Foreign employment. — (a) Filipinos working abroad in the service of an employer as defined in Section 3 hereof shall be covered by the System, and entitled to the same benefits as are provided for employees working in the Philippines.

(b) Medical services, including appliances and supplies for Filipinos employed abroad rendered or provided in such place of employment, shall be paid in accordance with, and subject to the limitations fixed in these Rules; Provided, That the Rules on Accreditation shall not apply in these cases.

(c) The notice requirement under these Rules shall not be strictly applied.

(d) Medical certifications of physicians, and statement of accounts of hospitals, when duly authenticated, are acceptable as basis for payment; Provided, That the standards and rates payable by the System shall be those provided for under these Rules.

SEC. 6. Effectivity. — (a) Coverage of employers shall take effect on the first day of operation but not earlier than January 1, 1975.

(b) Coverage of employees shall take effect on the first day of employment.

Rule II
REGISTRATION

SECTION 1. Requirement. — (a) Every employer shall register with the System by accomplishing the prescribed forms.

(b) Every employee shall be registered with the System through his employer by accomplishing the prescribed forms.

SEC. 2. GSIS. — The following guidelines shall apply to the public sector:

(1) Every employer operating before January 1, 1975 shall register not later than March 31, 1975;

(2) Every employer operating on or after January 1, 1975 shall register within one month from the first day of operation; and

(3) Every employee shall be registered through his employer within one month from the date of employment.

SEC. 3. SSS. — (a) The following guidelines shall apply to the private sector:

(1) Every employer already registered need not register again, for he is automatically registered;

(2) Every employer not yet registered shall register not later than the first day of operation;
Every employee already registered need not register again, for he is automatically registered;

Every employee not yet registered shall register not later than the date of employment; and

Only one registration is needed for SSS, Medicare and Employees’ Compensation.

In case the employee has not yet been registered, he shall be reported by his employer according to the following guidelines:

1. Every employee already reported need not be reported again, for he is automatically reported.
2. Every newly hired employee shall be reported by his employer not later than 30 days from the date of employment; and
3. Every employee shall be deemed as having been duly reported for coverage if the System has received a report or written communication about him from his employer or an EC contribution paid in his name by his employer, before a compensable contingency occurs.

**SEC. 4. Penalty.** — Any violation under this Rule shall be penalized as follows:

1. In case of failure or refusal to register employees, the employer or responsible official who committed the violation shall be punished with a fine of not less than P1,000 nor more than P10,000 and/or imprisonment for the duration of the violation or non-compliance or until such time that rectification of the violation has been made, at the discretion of the Court.
2. In case a compensable contingency occurs after 30 days from employment and before the System receives any report for coverage about the employee or EC contribution on his behalf, his employer shall be liable to the System for the lump sum equivalent to the benefits to which he or his dependents may be entitled.

**Rule III**

**COMPENSABILITY**

**SECTION 1. Grounds.** — (a) For the injury and the resulting disability or death to be compensable, the injury must be the result of accident arising out of and in the course of the employment. *(ECC Resolution No. 2799, July 25, 1984)*

(b) For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex “A” of these Rules with the conditions set therein satisfied; otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions.

(c) Only injury or sickness that occurred on or after January 1, 1975 and the resulting disability or death shall be compensable under these Rules.
IMPLEMENTING RULES

SEC. 2. Occupational diseases. — (a) The diseases listed in Annex “A” of these Rules are occupational when the nature of employment is as described therein.

(b) The employer shall require pre-employment examination of all prospective employees, provide periodic medical examination to employees who are exposed to occupational diseases, and take such other measures as may be necessary.

(c) The periodic medical examination for the early detection of occupational diseases shall be in accordance with the minimum standards prescribed in Annex “B” hereof.

SEC. 3. Authority of the Commission. — The Commission is hereby authorized to determine and approve additional occupational diseases and work-related illnesses with specific criteria based on peculiar hazards of employment.

Rule IV
LIABILITY

SECTION 1. Limitation. — No compensation shall be allowed to the employee or his dependents when the injury, sickness, disability or death was occasioned by any of the following:

(1) his intoxication;
(2) his willful intention to injure or kill himself or another; or
(3) his notorious negligence.

SEC. 2. Extent of liability. — (a) Unless otherwise provided, the liability of the state insurance fund shall be exclusive and in place of all other liabilities of the employer to the employee or his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents.

(b) The payment of compensation under this title shall not bar the recovery of benefits as provided for in Section 699 of the Revised Administrative Code, Commonwealth Act numbered 186, as amended, Republic Act numbered sixteen one hundred eleven, as amended, Republic Act numbered eleven hundred sixty-one, as amended, Republic Act numbered six hundred ten, as amended, Republic Act numbered forty-eight hundred sixty-four, as amended, and other laws whose benefits are administered by the System or by other agencies of the government.

(ECC Resolution No. 2799, July 25, 1984)

SEC. 3. Third parties. — When the disability or death is caused by circumstances creating a legal liability against a third party, the disabled employee or the dependents in case of his death shall be paid benefit from the System under these Rules. In case benefit is claimed and allowed under these Rules, the System shall be subrogated to the rights of the disabled employee or the dependents in case of his death in accordance with existing laws.

SEC. 4. Unauthorized changes. — The System shall not be liable for compensation for unauthorized changes in medical services, appliances, supplies, hospitals, rehabilitation services or physicians. Should there be any reason for such
changes, the employee or his dependents shall notify the System and secure its prior consent before the changes may be effected.

SEC. 5. Medical reports. — (a) An employee enjoying temporary total disability benefits shall submit to the System a monthly medical report on his disability certified by his attending physician; otherwise, his benefit shall be suspended until such time that he complies with this requirement.

(b) An employee enjoying permanent disability benefit where the disability resulted from a disease shall submit to the System a quarterly medical report on his disability certified by his physician; otherwise, his benefit shall be suspended until such time that he complies with this requirement.

Rule V

EMPLOYER’S CONTRIBUTION

SECTION 1. Rate and amount. — Subject to the following conditions, contributions under these Rules shall be paid in their entirety by the employer and any contract or device for the deduction of any portion thereof from the wages or salary of the employees shall be null and void:

(1) For a covered employee in the public sector, his employer shall remit to the GSIS a monthly contribution equivalent to one percent of the actual wages or salary received by him as of the last day of the month but not to exceed P30 per employee. (ECC Resolution No. 1451 dated December 27, 1979)

(2) For a covered employee in the private sector, his employer shall remit to the SSS a monthly contribution equivalent to one percent of his monthly salary credit as of the last day of the month, in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Salary Bracket</th>
<th>Range of Wage or Salary</th>
<th>Monthly Salary Credit</th>
<th>Employer's Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>P1 – P 49.99</td>
<td>P 25</td>
<td>P 0.25</td>
</tr>
<tr>
<td>II</td>
<td>50 – 99.99</td>
<td>75</td>
<td>0.75</td>
</tr>
<tr>
<td>III</td>
<td>100 – 149.99</td>
<td>125</td>
<td>1.25</td>
</tr>
<tr>
<td>IV</td>
<td>150 – 199.99</td>
<td>175</td>
<td>1.75</td>
</tr>
<tr>
<td>V</td>
<td>200 – 249.99</td>
<td>225</td>
<td>2.25</td>
</tr>
<tr>
<td>VI</td>
<td>250 – 349.99</td>
<td>300</td>
<td>3.00</td>
</tr>
<tr>
<td>VII</td>
<td>350 – 499.99</td>
<td>425</td>
<td>4.25</td>
</tr>
<tr>
<td>VIII</td>
<td>500 – 699.99</td>
<td>600</td>
<td>6.00</td>
</tr>
<tr>
<td>IX</td>
<td>700 – 899.99</td>
<td>800</td>
<td>8.00</td>
</tr>
<tr>
<td>X</td>
<td>900 – over</td>
<td>1,000 – 3,000</td>
<td>10.00</td>
</tr>
</tbody>
</table>

(3) When a covered employee dies during employment, or is separated from employment, his employer’s obligation to pay the monthly contribution arising from that employment shall cease on the last day of the month of contingency.
IMPLEMENTING RULES

(4) When a covered employee becomes disabled during employment, his employer’s obligation to pay the monthly contribution arising from that employment shall be suspended during such months that he is not receiving salary or wages.

(5) No refund of contribution shall be allowed under these Rules.

SEC. 2. Remittance. — Contributions shall start in January 1975 and every month thereafter for as long as the employee has earnings. The initial contribution for the month of January 1975 shall be remitted by employer to the System in February 1975, unless some other arrangement has been agreed by the System and the employer.

SEC. 3. Penalty. — Any violation of the provisions on contribution under these Rules shall be penalized as follows:

(1) Any employer who is delinquent in his contributions shall be liable to the System for the benefits which may have been paid to his employees or their dependents, and any benefit and expenses to which such employer is liable shall constitute a preferred lien on all his property, real or personal, over any credit except taxes;

(2) The payment by the employer of the lump sum equivalent of such liability shall absolve him from the payment of the delinquent contributions due and payable during the calendar year of the contingency and penalty thereon with respect to the employee concerned, but said employer shall still be subject to criminal liability;

(3) In case of such delinquency, the employer or responsible official who committed the violation shall be punished with a fine of not less than P1,000 nor more than P10,000 and/or imprisonment for the duration of the violation or noncompliance or until such time that a rectification of the violation has been made, at the Court’s discretion;

(4) If any contribution is not paid to the SSS as prescribed under these Rules, the employer shall pay besides the contribution a penalty thereon of 3 percent a month from the date the contribution falls due until paid.

Note: Under ECC Resolution No. 1243 dated January 18, 1979, the System shall pay the employee or his dependents all benefits due them under P.D. No. 626, as amended, without prejudice on its part to proceed against the erring employer.

Rule VI
DEFINITIONS RELATED TO CREDITED EARNINGS

SECTION 1. Quarter. — A period of three consecutive calendar months ending on the last day of March, June, September and December.

SEC. 2. Semester. — A period of two consecutive quarters ending in the quarter of contingency.

SEC. 3. Monthly salary credit. — The wage base for contributions or the actual salary, as provided in Section 1 of Rule V hereof. If earnings are derived from more than one employment, it shall be determined on the basis of the aggregate earnings
from all employments, but not exceeding P1,000 in the case of SSS and P3,000 in
the case of GSIS.

SEC. 4. Wages or salary. — Insofar as they refer to the computation of benefits,
means the monthly remuneration as defined in Republic Act No. 1161, as amended,
for SSS and Presidential Decree No. 1146, as amended, for GSIS, respectively, except
that part in excess of Three thousand pesos. (ECC Resolution No. 3682, dated July 21,
1987)

SEC. 5. Average monthly salary credit. — (a) In the case of the SSS, it is the
result obtained by dividing the sum of the monthly salary credits in the 60-month
period immediately preceding the semester of death or permanent disability, injury
or sickness, by the number of months of coverage in the same period, except for the
following cases:

(1) Where death or permanent disability falls within 18 months from the
month of coverage, it is the result obtained by dividing the sum of all monthly salary
credits paid prior to the month of death or permanent disability by the number of
calendar months of coverage in the same period; and

(2) Where death or permanent disability falls within the months of coverage,
it is the actual salary received during the calendar month or its corresponding monthly
salary credit.

(b) The day of injury or sickness which caused the disability shall be used as
the reckoning date for the purpose of computing the average monthly salary credit.

(c) In the case of the GSIS, the average monthly salary credit is the quotient
after dividing the aggregate compensations received by the member or employee for
the last three years immediately preceding his death, permanent disability, injury or
sickness, by the number of months he received said compensation, or Three thousand
pesos, whichever is smaller.

SEC. 6. Average daily salary credit. — (a) In the case of the SSS, it is the result
obtained by dividing the sum of the 6 highest monthly salary credits in the 12-month
period immediately preceding the semester of sickness by 180, except for the following
cases:

(1) Where the injury falls within 12 calendar months from the month of
coverage, it is the result obtained by dividing the sum of all monthly salary credits by
30 and by the number of months of coverage, excluding the month of injury; and

(2) Where the injury falls within the month of coverage, it is the actual
salary received during the calendar month or its corresponding monthly salary credit
divided by 30.

(b) In the case of the GSIS, the average daily salary credit shall be determined
as follows:

(1) If the salary or wage is based on an hourly rate, it is the hourly rate times
the number of hours required to work during the month of contingency divided by
22.

(2) If the salary or wage is based on a daily rate, it is the daily rate times the
number of days required to work per month divided by 22.
If the salary or wage is based on a monthly rate, it is the monthly rate divided by 22.

If the employee has worked for less than one month, his daily salary credit is the actual daily wage or salary or the monthly wage or salary divided by the actual number of days worked during the month of contingency.

SEC. 7. Replacement ratio. — In the case of the SSS, it is the sum of twenty percent and the quotient obtained by dividing three hundred by the sum of three hundred forty and the average monthly salary credit.

SEC. 8. Credited years of service. — For a member covered prior to January 1975, nineteen hundred seventy-five minus the calendar year of coverage, plus the number of calendar years in which six or more contributions have been paid from January 1975 up to the calendar year containing the semester prior to the contingency. For a member covered in or after January 1975, the number of calendar years in which six or more contributions have been paid from the year of coverage up to the calendar year containing the semester prior to the contingency.

SEC. 9. Monthly income benefit. — (a) In the case of the SSS, it is the amount equivalent to one hundred fifteen percent of the sum of:

The average monthly salary credit multiplied by the replacement ratio and one and a half percent of the average monthly salary credit for each credited year of service in excess of ten years: Provided, That the monthly income benefit shall in no case be less than P250; Provided, however, That the monthly pension of surviving pensioners shall be increased automatically and simultaneously to the extent that the 15% difference in monthly income benefit between EC and SSS and the 20% difference in monthly income benefit between EC and GSIS, be maintained. (LOI 1286) (ECC Resolution No. 2799, July 25, 1984)

(b) In the case of the GSIS, the monthly income benefit shall be the basic monthly pension as defined in P.D. No. 1146 plus twenty percent thereof, but shall not be less than P250, nor more than the actual salary at the time of contingency. (ECC Resolution No. 2799, July 25, 1984)

Rule VII

BENEFITS

SECTION 1. Types of benefits. — The benefits under Employees’ Compensation are in the form of income or services, and consist of the following:

(1) medical services, appliances and supplies;
(2) rehabilitation services;
(3) temporary total disability benefit;
(4) permanent total disability benefit;
(5) permanent partial disability benefit;
(6) death benefit; and
(7) funeral benefit.
SEC. 2. Disability. — (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

(c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.

SEC. 3. Income benefit. — The disability or death resulting from the injury or sickness is compensable by cash payments, and not the injury or sickness itself, except in the case of permanent partial disability.

SEC. 3-A. Income benefit for permanent partial disability. — In the case where the period covered for payment of income benefit for permanent partial disability does not exceed twelve months, the System may pay in lump sum or in monthly pension, otherwise, income benefit shall be paid in monthly pension.

SEC. 4. Services. — The injury or sickness is compensable by medical services, appliances, supplies and rehabilitation services.

SEC. 5. Deprivation. — No contract, regulation or device whatsoever shall operate to deprive the employee or his dependents of any part of the income benefits, and medical or related services, except as provided under these Rules. Existing medical services being provided by the employer shall be maintained and continued to be enjoyed by his employees.

SEC. 6. Prescriptive period. — No claim for compensation shall be given due course unless said claim is filed with the System within three years from the time the cause of action accrued. *(ECC Resolution No. 2799, July 25, 1984)*

**Rule VIII**

**MEDICAL SERVICES, APPLIANCES AND SUPPLIES**

SECTION 1. Condition to entitlement. — Any employee shall be entitled to such medical services, appliances and supplies as the nature of his disability and the progress of his recovery may require, subject to the expense limitation as contained in Annex “C” hereof, if all of the following conditions are satisfied:

1. He has been duly reported to the System;
2. He sustains an injury or contracts sickness; and
3. The System has been duly notified of the injury or sickness.

SEC. 2. Period of Entitlement. — The medical services, appliances and supplies shall be provided to the afflicted employee beginning on the first day of injury or sickness, during the subsequent period of his disability, and as the progress of his recovery may require, subject to Section 5 of Rule IV.

SEC. 3. Extent of Services. — (a) The employee is entitled to the benefits only for the ward services of an accredited hospital and accredited physician. However,
if the employee chooses accommodations better than ward services, the excess of
the total amount of expenses incurred over the benefits provided under Annex “C”
hereof, shall be borne by the employee. For this purpose, “ward” means a hospital
room that can accommodate 6 or more patients.

(b) The hospital shall provide all the medicines, drugs or supplies necessary
for the treatment of the employee at a cost not exceeding the retail prices prevailing
in local drug stores.

(c) Payments shall be made directly to the providers of such services in such
amount as are prevailing in the community for similar services or provided under
the schedule set forth in Annex “C” of these Rules, whichever is less.

Rule IX
REHABILITATION SERVICES

SECTION 1. Definition of terms. — As used in this Rule unless otherwise
indicated by the context, the following definition of terms are hereby adopted:

(a) Rehabilitation. — The process by which there is provided a balanced
program of remedial treatment, vocational assessment and preparation designed
to meet the individual needs of each handicapped employee to restore him to
suitable employment, including assistance as may be within its resources to help each
rehabilitee to develop his mental, vocational or social potential.

(b) Rehabilitee. — A disabled individual undergoing rehabilitation (student-
rehabilitee or trainee) or who has finished a prescribed course in rehabilitation in
which he is known as a graduate-rehabilitee or trainee.

(c) Rehabilitation Center. — An organized service of varied rehabilitation
measures usually located in one site for the rehabilitation of disabled individuals.
(Example: the WRCC — the Center).

(d) Rehabilitation Facility. — An organized service offering one or more types
of service for the rehabilitation of the handicapped individual.

(e) Governing Board. — For this purpose, the Workers Rehabilitation
Center Complex shall receive policy guidance from, and shall be under the general
management of, the Employees’ Compensation Commission, which is hereby
constituted as its Governing Board.

Whenever necessary, the Governing Board may create an Advisory Council
that shall act as a Consultative and Advisory Body, to be composed of representatives
from the National Commission on Rehabilitation, the Ministry of Health, the Institute
of Public Health of the University of the Philippines, and such other specialized
association and organizations on rehabilitation as may be needed.

(f) Placement Officer. — A person practising the allied medical profession or
discipline specialized in psychology of the handicapped and whose responsibility is
to personally advise and guide the disabled individual to acceptance into a job.

(g) Suitable Employment. — Remunerative occupation giving the rehabilitee
earning at least equal to the statutory minimum wage.
SEC. 2. **Nature and effectivity of coverage.** — (a) Coverage under this Rule shall be voluntary.

(b) Coverage under this Rule shall take effect upon completion of registration.

SEC. 3. **Condition to entitlement.** — Any employee shall be entitled to rehabilitation services, if all of the following conditions are satisfied:

1. He has been reported to the System;
2. He sustains a permanent disability as a result of a compensable injury or sickness as defined in these Rules;
3. He has not been placed in suitable employment.

SEC. 4. **Period of entitlement.** — Rehabilitation services shall be provided during the period of the disability unless such services are suspended or terminated under any of the following conditions:

1. Upon suitable employment;
2. Upon suspension or termination of such services by the Rehabilitation Center;

SEC. 5. **Extent of services.** — Rehabilitation services shall consist of medical-surgical management, hospitalization, necessary appliances and supplies, vocational training and assistance for placement. (Transportation allowance between place of residence and the rehabilitation facility, lunch, and dormitory allowances in appropriate cases may be included in the extent of services).

SEC. 6. **Rehabilitation centers.** — There shall be established a Workers Rehabilitation Center Complex, and such other rehabilitation centers or services as the needs of occupationally disabled employees, whether from private or public sector, may require.

SEC. 7. **Accreditation of rehabilitation facilities.** — Hospitals accredited under Rule XVII of these Rules; rehabilitation facilities, vocational and training centers and their personnel participating in the work of rehabilitation accredited by the Philippine Academy of Rehabilitation Medicine (PARM) may apply for accreditation.

SEC. 8. **Liability limitations.** — The System shall not be legally responsible when the injury, sickness, disability or death during the rehabilitation is occasioned by any of the following:

1. His intoxication;
2. His willful intention to injure or kill himself or another;
3. His notorious negligence.

SEC. 9. **Suspension, termination and appeal.** — (a) **Grounds.** — For adequate and duly proven causes and upon recommendation of the rehabilitation counselor, the student-rehabilitee may be suspended or terminated by the Center.

(b) **Appeal.** — The decision of the Center may be appealed within 15 days from notice thereof to the Governing Board whose decision shall be final and executory.
SEC. 10. **Placement.** — Arrangement for placement of the rehabilitee shall be an integral part of the rehabilitation program.

SEC. 11. **Participation of the System.** — As incentive to the participating employers in the on-the-job training and possible employment of the rehabilitee, the System may enter into agreement with the employer to participate in the payment of wages of the placed rehabilitee as follows:

1. 50% of the wages for the first two weeks after the start of the on-the-job training;
2. 25% of the wages for the third and fourth weeks of the on-the-job training;
3. 10% of the wages for the fifth and sixth weeks of the on-the-job training;
4. 0% of the wages for the rest of the period of the on-the-job training.

SEC. 12. **Reports.** — Reports to the Governing Board on the progress of activities of rehabilitation program shall be submitted by the Center once every 3 months or as often as necessary.

**Rule X**

**TEMPORARY TOTAL DISABILITY**

SECTION 1. **Condition to entitlement.** — An employee shall be entitled to an income benefit for temporary total disability if all of the following conditions are satisfied:

1. He has been duly reported to the System;
2. He sustains the temporary total disability as a result of the injury or sickness; and
3. The System has been duly notified of the injury or sickness which caused his disability.

His employer shall be liable for the benefit if such illness or injury occurred before the employee is duly reported for coverage to the System.

SEC. 2. **Period of entitlement.** — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

(b) After an employee has fully covered from an illness as duly certified to by the attending physician, the period covered by any relapse he suffers, or recurrence of his illness, which results in disability and is determined to be compensable, shall
be considered independent of, and separate from, the period covered by the original disability in the computation of his income benefit for temporary total disability (TTD). *(ECC Resolution No. 1029, August 10, 1978)*

**SEC. 3. Amount of benefit.** — Any employee entitled to benefit for temporary total disability shall be paid an income benefit equivalent to 90 percent of his average daily salary credit, subject to the following conditions:

(1) The daily income benefit shall not be less than P10.00 nor more than P90.00 nor paid longer than 120 days for the same disability, unless the injury or sickness requires more extensive treatment that lasts beyond 120 days, but not to exceed 240 days from onset of disability, in which case he shall be paid benefit for temporary total disability during the extended period.

(2) The monthly income benefit shall be suspended if the employee fails to submit a monthly medical report certified by his attending physician as required under Sec. 5 of Rule IV hereof. *(ECC Resolution No. 3682, July 21, 1987)*

**Rule XI
PERMANENT TOTAL DISABILITY

**SECTION 1. Condition of entitlement.** — (a) An employee shall be entitled to an income benefit for permanent total disability if all of the following conditions are satisfied:

(1) He has been duly reported to the System;

(2) He sustains the permanent total disability as a result of injury or sickness; and

(3) The System has been duly notified of the injury or sickness which caused his disability.

His employer shall be liable for the benefit if such injury or sickness occurred before the employee is duly reported for coverage to the System.

(b) The following total disabilities shall be considered permanent:

(1) Temporary total disability lasting continuously for more than 120 days, except as otherwise provided for in Rule X hereof;

(2) Complete loss of sight of both eyes;

(3) Loss of two limbs at or above the ankle or wrist;

(4) Permanent complete paralysis of two limbs;

(5) Brain injury resulting in incurable imbecility or insanity; and

(6) Such cases as determined by the System and approved by the Commission.

**SEC. 2. Period of entitlement.** — (a) The full monthly income benefits shall be paid for all compensable months of disability.

(b) After the benefit under Employees’ Compensation shall have ceased as provided under the preceding paragraph, and if the employee is otherwise qualified
for benefit for the same disability under another law administered by the System, he shall be paid a benefit in accordance with the provisions of that law. This paragraph applies to contingencies which occurred prior to May 1, 1978.

(c) Except as otherwise provided for in other laws, decrees, orders or letters of instructions, the monthly income benefit shall be guaranteed for 5 years and shall be suspended under any of the following conditions:

1. Failure to present himself for examination at least once a year upon notice by the System;
2. Failure to submit a quarterly medical report certified by his attending physician as required under Sec. 5 of Rule IV hereof;
3. Complete or full recovery from his permanent disability; or
4. Upon being gainfully employed.

SEC. 3. Amount of benefit. — (a) In the case of the SSS:

1. Any employee entitled to permanent total disability benefit shall be paid by the System a monthly income benefit as defined in Sec. 9 (a), Rule VI of these Rules.

(b) The number of months of paid coverage shall be the number of monthly contributions remitted to the System including contributions other than for Employees’ Compensation if paid before March 31, 1975. The full monthly income benefits shall be paid for all compensable months of disability.

(c) The first day preceding the semester of temporary total disability shall be considered for purposes of computing the monthly income benefit for permanent total disability.

SEC. 4. Amount of benefit for dependent children. — (a) Each dependent child, but not exceeding five, counted from the youngest and without substitution, shall be entitled to 10 percent of the monthly income benefit of the employee. These Rules shall not apply to causes of action which accrued before May 1, 1978.

SEC. 5. Entitlement to the new income benefit under PD 1641. — (a) The new amount of the monthly income benefit computed under these amended Rules shall be applicable to all contingencies occurring on or after January 1, 1980. However, for contingencies which occurred before May 1, 1978, the limitation of P12,000 or 5 years, whichever comes first, shall be enforced.

In the case of the SSS, the present monthly income benefit of current pensioners shall be increased by 20 percent effective January 1, 1980.

In the case of the GSIS, the monthly income benefit of current pensioners shall be adjusted and recomputed to reflect the 20 percent increase over the benefit under PD 1146 effective January 1, 1980.

SEC. 6. Aggregate monthly benefit payable. — Except the benefit to dependent children under Section 4 of this Rule, the aggregate monthly benefit payable, in the case of the GSIS, shall in no case exceed the monthly wage or salary actually received by the employee as of the date of his permanent total disability. (ECC Resolution No. 2819, August 9, 1984)
Rule XII
PERMANENT PARTIAL DISABILITY

SECTION 1. Condition to entitlement. — (a) An employee shall be entitled to an income benefit for permanent partial disability if all of the following conditions are satisfied:

1. He has been duly reported to the System;
2. He sustains the permanent partial disability as a result of the injury or sickness; and
3. The System has been duly notified of the injury or sickness which caused his disability.

His employer shall be liable for the benefit if such injury or sickness occurred before the employee is duly reported for coverage to the System.

(b) For purposes of entitlement to income benefits for permanent partial disability, a covered employee shall continue to receive the benefits provided thereunder even if he is gainfully employed and receiving his wages or salary.

SEC. 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first month of such disability, but not longer than the designated number of months in the following schedule:

<table>
<thead>
<tr>
<th>Loss of the Use of</th>
<th>No. of Months</th>
</tr>
</thead>
<tbody>
<tr>
<td>One thumb</td>
<td>10</td>
</tr>
<tr>
<td>One index finger</td>
<td>8</td>
</tr>
<tr>
<td>One middle finger</td>
<td>6</td>
</tr>
<tr>
<td>One ring finger</td>
<td>5</td>
</tr>
<tr>
<td>One little finger</td>
<td>3</td>
</tr>
<tr>
<td>One big toe</td>
<td>6</td>
</tr>
<tr>
<td>Any toe</td>
<td>3</td>
</tr>
<tr>
<td>One arm</td>
<td>50</td>
</tr>
</tbody>
</table>

(b) A loss of a wrist shall be considered a loss of the hand, and a loss of an elbow shall be considered a loss of the arm, a loss of an ankle shall be considered a loss of one foot, and a loss of a knee shall be considered a loss of the leg; a loss of more than one joint shall be considered a loss of the whole finger or toe; and a loss of only the first joint shall be considered a loss of one-half of the whole finger or toe. Other permanent partial disabilities shall be determined by the Medical Officer of the System.

(c) The degree of permanent disability shall be equivalent to the ratio that the designated number of compensability bears to 75.

SEC. 3. Amount of benefits. — (a) Any employee entitled to permanent partial disability benefit shall be paid by the System a monthly income benefit for the number of months indicated in Section 2 hereof. If the indicated number of months indicated in Section 2 hereof exceeds twelve, the income benefit shall be paid in monthly pension; otherwise, the System may pay income benefit in lump sum or in monthly pension.
IMPLEMENTING RULES

(b) In case of permanent partial disability less than the total loss of the member, the same monthly income shall be paid for a portion of the period established for the total loss of the member in accordance with the proportion that the partial loss bears to the total loss. If the result is a decimal fraction, the same shall be rounded off to the next higher integer.

(c) In case of simultaneous loss of more than one member or a part thereof, the same monthly income shall be paid for a period equivalent to the sum of the periods established for the loss of the member or part thereof but not exceeding 75. If the result is a decimal fraction, the same shall be rounded off to the higher integer.

(d) The new amount of the monthly income benefit computed under these amended Rules shall be applicable to all contingencies occurring on or after January 1, 1980. However, for contingencies which occurred before May 1, 1978, the limitation of P12,000 or 5 years, whichever comes first, shall be enforced.

In the case of the SSS, the present monthly income benefit of current pensioners shall be increased by 20 percent effective January 1, 1980.

In the case of the GSIS, the monthly income benefit of current pensioners shall be adjusted and recomputed to reflect the 20 percent increase over the benefit under PD 1146 effective January 1, 1980.

SEC. 4. Unlisted injuries and illnesses. — (a) In cases of injuries or illnesses not listed in the schedule under Section 2 hereof, the benefit shall be an income benefit equivalent to the percentage of the permanent loss of the capacity for work.

(Non-Scheduled Disabilities).

Rule XIII
DEATH

SECTION 1. Condition to entitlement. — (a) The beneficiaries of a deceased employee shall be entitled to an income benefit if all of the following conditions are satisfied:

(1) The employee had been duly reported to the System;
(2) He died as a result of an injury or sickness; and
(3) The System has been duly notified of his death, as well as the injury or sickness which caused his death.

His employer shall be liable for the benefit if such death occurred before the employee is duly reported for coverage to the System.

(b) If the employee has been receiving monthly income benefit for permanent total disability at the time of his death, the surviving spouse must show that the marriage has been validly subsisting at the time of his disability.

SEC. 2. Period of entitlement.
A. For primary beneficiaries:
(a) The income benefit shall be paid beginning at the month of death and shall continue to be paid for as long as the beneficiaries are entitled thereto.
(b) The monthly income benefit shall be guaranteed for five years which in no case shall be less than Fifteen thousand pesos (P15,000.00). Thereafter, the beneficiaries shall be paid the monthly income benefit for as long as they are entitled thereto. *(ECC Resolution No. 2799, July 25, 1984)*

**B. For secondary beneficiaries:**

(a) The income benefit shall be sixty (60) times the monthly income benefit of a primary beneficiary which in no case shall be less than P15,000.00, which shall likewise be paid in monthly pension. *(ECC Resolution No. 2799, July 25, 1984)*

**SEC. 3. Amount of benefit.** — (a) In the case of primary beneficiaries, the monthly income benefit shall be equivalent to the monthly income benefit for permanent total disability, which shall be guaranteed for five years, increased by ten percent for each dependent child but not exceeding five (5), beginning with the youngest and without substitution: *Provided,* that the aggregate monthly benefit payable in the case of the GSIS shall in no case exceed the monthly wage or salary actually received by the employee at the time of his death; and *Provided, further,* that the minimum income benefit shall not be less than Fifteen thousand pesos (P15,000.00). The death benefit shall be paid during the entire period for which they are entitled thereto.

If the employee has been receiving income benefits for permanent total disability at the time of his death, the primary beneficiaries shall be paid the monthly income benefit equivalent to eighty percent plus the dependent’s pension equivalent to 10 percent thereof for every dependent child but not exceeding five counted from the youngest and without substitution.

(b) In the case of secondary beneficiaries, the income benefit is payable in monthly pension which shall not exceed the period of 60 months and the aggregate income benefit shall not be less than P15,000.00.

If the employee has been receiving monthly income benefit for permanent total disability at the time of his death, the secondary beneficiaries shall be paid the monthly pension, excluding the dependent’s pension of the remaining balance of the five-year guaranteed period. *(ECC Resolution No. 2799, July 25, 1984)*

**SEC. 4. Entitlement to the new income benefit under PD 1641.** — The new amount of the monthly income benefit computed under these amended Rules shall be applicable to all contingencies occurring on or after January 1, 1980. However, for contingencies which occurred before May 1, 1978, the limitation of P12,000 or 5 years, whichever comes first, shall be enforced.

In the case of the SSS, the present monthly income benefit of current pensioners shall be increased by 20 percent effective January 1, 1980.

In the case of the GSIS, the monthly income benefit of current pensioners shall be adjusted and recomputed to reflect the 20 percent increase over the benefit under PD 1146 effective January 1, 1980.

**SEC. 5. The new amount of lump sum benefit computed under these Amended Rules shall be applicable to all contingencies occurring on or after May 1, 1980; otherwise, entitlement thereto shall be governed by the immediately preceding Section.**
IMPLEMENTING RULES

Rule XIV
FUNERAL BENEFIT

SECTION 1. Entitlement to funeral benefit. — A funeral benefit of Three thousand (P3,000.00) pesos shall be paid upon the death of a covered employee or permanently totally disabled pensioner to one of the following:

(a) the surviving spouse; or
(b) the legitimate child who spent for the funeral services; or
(c) any other person who can show incontrovertible proof or proofs of his having borne the funeral expenses. (ECC Resolution No. 3682, July 21, 1987)

Note: ECC Res. No. 3903 increased the funeral benefit for the private sector to P6,000 effective May 1, 1988.

Rule XV
BENEFICIARIES

SECTION 1. Definition. — (a) Beneficiaries shall be either primary or secondary, and determined at the time of the employee’s death.

(b) The following beneficiaries shall be considered primary:

(1) The legitimate spouse living with the employee at the time of the employee’s death until he remarry
and
(2) Legitimate, legitimated, legally adopted or acknowledged natural children, who are unmarried, not gainfully employed, not over 21 years of age, or over 21 years of age; Provided, That he is incapacitated and incapable of self-support due to physical or mental defect which is congenital or acquired during minority; Provided, further, That dependent acknowledged natural child shall be considered as a primary beneficiary only when there are no other dependent children who are qualified and eligible for monthly income benefit; Provided finally, That if there are two or more acknowledged natural children, they shall be counted from the youngest and without substitution, but not exceeding five. (ECC Resolution No. 2799, July 25, 1984)

(c) The following beneficiaries shall be considered secondary:

(1) The legitimate parents wholly dependent upon the employee for regular support;
(2) The legitimate descendants and illegitimate children who are unmarried, not gainfully employed, and not over 21 years of age, or over 21 years of age; Provided, That he is incapacitated and incapable of self-support due to physical or mental defect which is congenital or acquired during minority.

SEC. 2. Priority. — (a) Primary beneficiaries shall have priority claim to death benefit over secondary beneficiaries. Whenever there are primary beneficiaries, no death benefit shall be paid to his secondary beneficiaries.
(b) If the deceased employee has no primary beneficiaries at the time of his death, the death benefit shall be paid to his secondary beneficiaries.

(c) If the deceased employee has no beneficiaries at the time of his death, the death benefit shall accrue to the Employees’ Compensation fund.

SEC. 3. Benefits payable. — Primary beneficiaries shall be entitled to a monthly income benefit. In their absence, the secondary beneficiaries shall be entitled to a monthly income benefit not to exceed 60 months and the death benefit shall not be less than P15,000.00. (ECC Resolution No. 2799, July 25, 1984)

Rule XVI
EMPLOYER’S RECORDS AND NOTICES

SECTION 1. Notice by employee. — The notice of sickness, injury or death shall be given to the employer by the employee, his dependents or anybody on his behalf, within 5 days from the occurrence of the contingency. Said notice is not necessary where the employer or his representative already had knowledge thereof, or the contingency occurred during working hours at the workplace.

SEC. 2. Employer’s logbook. — Every employer shall keep a logbook to record chronologically the sickness, injury or death of his employees, within 5 days from due notice thereof.

SEC. 3. Notice by employer. — The notice of sickness, injury or death for cases which the employer deems to be work-connected shall be submitted to the System by the employer within 5 days from due entry thereof in his logbook in a form prescribed by the System.

SEC. 4. Visitorial power. — The employer’s logbook prescribed in these Rules shall be made available for inspection to any duly authorized representative of the System during working hours.

SEC. 5. Penalty. — Any employer who fails to record in his logbook the sickness, injury or death of any of his employees within 5 days from knowledge or receipt of due notice thereof as prescribed herein, gives false information, or withholds material information already in his possession, shall be liable to 50 percent of the lump sum equivalent of the income benefit to which the employee may be found to be entitled and/or a fine of not less than P500 nor more than P5,000 and imprisonment for not less than 6 months or more than one year, at the discretion of the Court. The sum paid by the employer under this Section shall accrue to the Employees’ Compensation fund of the System.

Rule XVII
ACCREDITATION

SECTION 1. Minimum requirements for accreditation. — (a) A physician may be accredited for purposes of the Employees’ Compensation Program upon his application if he is a doctor of medicine duly licensed to practice in the Philippines and an active member in good standing of the Philippine Medical Association.
IMPLEMENTING RULES

(b) A hospital may likewise be accredited upon application if:

(1) it is an institution primarily engaged in providing to in-patients, by or under the supervision of physicians, diagnostic and therapeutic services for their medical diagnosis, treatment and care;
(2) it is adequately equipped with facilities for physicians to treat injured or sick persons;
(3) it maintains clinical records on all patients;
(4) it has by-laws concerning its medical staff;
(5) it provides 24-hour nursing services by itself or supervised by a registered professional nurse; and has a licensed practical nurse or registered professional nurse on duty at all times;
(6) it requires that every patient must be under the care of a physician;
(7) it is licensed by the Bureau of Medical Services of the Department of Health;
(8) it meets the health and safety requirements of the Department of Health and Department of Labor;
(9) it maintains a utilization review committee as provided for in Section 3 of this Rule; and
(10) it is a member in good standing of the Philippine Hospital Association.

(c) A rehabilitation facility may be accredited upon application if:

(1) it is an institution engaged in providing to in-patients, by or under the supervision of physicians (specialized in rehabilitation medicine, in neurology, or in neuro-surgery, or in internal medicine, or in orthopedic surgery), diagnostic or therapeutic services in rehabilitation practice;
(2) it is adequately equipped with facilities for physical medicine rehabilitation (PMR);
(3) it maintains clinical records on all patients;
(4) it has by-laws concerning its medical staff;
(5) it requires that every patient must be under the care of a physician;
(6) it is licensed by the Bureau of Medical Services of the Department of Health;
(7) it meets the health and safety requirements of the Department of Health and Department of Labor and Employment; and
(8) it maintains a Utilization Review Committee as provided for in Section 3 of this Rule.

(d) The above requirements may be modified by the Commission from time to time as circumstances may warrant.
SEC. 2. Conditions on accredited hospitals or rehabilitation facilities and physicians or rehabilitation specialists. — (a) An accredited hospital or rehabilitation facility binds itself:

1. not to collect from the patient any amount for ward services;
2. to provide adequate services on a non-discriminating basis;
3. to limit charges for ward services to the rates approved by the Commission, including, but not limited to, laboratory ward rates, laboratory facilities, x-rays, stools, drugs, medical attendance and the Relative Value Scale (RVS) for surgical procedures, etc.;
4. to abide by these rules on accreditation;
5. to have its house rules conform to the requirements of the Commission;
6. to subject its facilities to inspection at anytime by duly authorized representatives of the Commission or the System.

(b) An accredited physician binds himself:

1. not to collect from the patient any amount for ward services;
2. to provide adequate services on a non-discriminating basis; and
3. to abide by these rules on accreditation.

SEC. 3. Utilization review. — (a) Every hospital or rehabilitation facility shall have a Utilization Review Committee, composed of at least two physicians or rehabilitation specialists, to help assure the most effective use of rehabilitation facilities, hospitals and services by reviewing admissions each day on a sample basis and all long-stay cases.

(b) The Committee shall decide in every specific case being reviewed, whether or not care in a hospital is medically necessary. In every case, the Committee shall discuss its findings with the patient’s doctor before making a decision.

(c) The Committee shall advise in writing the patient, his doctor and the hospital of its decision only if it has been decided that care in a hospital is not medically necessary, in which case no payment for room and board shall be made by the System.

SEC. 4. Coverage of services. — (a) Payment for services shall ordinarily be made only to accredited rehabilitation facilities or hospitals and accredited physicians.

(b) Non-accredited rehabilitation facility or hospitals and nonaccredited physicians shall be paid only for emergency services. No payment can be made to them for services rendered after the emergency has ended.

SEC. 5. Emergency services. — (a) Those services which are necessary to prevent the death or serious impairment of the health of the individual, and which necessitate the use of the most accessible hospital available and equipped to furnish such services.

(b) An emergency no longer exists when it becomes safe from a medical standpoint to move the patient to an accredited hospital, or to discharge him whichever occurs first.
(c) The determination that the patient’s condition requires emergency services or that an emergency has ended shall be based on the physician’s evaluation and, when appropriate, on the patient’s medical record and other additional data furnished by the hospital.

(d) Claims filed by non-accredited hospitals and non-accredited physicians for payment of emergency services shall be accompanied by a physician’s statement.

(e) The physician’s statement shall describe the nature of the emergency, furnish relevant clinical information about the condition of the patient, and state that the services rendered were necessary to prevent the death of the individual or the serious impairment of his health. A bare statement that an emergency existed is not sufficient.

(f) In addition, when in-patient services are involved, the statement shall include the date when, in the physician’s judgment, the emergency ceased.

SEC. 6. Referral. — Immediately upon knowledge by the employer of his employee’s injury or sickness at the workplace, he shall, in addition to the medical and dental facilities which the pertinent provisions of the Code and these Rules on Accreditation may require him to furnish, cause the employee to be brought by the fastest available means of transportation to the duly accredited physician or hospital nearest or most accessible to the employee’s place of work.

SEC. 7. Violation of conditions and requirements, penalties. — (a) An accredited hospital or physician shall be disaccredited for violation of any of the conditions and requirements under Sections 1 and 2 hereof without prejudice to the imposition of penalties under Rule XIX if applicable or to any other penalty which the Commission may impose.

(b) The cancellation or invalidation of accreditation of a physician or hospital shall be effective on the date of notice of the disaccreditation.

(c) In case of disaccreditation, the physician or the hospital shall carry the disqualification wherever its physical identity is found. Mere change of legal personality shall not defeat the disqualification imposed.

(d) Disaccreditation shall be lifted only on application and upon showing of good cause and effective upon approval by the Commission. As soon as accreditation is duly restored, the hospital or physician concerned shall be allowed to participate in the Employees’ Compensation Program.

Rule XVIII
SETTLEMENT OF CLAIMS

SECTION 1. Services. — (a) The claim for medical benefits shall be filed in a prescribed form by the accredited physician or accredited hospital directly with the System.

(b) The claim for emergency services shall be filed in a prescribed form by any physician or hospital.
SEC. 2. **Income benefit.** — The claim for income benefit shall be filed in a prescribed form by the employee, his dependents or his employer, on his behalf, directly with the System. Failure to file the claim within three years from the time the cause of action accrued, shall forever bar the right to benefits granted under these Rules. (ECC Resolution No. 2799, July 25, 1984)

SEC. 3. **Adjudication.** — Upon receipt of the claim, the System shall process the same and determine whether or not the injury, sickness, disability or death is compensable.

SEC. 4. **Additional requirements.** — If the supporting papers of the claim are insufficient to make proper determination, the System shall require the submission of additional proofs from the employee or his dependents, or from any office, entity or agency, public or private, or from any person, having knowledge of the contingency.

SEC. 5. **Appeal.** — Within 10 days from receipt of the letter of denial or the affirmation of the denial, as the case may be, the claimant shall inform the System in writing of his desire to appeal the decision of the System. Upon receipt of such appeal, the System shall within 5 days forward the entire record of the case to the Commission for review.

Note: Period of appeal was increased from ten (10) to thirty (30) days by Rule IV.1 of Suppletory Rules [Annex D hereof].

**Rule XIX**

**REVIEW BY THE COMMISSION**

SECTION 1. **Decision en banc.** — Within 20-working days from receipt of an appealed case, the Commission shall review and decide said case. Four affirmative votes shall decide the case. However, if only a quorum of four members are present, three affirmative votes shall decide the case. No motion for reconsideration of the decision or resolution of the Commission en banc shall be entertained.

SEC. 2. **Payment of awards.** — Decisions, orders, or resolutions of the Commission en banc awarding compensation shall be complied with by the System within 15 days from receipt of the notice thereof.

SEC. 3. **Other decisions.** — In all other cases involving payments to be made by the employer, decisions, orders and resolutions of the Commission en banc which have become final and executory shall be enforced and executed in the same manner as decisions of the Court of First Instance, and the Commission shall have the power to issue to the City or Provincial Sheriff or to the Sheriff it may appoint, such writs of execution as may be necessary for the enforcement of such decisions, orders or resolutions.

SEC. 4. **Failure to comply.** — Any person or persons who fail or refuse to comply with the writ of execution issued by the Commission shall be punished for contempt by the proper court. In the case of a corporation, trust, firm, partnership, association or any other entity, the manager or officer-in-charge when the offense was committed, shall be responsible.
IMPLEMENTING RULES

Rule XX
PENALTIES

SECTION 1. Penalty for failure to install and maintain safety devices, etc. — The System shall determine for purposes of imposing the penalty provided in Art. 200 of the Code, whether the employee’s sickness, injury or death was due to the failure of the employer to comply with any health and safety law, or failure to install and maintain safety devices in accordance with standards set by the Commission, or take other precautions for the prevention of the sickness, injury or death. The requisite standards shall be set by the Commission within 6 months after the effectivity of these Rules.

SEC. 2. Penal provisions. — (a) The penal provisions of R.A. No. 1161, as amended, and C.A. No. 186, as amended, with regard to the funds as are thereunder being paid to, collected or disbursed by the System shall be applicable to the collection, administration and disbursement of Employees’ Compensation fund of the System. The penal provisions on coverage shall also be applicable.

(b) Any person who, for the purpose of securing entitlement to any benefit or payment under these Rules or the issuance of any certificate or document for any purpose whether for him or for some other persons, commits fraud, collusion, falsification, misrepresentation of facts or any other kind of anomaly shall be punished with a fine of not less than P500 nor more than P5,000 and imprisonment for not less than 6 months nor more than one year, at the discretion of the Court.

(c) If the act penalized is committed by any person who has been or is employed by the Commission or System or a recidivist, the imprisonment shall not be less than one year; if committed by a lawyer, physician or other professional, he shall in addition to the penalty prescribed herein be disqualified from the practice of his profession; and if committed by an official, employee or personnel of the Commission, System or any government agency, he shall in addition to the penalty prescribed herein, be dismissed with prejudice to reemployment in the government service.

Rule XXI
IMPLEMENTING PROVISION


APPROVED: July 21, 1987

(SGD.) FRANKLIN M. DRILON
Chairman

(SGD.) FELICIANO R. BELMONTE
Member
IMPLEMENTING RULES OF BOOK IV

(SGD.) RAOUL M. INOCENTES  
*Member*

(SGD.) JOSE L. CUISIA, JR.  
*Member*

(SGD.) ALFREDO R.A. BENGZON  
*Member*

(Sgd.) JORGE B. CONTRERAS  
*Member*
For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

(1) The employee’s work must involve the risks described herein;
(2) The disease was contracted as a result of the employee’s exposure to the described risks;
(3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;
(4) There was no notorious negligence on the part of the employee.

The employer who has failed to provide adequate protection and safety devices shall be subject to the penalty imposed by Article 200 of the Code. Where he has provided adequate protective and safety devices, there shall be a determination as to whether or not the employee has been notoriously negligent.

Silicosis, asbestosis and byssinosis shall not be compensable if the exposure to the described risks is less than 10 years, unless proven otherwise.

The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:

<table>
<thead>
<tr>
<th>OCCUPATIONAL DISEASES</th>
<th>NATURE OF EMPLOYMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cancer of the epithelial lining of the bladder. (Papilloma of the bladder)</td>
<td>Work involving exposure to alphanaphthylamine, betanaphthylamine or benzenidine or any part of the salts; and auramine or magenta.</td>
</tr>
<tr>
<td>Cancer, epitheliomatosus or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or any compound product or residue of any of these substances.</td>
<td>The use or handling of, or exposure to tar, pitch, bitumen, mineral oil (including paraffin) soot or any compound product or residue of any of these substances.</td>
</tr>
<tr>
<td>Cataract produced by exposure to the glare of, or rays from molten glass or molten or red hot metal.</td>
<td>Frequent and prolonged exposure to the glare of or rays from molten glass or red hot metal.</td>
</tr>
<tr>
<td>Deafness</td>
<td>Any industrial operation having excessive noise particularly in the higher frequencies.</td>
</tr>
<tr>
<td>Decompression sickness</td>
<td>Any process carried on in compressed or rarefied air.</td>
</tr>
<tr>
<td>Caissons disease</td>
<td>Any process carried on in compressed air.</td>
</tr>
</tbody>
</table>
### ECC RULES
#### ANNEX “A”: OCCUPATIONAL DISEASES

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(b) <strong>Aeroembolism</strong></td>
<td>Any process carried on in rarefied air.</td>
</tr>
<tr>
<td>6</td>
<td><strong>Dermatitis due to irritants and sensitizers</strong></td>
<td>The use or handling of chemical agents which are skin irritants and sensitizers.</td>
</tr>
<tr>
<td>7</td>
<td><strong>Infections</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) <strong>Anthrax</strong></td>
<td>Work in connection with animals infected with anthrax, handling of animal carcases or parts of such carcases including hides, hoofs and horns.</td>
</tr>
<tr>
<td></td>
<td>(b) <strong>Brucellosis</strong></td>
<td>Any occupation involving handling of contaminated food and drink particularly milk, butter and cheese of infected goats and cows.</td>
</tr>
<tr>
<td></td>
<td>(c) <strong>Glanders</strong></td>
<td>Any occupation involving handling of equine animals or carcases.</td>
</tr>
<tr>
<td></td>
<td>(d) <strong>Rabies</strong></td>
<td>Any occupation involving rabid dogs.</td>
</tr>
<tr>
<td></td>
<td>(e) <strong>Tuberculosis</strong></td>
<td>Any occupation involving close and frequent contact with a source or sources of tuberculosis infection by reason of employment: (a) in the medical treatment or nursing of a person or persons suffering from tuberculosis, (b) as a laboratory worker, pathologist or postmortem worker, where occupation involves working with material which is a source of tuberculosis infection.</td>
</tr>
<tr>
<td></td>
<td>(f) <strong>Tularemia</strong></td>
<td>Any occupation involving handling of rabbits, ground squirrels, mice or other rodents.</td>
</tr>
<tr>
<td></td>
<td>(g) <strong>Weill’s disease</strong></td>
<td>Any occupation involving handling of rats, mice, swine and dogs.</td>
</tr>
<tr>
<td></td>
<td>(h) <strong>Q. fever or equine encephalomyelitis</strong></td>
<td>Any occupation involving handling of horses, cattle and sheep, or their slaughter and meat packing.</td>
</tr>
<tr>
<td></td>
<td>(i) <strong>Mite dermatitis</strong></td>
<td>Any occupation involving handling of fowls or pigeons.</td>
</tr>
<tr>
<td></td>
<td>(j) <strong>Ionizing radiation disease, inflammation, ulceration or malignant disease of skin or subcutaneous tissues of the bones or leukemia, or anemia of the aplastic type due to X-rays, ionizing particle radium or other radioactive substances.</strong></td>
<td>Exposure to X-rays, ionizing particles of radium or other radioactive substance or other forms of radiant energy.</td>
</tr>
</tbody>
</table>
IMPLEMENTING RULES

(a) Acute radiation syndrome
Short durations of exposure to large doses of X-rays, gamma rays, alpha rays and beta rays.

(b) Chronic radiation syndrome
Chronic overexposure to X-rays with a long latent period affecting the skin, blood and reproductive organ.

(c) Glass blower’s cataract
Among furnace men, glass blowers, bakers, blacksmith, foundry workers. These are workers exposed to infrared rays.

9. Poisoning and its sequelae caused by:
(a) Ammonia
All work involving exposure to the risk concerned.

(b) Arsenic or its toxic compound
All work involving exposure to the risk concerned.

(c) Benzene or its toxic homologues; nitro and aminotoxic derivatives of benzene or its homologue
All work involving exposure to the risk concerned.

(d) Beryllium or its toxic compounds
All work involving exposure to the risk concerned.

(e) Brass, zinc or nickel
All work involving exposure to the risk concerned.

(f) Carbon dioxide
All work involving exposure to the risk concerned.

(g) Carbon bisulfide
All work involving exposure to the risk concerned.

(h) Carbon monoxide
All work involving exposure to the risk concerned.

(i) Chlorine
All work involving exposure to the risk concerned.

(j) Chrome or its toxic compounds
All work involving exposure to the risk concerned.

(k) Dinitrophenol or its homologue
All work involving exposure to the risk concerned.

(l) Halogen derivatives of hydrocarbon of the aliphatic series
All work involving exposure to the risk concerned.
(m) Lead or its toxic compounds All work involving exposure to the risk concerned.
(n) Manganese or its toxic compounds All work involving exposure to the risk concerned.
(o) Mercury or its toxic compounds All work involving exposure to the risk concerned.
(p) Nitrous fumes All work involving exposure to the risk concerned.
(q) Phosgene All work involving exposure to the risk concerned.
(r) Phosphorus or its toxic compounds All work involving exposure to the risk concerned.
(s) Sulfur dioxide All work involving exposure to the risk concerned.

10. Pneumoconioses
   (a) Coal miners Exposure to coal dust.
   (b) Byssinosis Exposure to cotton dust causing weaver’s cough or mill fever.
   (c) Bagassosis Exposure to sugar cane dust.
   (d) Psittacosis Any occupation involving handling of parrots, parakeets and other species of birds.

11. Diseases caused by abnormalities in temperature and humidity. Any occupation involving exposure to excessive heat or cold.
   (a) Heat stroke/cramps/exhaustion Any occupation involving exposure to excessive heat.
   (b) Chilblain/frostbite/freezing Any occupation involving exposure to excessive cold.
   (c) Immersion foot/general hypothermia Any occupation involving exposure to excessive cold.

12. Vascular disturbance in the upper extremities due to continuous vibration from pneumatic tools or power drills, riveting machines or hammers. Any occupation causing repeated motions, vibrations and pressure of upper extremities.
13. **Viral hepatitis** \(^1\) Among workers in dose and frequent contact with (a) human blood products and with (b) a source of viral hepatitis by reason of employment in the medical treatment or nursing of a person or persons suffering from viral hepatitis, or in a service ancillary to such treatment or nursing.

14. **Poisoning by cadmium** \(^2\) Among workers in battery factories who are exposed to cadmium fumes.

15. **Leukemia and lymphoma** \(^3\) Among operating room personnel due to exposure to anesthetics.

16. **Cancer of stomach and other lymphatic and blood forming vessels; nasal cavity and sinuses** \(^4\) Among woodworkers, wood products industry carpenters, loggers and employees in pulp and paper mills and plywood mills.

17. **Cancer of the lungs, liver and brain** Among vinyl chloride workers, plastic workers.

18. **CARDIOVASCULAR DISEASES.** \(^5\) Under any of the following conditions —
   a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.
   b. The strain of work that brings about an acute attack must be of sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship.
   c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

19. **CEREBRO-VASCULAR ACCIDENTS.** \(^6\) Under all the following conditions —
   a. There must be a history, which should be proved, of trauma at work (to the head specially) due to unusual and extraordinary physical or mental strain or event, or undue exposure to noxious gases in industry.

---

\(^{1}\) Approved under ECC Resolution No. 247-A, April 13, 1977.

\(^{2}\) Ibid.

\(^{3}\) Ibid.

\(^{4}\) Ibid.

\(^{5}\) Approved under Resolution No. 432, July 20, 1977. Although not considered occupational diseases, they are nevertheless work-related and thus compensable too.

\(^{6}\) Ibid.
b. There must be a direct connection between the trauma or exertion in the course of the employment and the worker's collapse.

c. If the trauma or exertion then and there caused a brain hemorrhage, the injury may be considered as arising from work.

20. MALARIA AND SCHISTOSOMIASIS.\(^1\) Under all the following conditions —

a. Through the knowledge of the respective incubation periods of the different types of the disease, the physician determining the causal relationship between the employment and the illness of malaria or schistosomiasis should be able to tell whether or not the disease of the afflicted employee or a worker manifested itself while he was so employed.

b. Compensability should be based on the principle of greater risk of acquiring the disease in the place of work than in the place of usual residence of the afflicted employee or worker.

c. The place of work of employment has to be verified as a malarial or schistosomal work area.

21. PNEUMONIA.\(^2\) Under all the following conditions —

a. There must be an honest and definite history of wetting and chilling during the course of employment and also, of injury to the chest wall with or without rib fracture, or inhalation of noxious gases, fumes and other deleterious substances in the place of work.

b. There must be a direct connection between the offending agent or event and the worker’s illness.

c. The signs of consolidation should appear soon (within a few hours) and the symptoms of initial chilling and fever should at least be 24 hours after the injury or exposure.

d. The patient must manifest any of the following symptoms within a few days of the accident: (1) severe chill and fever; (2) headache and pain, agonizing in character, in the side of the body; (3) short, dry, painful cough with blood-tinged expectoration; and (4) physical signs of consolidation, with fine rales.

22. HERNIA.\(^3\) Under all the following conditions —

a. The hernia should be of recent origin.

b. Its appearance was accompanied by pain, discoloration and evidence of a tearing of the tissues.

c. The disease was immediately preceded by undue or severe strain arising out of and in the course of employment.

d. A protrusion or mass should appear in the area immediately following the alleged strain.

\(^1\)Approved under Resolution No. 432, July 20, 1977. Although not considered occupational diseases, they are nevertheless work-related and thus compensable too.

\(^2\)Ibid.

\(^3\)Ibid.
23. BRONCHIAL ASTHMA.\textsuperscript{1} Under all the following conditions —
   a. There is no evidence of history of asthma before employment.
   b. The allergen is present in the working conditions.
   c. Sensitivity test to allergens in the working environment should yield positive results.
   d. A provocative test should show positive results.
24. OSTEOARTHRITIS.\textsuperscript{2} Any occupation involving: aa) joint strain from carrying heavy loads, or unduly heavy physical labor, as among laborers and mechanics; bb) minor or major injuries to the joint; cc) excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities; dd) extreme temperature changes (humidity, heat and cold exposures); and ee) faulty work posture or use of vibrating tools.
25. VIRAL ENCEPHALITIS.\textsuperscript{3} Any occupation involving: aa) contact with an infected person, as in areas of poor sanitation, with a high density of school children, who are the most frequent virus spreaders; bb) rural exposure, primarily in picnics, camping activities, fishing or hunting in, or adjacent to, woods or subtropical vegetations, or as among agricultural and forest workers; and cc) contact with other sources of infection, such as birds and animals, as among veterinarians and abbatoir workers.
26. PEPTIC ULCER.\textsuperscript{4} Any occupation involving prolonged emotional or physical stress, as among professional people, transport workers and the like.
27. PULMONARY TUBERCULOSIS.\textsuperscript{5} In addition to working conditions already listed under PD 626, as amended, any occupation involving constant exposure to harmful substances in the working environment, in the form of gases, fumes, vapors and dust, as in chemical and textile factories; overwork or fatigue; and exposure to rapid variations in temperature, high degree of humidity and bad weather conditions; and
28. VIRAL HEPATITIS.\textsuperscript{6} In addition to the working conditions already listed under PD 626, as amended, any occupation involving: exposure to a source of infection through ingestion of water, milk, or other food contaminated with hepatitis virus;

\textsuperscript{1}Approved under Resolution No. 432, July 20, 1977. Although not considered occupational diseases, they are nevertheless work-related and thus compensable too.
\textsuperscript{2}Approved under ECC Resolution No. 1676, January 29, 1981.
\textsuperscript{3}Ibid.
\textsuperscript{4}Ibid.
\textsuperscript{5}Ibid.
\textsuperscript{6}Ibid.
Provided, That the physician determining the causal relationship between the employment and the illness should be able to indicate whether the disease of the afflicted worker manifested itself while he was so employed, knowing the incubation period thereof.
ANNEX “B”

PRESCRIBED MINIMUM STANDARDS FOR PERIODIC MEDICAL EXAMINATIONS DESIGNED FOR THE EARLY DETECTION OF OCCUPATIONAL DISEASES

A. When the risk exists as to exposure to any of the occupational hazards enumerated in the “List of Occupational Diseases,” employers shall require his employees to undergo:

1. A periodic medical examination to be carried out at intervals, and in accordance with the conditions, outlined in 2 and 3 below;

2. Periodic examinations at intervals of 3 months or less if workers are exposed to the following:
   (a) Benzene (Benzol) or the nitro or amino-derivatives of benzene or its homologues.
   (b) Ionizing radiations.
   (c) Organic phosphorus insecticides, where the interval may be much shorter (as in spraying).

3. Periodic examinations at intervals not exceeding 6 months in cases of exposure to the following:
   (a) Lead or its toxic compounds
   (b) Mercury or its toxic compounds
   (c) Manganese or its toxic compounds
   (d) Chromium or its toxic compounds
   (e) Carbon disulphide

4. Periodic examinations at intervals not exceeding one year in cases of all other exposures enumerated in the “List of Occupational Diseases” and not covered under 2 or 3 above.

5. Under special circumstances, medical examinations be repeated at intervals shorter than specified under 3 and 4 as recommended by the authorized medical officers.

B. The medical examination shall be as complete as possible, but shall primarily be directed towards the early detection of occupational diseases. This necessitates that certain aspects of the examination be stressed in certain types of exposures:

(1) Examination of urine and urinary bladder in workers exposed to alphanaphthylamine, betanaphthylamine or benzidine or any of their salts, and suramine or magenta.

(2) Examination of the skin and eyes in workers exposed to tar, pitch, bitumen, mineral oil, paraffin or soot or any compound, product or residue of any of these substances.

(3) Examination of the eyes in workers exposed to infrared rays from molten metal, red hot metal or molten glass.
Examination of the skin in workers exposed to skin irritants and sensitizers.

Audiometric examinations in workers exposed to excessive noise, particularly in the higher frequencies.

Examination of the skin, eyes and blood in workers exposed to ionizing radiations.

Examination of the gastro-intestinal and nervous systems, blood, skin, mucous membranes and lungs in workers exposed to toxic compounds of arsenic.

Examination of the blood in workers exposed to benzene or the nitro or amino derivatives of benzene or its homologues.

Examination of the skin and lungs in cases of exposure to beryllium.

Examination of the skin and respiratory tract in workers exposed to nickel, chromium or their toxic compounds.

Examination of the nervous system, eyes, blood and skin in workers exposed to carbon disulphide.

Examination of the blood in workers exposed to carbon monoxide.

Examination of the eyes and respiratory tract in workers exposed to chlorine or sulphur dioxide.

Examination of the liver and kidney in workers exposed to dinitrophenol and its homologues.

Examination of the skin, liver, kidneys and gastro-intestinal and nervous systems in workers exposed in halogen derivatives of aliphatic hydrocarbons.

Examination of the blood, urine, gastro-intestinal and neuromuscular systems in workers exposed to lead or its toxic compounds.

Examination of the lungs and nervous system in workers exposed to manganese or its toxic compounds.

Examination of the nervous and the gastro-intestinal systems, the kidneys and eyes in workers exposed to mercury or its toxic compounds.

Examination of the bones, especially the lower jaw in workers exposed to phosphorus, and the cholinesterase activity in workers exposed to organic phosphate insecticides.

Examination of the lungs in workers exposed to risk of tuberculosis infection, silica dust, asbestos and cotton dust.

Examination of the presence of peripheral vascular disturbance in workers exposed to vibrating tools.

Results of medical examinations shall be reported in a prescribed form which indicates the dates of examinations, results and recommended action.

Cases of occupational diseases discovered shall be reported by the employer to the System in a prescribed form.
ANNEX “C”

MEDICAL BENEFITS

A. Medical services. — (a) An employee who sustains an injury or contracts sickness shall be entitled to:
   (1) ward services during confinement in an accredited hospital;
   (2) the subsequent domiciliary care by an accredited physician; and
   (3) medicines.
(b) Ambulatory services in an accredited hospital shall be allowed only in case of injury.

B. Ward services. — (a) They cover all of the services an in-patient would ordinarily receive in a hospital such as:
   (1) Bed in a ward (6 beds in a room);
   (2) All meals, including special diets;
   (3) Regular nursing services;
   (4) Medicines furnished by the hospital;
   (5) Laboratory services such as blood and urine tests;
   (6) Radiology services such as X-rays;
   (7) Medical supplies such as splints and casts;
   (8) Use of appliances and equipment furnished by the hospital such as a wheelchair, crutches and braces;
   (9) Anesthetic services;
   (10) Operating room charges;
   (11) Surgery; and
   (12) Doctor’s services.
(b) Ward services do not include:
   (1) The extra charge for more comfortable accommodations such as private and semi-private rooms;
   (2) Personal comfort or convenience such as charges for the use of a telephone, radio or television;
   (3) Private duty nurses.
(c) If a patient receives services more expensive than ward services, payment by the System shall be made only for the ward services. However, private or semi-private room accommodations when medically necessary because the contagious disease or his condition requires him to be isolated, or there is no available ward bed and the emergency nature of the injury or disease requires him to be immediately accommodated, shall be paid by the System after satisfying itself as to the reasonableness thereof, and
at no cost whatsoever to the patient. The continued accommodation of the patient in a private or semi-private room when a ward bed is available and the emergency or contagion no longer exists shall be paid by the System as ward services.

(d) Only necessary and relevant services shall be paid by the System. Laboratory and/or radiology services and medicines shall be kept to a level considered by the physician reasonably necessary and relevant to the particular illness or injury.

C. **Hospital confinement.** — (a) The benefit for each day of confinement in an accredited hospital shall be only for ward services.

(b) The benefit in case of injury shall not exceed the actual cost of ward services in an accredited hospital.

(c) The benefit in case of sickness shall not exceed the actual cost of ward services in an accredited hospital equipped with facilities necessary for the treatment of the disease.

(d) Confinement shall be counted in units of a full day, with the day of admission counted as a full day but not the day of discharge.

D. **Domiciliary care.** — The benefit for the subsequent domiciliary care by an accredited physician shall not exceed P60 for the first visit and P50 for each subsequent visit.

E. **Ambulatory services.** — (a) The benefit for ambulatory care in an accredited hospital, either by (1) a physician in his hospital/clinic, or (2) training resident in emergency, shall not exceed P60 a day, exclusive of drugs and medicines.

(b) A patient who is treated for a specific minor surgical procedure or other treatment that keeps him in the hospital only for a few hours (less than 24) shall be considered an ambulatory patient regardless of the hour of admission, whether or not he used a bed, or whether or not he remained in the hospital past midnight.

**Surgical expense benefit.** — (a) A qualified employee who has undergone a surgical procedure in an accredited hospital shall be entitled to a surgical expense benefit, which shall consist of:


2. An anesthesiologist’s fee ordinarily not exceeding 25 percent of the surgeon’s fee; and

3. An operating fee ordinarily not exceeding 25 percent of the surgeon’s fee.

(b) The surgeon’s fee shall be paid to the surgeon who performed the operation, and the anesthesiologist’s fee to the anesthesiologist, subject to the following conditions:
IMPLEMENTING RULES

(1) Only one surgeon shall be paid for each operation;
(2) Only one anesthesiologist, if any, shall be paid for each operation; and
(3) Local anesthesia, other than regional nerve block anesthesia, shall not be compensable.

(c) The operating room fee shall be paid by the System only for surgical procedures done in the operating-diagnostic therapeutic room complex of the accredited hospital.
SUPPLETORY RULES

I. DISTRIBUTION OF MONTHLY INCOME BENEFITS
1. Monthly income benefits shall be shared equally by all the primary beneficiaries including dependent children who were not considered in the determination of dependent pensions. Upon emancipation or otherwise disqualification to entitlement to the dependent pension of a dependent child, only ten (10%) percent shall be deducted from the benefits, and the remaining income benefits, shall once again be divided equally by the qualified primary beneficiaries.

2. If there are no primary beneficiaries, the secondary beneficiaries shall also share equally in the monthly income benefits.

II. BENEFITS UPON THE DEATH OF A PENSIONER
1. Provisions of paragraph (b), Article 194 of PD 442, as amended, shall apply to death occurring on or after January 1, 1980, regardless of the date of the onset of the permanent total disability.

2. Upon the death of a pensioner as mentioned in paragraph (b) of Article 194, eighty (80%) percent of the monthly income benefit and the dependents’ pension shall be paid to the primary beneficiaries regardless of the cause of death.

3. This provision does not apply to cases where a member under permanent partial disability dies during the period that he is receiving monthly income benefits for permanent partial disability.

4. Upon the death of a pensioner who is survived by secondary beneficiaries, the latter are entitled only to the balance of the five (5)-year guarantee period, provided that the total amount of compensation benefits for the five-year period shall not be less than Fifteen thousand (P15,000.00) pesos, but if the member under permanent total disability dies after the five-year guarantee period, secondary beneficiaries are no longer entitled to any benefits.

III. PRESCRIPTIVE PERIOD
1. Notice in any form by the employee or employer to the Systems of any compensable contingency within three (3) years from the accrual of the cause of action suspends the running of the prescriptive period.

2. If the employee notified the employer of the compensable contingency or in those cases where notice is no longer required, and the employer failed to notify the System as required by law, the claimant is entitled only to fifty (50%) percent of the monthly income benefits to be paid by the employer, if he failed to file his claim within three (3) years but the benefits shall be paid in advance by the System after which the amount so paid shall be reimbursed by the employer.
3. The rule on Constructive Filing under ECC Resolution No. 2127 shall not apply to contingencies whose causes of action accrued on or after June 1, 1984.

4. The new prescriptive period of three (3) years shall benefit those pending cases which were filed within three (3) years, provided the one (1)-year prescriptive period has not yet elapsed as of June 1, 1984.

IV. APPEAL FROM THE DECISIONS OF THE SYSTEM

1. Within thirty (30) days from receipt of the letter of denial or the affirmation of the denial, as the case may be, the claimant shall inform the System in writing of his desire to appeal, otherwise the decision of the System shall become final. Upon receipt of such appeal; the System shall within five (5) days forward the entire record of the case to the Commission for review.

   However, when a judgment or order is entered through fraud, accident, mistake, excusable negligence or analogous circumstances, claimant may file a petition with the System praying that the judgment be set aside within the time and in the manner prescribed under Section 3, Rule 38 of the Revised Rules of Court.

V. REPEALING CLAUSE AND EFFECTIVITY

1. All Rules or Regulations which are inconsistent with this Suppletory Rules are deemed repealed and superseded.

2. This Suppletory Rules shall take effect upon approval by the Commission.

APPROVED UNANIMOUSLY.


The foregoing Suppletory Rules were adopted by the Employees’ Compensation Commission in its Resolution 90-03-0022, passed during its 6th Regular Meeting, Series of 1990, held on March 23, 1990 at Fourth Floor, Employees’ Compensation Commission Building, 355 Sen. Gil J. Puyat Avenue, Makati, Metro Manila.
APPENDICES

Appendix to Book I
  I-1: Migrant Workers Act (R.A. No. 8042 as amended by R.A. No. 10022)
    I-1.1 Rules Implementing R.A. No. 8042 as amended by R.A. No. 10022

Appendix to Book II
  II-1: The TESDA Act of 1994
    II-1.1 Implementing Rules of the TESDA Act of 1994

Appendix to Book III
  III-1: Kasambahay Law (R.A. No. 10361)

Appendix to Book IV
  IV-1: Guidelines for Drug Free Work Place Programs
        (D.O. No. 53-03)
APPENDIX TO BOOK I

APPENDIX I-1: Migrant Workers Act (R.A. No. 8042)

REPUBLIC ACT NO. 8042
As amended by Republic Act No. 10022

AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND
ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION
OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND
OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress
assembled:

SECTION 1. Short Title. — This Act shall be known and cited as the “Migrant
Workers and Overseas Filipinos Act of 1995.”

SEC. 2. Declaration of Policies. —
(a) In the pursuit of an independent foreign policy and while considering
national sovereignty, territorial integrity, national interest and the right to self-
determination paramount in its relations with other states, the State shall, at all
times, uphold the dignity of its citizens whether in country or overseas, in general,
and Filipino migrant workers, in particular, continuously monitor international
conventions, adopt/be signatory to and ratify those that guarantee protection to
our migrant workers, and endeavor to enter into bilateral agreements with countries
hosting overseas Filipino workers. (As amended by R.A. No. 10022)

(b) The State shall afford full protection to labor, local and overseas, organ-
ized and unorganized, and promote full employment and equality of employment
opportunities for all. Towards this end, the State shall provide adequate and timely
social, economic and legal services to Filipino migrant workers.

(c) While recognizing the significant contributions of Filipino migrant
workers to the national economy through their foreign exchange remittances, the
State does not promote overseas employment as a means to sustain economic growth
and achieve national development. The existence of the overseas employment
program rests solely on the assurance that the dignity and fundamental human rights
and freedoms of the Filipino citizen shall not, at any time, be compromised or violated.
The State, therefore, shall continuously create local employment opportunities and
promote the equitable distribution of wealth and the benefits of development.

(d) The State affirms the fundamental equality before the law of women
and men and the significant role of women in nation-building. Recognizing the
contribution of overseas migrant women workers and their particular vulnerabilities,
the State shall apply gender-sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers.

(e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, whether regular/documented or irregular/undocumented, are adequately protected and safeguarded. (As amended by R.A. No. 10022)

(f) The right of Filipino migrant workers and all overseas Filipinos to participate in the democratic decision-making processes of the State and to be represented in institutions relevant to overseas employment is recognized and guaranteed.

(g) The State recognizes that the most effective tool for empowerment is the possession of skills by migrant workers. The government shall provide them free and accessible skills development and enhancement programs. Pursuant to this and as soon as practicable, the government shall deploy and/or allow the deployment only of skilled Filipino workers. (As amended by R.A. No. 10022)

(h) The State recognizes non-governmental organizations, trade unions, workers associations, stakeholders and their similar entities duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect. The significant contribution of recruitment and manning agencies shall form part of this partnership. (As amended by R.A. No. 10022)

(i) Government fees and other administrative costs of recruitment, introduction, placement and assistance to migrant workers shall be rendered free without prejudice to the provision of Section 36 hereof.

Nonetheless, the deployment of Filipino overseas workers, whether land-based or sea-based, by local service contractors and manning agencies employing them shall be encouraged. Appropriate incentives may be extended to them.

SEC. 3. Definitions. — For purposes of this Act:

(a) “Overseas Filipino worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas; to be used interchangeably with migrant worker. (As amended by R.A. No. 10022)

(b) “Gender-sensitivity” shall mean cognizance of the inequalities and inequities prevalent in society between women and men and a commitment to address issues with concern for the respective interests of the sexes.

(c) “Overseas Filipinos” refer to dependents of migrant workers and other Filipino nationals abroad who are in distress as mentioned in Sections 24 and 26 of this Act.
I. Deployment

SEC. 4. Deployment of Migrant Workers. — The State shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers:

(a) It has existing labor and social laws protecting the rights of workers, including migrant workers;

(b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and

(c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers:

Provided, That the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b) and (c) hereof.

In the absence of a clear showing that any of the aforementioned guarantees exists in the country of destination of the migrant workers, no permit for deployment shall be issued by the Philippine Overseas Employment Administration (POEA).

The members of the POEA Governing Board who actually voted in favor of an order allowing the deployment of migrant workers without any of the aforementioned guarantees shall suffer the penalties of removal or dismissal from service with disqualification to hold any appointive public office for five (5) years. Further, the government official or employee responsible for the issuance of the permit or for allowing the deployment of migrant workers in violation of this section and in direct contravention of an order by the POEA Governing Board prohibiting deployment shall be meted the same penalties in this section.

For this purpose, the Department of Foreign Affairs, through its foreign posts, shall issue a certification to the POEA, specifying therein the pertinent provisions of the receiving country’s labor/social law, or the convention/declaration/resolution, or the bilateral agreement/arrangement which protect the rights of migrant workers.

The State shall also allow the deployment of overseas Filipino workers to vessels navigating the foreign seas or to installations located offshore or on high seas whose owners/employers are compliant with international laws and standards that protect the rights of migrant workers.

The State shall likewise allow the deployment of overseas Filipino workers to companies and contractors with international operations: Provided, That they are compliant with standards, conditions and requirements, as embodied in the employment contracts prescribed by the POEA and in accordance with internationally-accepted standards. (As amended by R.A. No. 10022)

SEC. 5. Termination or Ban on Deployment. — Notwithstanding the provisions of Section 4 hereof, in pursuit of the national interest or when public welfare so
requires, the POEA Governing Board, after consultation with the Department of Foreign Affairs, may, at any time, terminate or impose a ban on the deployment of migrant workers. (As amended by R.A. No. 10022)

II. Illegal Recruitment

SEC. 6. Definition. — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, when committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code, or for the purpose of documenting hired workers with the POEA, which include the act of reprocessing workers through a job order that pertains to nonexistent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers’ organization;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;
(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment;

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker’s fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage; and

(n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

(1) Grant a loan to an overseas Filipino worker with interest exceeding eight percent (8%) per annum, which will be used for payment of legal and allowable placement fees and make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;

(2) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to avail of a loan only from specifically designated institutions, entities or persons;

(3) Refuse to condone or renegotiate a loan incurred by an overseas Filipino worker after the latter’s employment contract has been prematurely terminated through no fault of his or her own;

(4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;

(5) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo training, seminar, instruction or schooling
APPENDIX

of any kind only from specifically designated institutions, entities or persons, except for recommendatory trainings mandated by principals/shipowners where the latter shoulder the cost of such trainings;

(6) For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers' applications; and

(7) For a recruitment/manning agency or a foreign principal/employer to pass on the overseas Filipino worker or deduct from his or her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker’s insurance coverage.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business who are responsible for the commission of the offense and the responsible employees/agents thereof shall be liable.

In the filing of cases for illegal recruitment or any of the prohibited acts under this section, the Secretary of Labor and Employment, the POEA Administrator or their duly authorized representatives, or any aggrieved person may initiate the corresponding criminal action with the appropriate office. For this purpose, the affidavits and testimonies of operatives or personnel from the Department of Labor and Employment, POEA and other law enforcement agencies who witnessed the acts constituting the offense shall be sufficient to prosecute the accused.

In the prosecution of offenses punishable under this section, the public prosecutors of the Department of Justice shall collaborate with the anti-illegal recruitment branch of the POEA and, in certain cases, allow the POEA lawyers to take the lead in the prosecution. The POEA lawyers who act as prosecutors in such cases shall be entitled to receive additional allowances as may be determined by the POEA Administrator.

The filing of an offense punishable under this Act shall be without prejudice to the filing of cases punishable under other existing laws, rules or regulations. (As amended by R.A. No. 10022)

SEC. 7. Penalties.

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) nor more than Two million pesos (P2,000,000.00).

(b) The penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) nor more than Five million pesos (P5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

(c) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve
(12) years and a fine of not less than Five hundred thousand pesos (P500,000.00) nor more than One million pesos (P1,000,000.00).

If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings.

In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment/manning agency, lending institutions, training school or medical clinic. (As amended by R.A. No. 10022)

SEC. 8. Prohibition on Officials and Employee. — It shall be unlawful for any official or employee of the Department of Labor and Employment, the Philippine Overseas Employment Administration (POEA), or the Overseas Workers Welfare Administration (OWWA), or the Department of Foreign Affairs, or other government agencies involved in the implementation of this Act, or their relatives within the fourth civil degree of consanguinity or affinity, to engage, directly or indirectly, in the business of recruiting migrant workers as defined in this Act. The penalties provided in the immediately preceding paragraph shall be imposed upon them.

SEC. 9. Venue. — A criminal action arising from illegal recruitment as defined herein shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense: Provided, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts: Provided, however, That the aforesated provisions shall also apply to those criminal actions that have already been filed in court at the time of the effectivity of this Act.

SEC. 10. Money Claims. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.
Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within thirty (30) days from the approval of the settlement by the appropriate authority.

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker’s salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less. *(Note: The Supreme Court in Serrano v. Gallant Maritime Services, et al., G.R. No. 167614, March 24, 2009, declared the phrase “whichever is less” unconstitutional. Because of this ruling the alternative to pay three month’s salary is no longer.)*

In case of a final and executory judgement against a foreign employer/principal, it shall be automatically disqualified, without further proceedings, from participating in the Philippine Overseas Employment Program and from recruiting and hiring Filipino workers until and unless it fully satisfies the judgement award.

Noncompliance with the mandatory periods for resolutions of case provided under this section shall subject the responsible officials to any or all of the following penalties:

(a) The salary of any such official who fails to render his decision or resolution within the prescribed period shall be, or caused to be, withheld until the said official complies therewith;

(b) Suspension for not more than ninety (90) days; or

(c) Dismissal from the service with disqualification to hold any appointive public office for five (5) years.

*Provided, however; That the penalties herein provided shall be without prejudice to any liability which any such official may have incurred under other existing laws or rules and regulations as a consequence of violating the provisions of this paragraph.* *(As amended by R.A. No. 10022)*

**SEC. 11. Mandatory Periods for Resolution of Illegal Recruitment Cases.** — The preliminary investigations of cases under this Act shall be terminated within a period of thirty (30) calendar days from the date of their filing. Where the preliminary investigation is conducted by a prosecution officer and a *prima facie* case is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a *prima facie* case is found to exist, the corresponding information shall be filed by the proper prosecution officer within forty-eight (48) hours from the date of receipt of the records of the case.

**SEC. 12. Prescriptive Periods.** — Illegal recruitment cases under this Act shall prescribe in five (5) years: *Provided, however; That illegal recruitment cases involving economic sabotage as defined herein shall prescribe in twenty (20) years.*

**SEC. 13. Free Legal Assistance; Preferential Entitlement Under the Witness Protection Program.** — A mechanism for free legal assistance for victims of illegal
recruitment shall be established in the anti-illegal recruitment branch of the POEA including its regional offices. Such mechanism shall include coordination and cooperation with the Department of Justice, the Integrated Bar of the Philippines, and other non-governmental organizations and volunteer groups. (As amended by R.A. No. 10022)

The provisions of Republic Act No. 6981 to the contrary notwithstanding, any person who is a victim of illegal recruitment shall be entitled to the Witness Protection Program provided thereunder.

III. Services

SEC. 14. Travel Advisory/Information Dissemination. — To give utmost priority to the establishment of programs and services to prevent illegal recruitment, fraud and exploitation or abuse of Filipino migrant workers, all embassies and consular offices, through the Philippine Overseas Employment Administration (POEA), shall issue travel advisories or disseminate information on labor and employment conditions, migration realities and other facts; and adherence of particular countries to international standards on human and workers’ rights which will adequately prepare individuals into making informed and intelligent decisions about overseas employment. Such advisory or information shall be published in a newspaper of general circulation at least three (3) times in every quarter.

SEC. 15. Repatriation of Workers; Emergency Repatriation Fund. — The repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation shall be borne by or charged to the agency concerned and/or its principal. Likewise, the repatriation of remains and transport of the personal belongings of a deceased worker and all costs attendant thereto shall be borne by the principal and/or the local agency. However, in cases where the termination of employment is due solely to the fault of the worker, the principal/employer, or agency shall not in any manner be responsible for the repatriation of the former and/or his belongings.

The Overseas Workers Welfare Administration (OWWA), in coordination with appropriate international agencies, shall undertake the repatriation of workers in cases of war, epidemic, disasters or calamities, natural or man-made, and other similar events without prejudice to reimbursement by the responsible principal or agency. However, in cases where the principal or recruitment agency cannot be identified, all costs attendant to repatriation shall be borne by the OWWA.

For this purpose, there is hereby created and established an emergency repatriation fund under the administration, control and supervision of the OWWA, initially to consist of One hundred million pesos (P100,000,000.00), which shall be taken from the existing fund controlled and administered by the OWWA. Thereafter, such fund shall be provided for in the General Appropriations Act from year to year: Provided, That the amount appropriated shall in no case be less than One hundred million pesos (P100,000,000.00), inclusive of outstanding balances.
SEC. 16. Mandatory Repatriation of Underage Migrant Workers. — Upon discovery or being informed of the presence of migrant workers whose ages fall below the minimum age requirement for overseas deployment, the responsible officers in the foreign service shall without delay repatriate said workers and advise the Department of Foreign Affairs through the fastest means of communication available of such discovery and other relevant information. The license of a recruitment/manning agency which recruited or deployed an underage migrant worker shall be automatically revoked and shall be imposed a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00). All fees pertinent to the processing of papers or documents in the recruitment or deployment shall be refunded in full by the responsible recruitment/manning agency, without need of notice, to the underage migrant worker or to his parents or guardian. The refund shall be independent of and in addition to the indemnification for the damages sustained by the underage migrant worker. The refund shall be paid within thirty (30) days from the date of the mandatory repatriation as provided for in this Act. (As amended by R.A. No. 10022)

SEC. 17. Establishment of National Reintegration Center for Overseas Filipino Workers. — A national reintegration center for overseas Filipino workers (NRCO) is hereby created in the Department of Labor and Employment for returning Filipino migrant workers which shall provide a mechanism for their reintegration into the Philippine society, serve as a promotion house for their local employment, and tap their skills and potentials for national development.

The Department of Labor and Employment, the Overseas Workers Welfare Administration (OWWA), and the Philippine Overseas Employment Administration (POEA) shall, within ninety (90) days from the effectivity of this Act, formulate a program that would motivate migrant workers to plan for productive options such as entry into highly technical jobs or undertakings, livelihood and entrepreneurial development, better wage employment, and investment of savings.

For this purpose, the Technical Education and Skills Development Authority (TESDA), the Technology Livelihood Resource Center (TLRC), and other government agencies involved in training and livelihood development shall give priority to returnees who had been employed as domestic helpers and entertainers. (As amended by R.A. No. 10022)

SEC. 18. Functions of the National Reintegration Center for Overseas Filipino Workers. — The Center shall provide the following services:

(a) Develop and support programs and projects for livelihood, entrepreneurship, savings, investments and financial literacy for returning Filipino migrant workers and their families in coordination with relevant stakeholders, service providers and international organizations;

(b) Coordinate with appropriate stakeholders, service providers and relevant international organizations for the promotion, development and the full utilization of overseas Filipino worker returnees and their potentials;

(c) Institute, in cooperation with other government agencies concerned, a computer-based information system on returning Filipino migrant workers which shall be accessible to all local recruitment agencies and employers, both public and private;
APPENDIX I-1: Migrant Workers Act (R.A. No. 8042)
(As amended by R.A. No. 10022)

(d) Provide a periodic study and assessment of job opportunities for returning Filipino migrant workers;
(e) Develop and implement other appropriate programs to promote the welfare of returning Filipino migrant workers;
(f) Maintain an internet-based communication system for on-line registration and interaction with clients, and maintain and upgrade computer-based service capabilities of the NRCo;
(g) Develop capacity-building programs for returning overseas Filipino workers and their families, implementers, service providers, and stakeholders; and
(h) Conduct research for policy recommendations and program development.

(As amended by R.A. No. 10022)

SEC. 19. Establishment of a Migrant Workers and Other Overseas Filipinos Resource Center. — Within the premises and under the administrative jurisdiction of the Philippine Embassy in countries where there are large concentrations of Filipino migrant workers, there shall be established a Migrant Workers and Other Overseas Filipinos Resource Center with the following services:

(a) Counseling and legal services;
(b) Welfare assistance including the procurement of medical and hospitalization services;
(c) Information, advisory and programs to promote social integration such as post-arrival orientation, settlement and community networking services and activities for social interaction;
(d) Institute a scheme of registration of undocumented workers to bring them within the purview of this Act. For this purpose, the Center is enjoined to compel existing undocumented workers to register with it within six (6) months from the effectivity of this Act, under pain of having his/her passport cancelled;
(e) Human resource development, such as training and skills upgrading;
(f) Gender-sensitive programs and activities to assist particular needs of women migrant workers;
(g) Orientation program for returning workers and other migrants; and
(h) Monitoring of daily situations, circumstances and activities affecting migrant workers and other overseas Filipinos.

The establishment and operations of the Center shall be a joint undertaking of the various government agencies. The Center shall be open for twenty-four (24) hours daily including Saturdays, Sundays and holidays, and shall be staffed by Foreign Service personnel, service attaches or officers who represent other Philippine government agencies abroad and, if available, individual volunteers and bona fide non-government organizations from the host countries. In countries categorized as highly problematic by the Department of Foreign Affairs and the Department of Labor and Employment and where there is a concentration of Filipino migrant workers, the government must provide a Shari'a or human rights lawyer, a psychologist and a social worker for the Center. In addition to these personnel, the government must also hire
within the receiving country, in such number as may be needed by the post, public
relation officers or case officers who are conversant, orally and in writing, with the
local language, laws, customs and practices. The Labor Attache shall coordinate the
operation of the Center and shall keep the Chief of Mission informed and updated
on all matters affecting it. (Only second paragraph was amended by R.A. No. 10022)

The Center shall have a counterpart 24-hour information and assistance center
at the Department of Foreign Affairs to ensure a continuous network and coordinative
mechanism at the home office.

SEC. 20. Establishment of a Shared Government Information System for
Migration. — An interagency committee composed of the Department of Foreign
Affairs and its attached agency, the Commission on Filipinos Overseas, the Department
of Labor and Employment and its attached concerned agencies, the Department
of Tourism, the Department of Justice the Bureau of Immigration, the National
Bureau of Investigation, the Department of the Interior and Local Government, the
National Telecommunications Commission, the Commission on Information and
Communications Technology, the National Computer Center, the National Statistical
and Coordination Board, the National Statistics Office and other government agencies
concerned with overseas employment shall be established to implement a shared
government information system for migration. The inter-agency committee shall
initially make available to itself the information contained in existing data bases/
files. The second phase shall involve linkaging of computer facilities in order to allow
free-flow data exchanges and sharing among concerned agencies.

The interagency committee shall be co-chaired by the Department of Foreign
Affairs and the Department of Labor and Employment. The National Computer
Center shall provide the necessary technical assistance and shall set the appropriate
information and communications technology standards to facilitate the sharing of
information among the member agencies.

The interagency committee shall meet regularly to ensure the immediate and
full implementation of this section and shall explore the possibility of setting up a
central storage facility for the data on migration. The progress of the implementation
of this section shall be include in the report to Congress of the Department of Foreign
Affairs and the Department of Labor and Employment under Section 33.

The interagency committee shall convene to identify existing data bases which
shall be declassified and shared among member agencies. These shared data bases
shall initially include, but not be limited to, the following information:

(a) Masterlists of Filipino migrant workers/overseas Filipino classified
according to occupation/job category, civil status, by country/state of destination
including visa classification;

(b) Inventory of pending legal cases involving Filipino migrant workers and
other Filipino nationals, including those serving prison terms;

(c) Masterlists of departing/arriving Filipinos;

(d) Statistical profile on Filipino migrant workers/overseas Filipinos/tourists;

(e) Blacklisted foreigners/undesirable aliens;
Basic data on legal systems, immigration policies, marriage laws and civil and criminal codes in receiving countries particularly those with large numbers of Filipinos;

List of Labor and other human rights instruments where receiving countries are signatories;

A tracking system of past and present gender disaggregated cases involving male and female migrant workers, including minors; and

Listing of overseas posts which may render assistance to overseas Filipinos, in general, and migrant workers, in particular. (As amended by R.A. No. 10022)

**SEC. 21. Migrant Workers Loan Guarantee Fund.** — In order to further prevent unscrupulous illegal recruiters from taking advantage of workers seeking employment abroad, the OWWA, in coordination with government financial institutions, shall institute financing schemes that will expand the grant of pre-departure loan and family assistance loan. For this purpose, a Migrant Workers Loan Guarantee Fund is hereby created and the revolving amount of One hundred million pesos (P100,000,000.00) from the OWWA is set aside as a guarantee fund in favor of participating government financial institutions.

**SEC. 22. Rights and Enforcement Mechanism Under International and Regional Human Rights System.** — The Department of Foreign Affairs is mandated to undertake the necessary initiative such as promotions, acceptance or adherence of countries receiving Filipino workers to multilateral convention, declaration or resolutions pertaining to the protection of migrant workers’ right. The Department of Foreign Affairs is also mandated to make an assessment of rights and avenues of redress under international and regional human rights systems that are available to Filipino migrant workers who are victims of abuse and violation and, as far as practicable and through the Legal Assistant for Migrant Workers Affairs created under this Act, pursue the same on behalf of the victim if it is legally impossible to file individual complaints. If a complaints machinery is available under international or regional systems, the Department of Foreign Affairs shall fully apprise the Filipino migrant workers of the existence and effectiveness of such legal options.

**IV. Government Agencies**

**SEC. 23. Role of Government Agencies.** — The following government agencies shall perform the following to promote the welfare and protect the rights of migrant workers and, as far as applicable, all overseas Filipinos:

(a) **Department of Foreign Affairs.** — The Department, through its home office or foreign posts, shall take priority action or make representation with the foreign authority concerned to protect the rights of migrant workers and other overseas Filipinos and extend immediate assistance including the repatriation of distressed or beleaguered migrant workers and other overseas Filipinos.

(b) **Department of Labor and Employment.** — The Department of Labor and Employment shall see to it that labor and social welfare laws in the foreign countries
are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos including the grant of legal assistance and the referral to proper medical centers or hospitals.

(b.1) Philippine Overseas Employment Administration. — The Administration shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements. It shall be responsible for the regulation and management of overseas employment from the pre-employment stage, securing the best possible employment terms and conditions for overseas Filipino workers, and taking into consideration the needs of vulnerable sectors and the peculiarities of sea-based and land-based workers. In appropriate cases, the Administration shall allow the lifting of suspension of erring recruitment/manning agencies upon the payment of fine of Fifty thousand pesos (P50,000.00) for every month of suspension.

In addition to its powers and functions, the Administration shall inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights. It shall also be responsible for the implementation, in partnership with other law-enforcement agencies, of an intensified program against illegal recruitment activities. For this purpose, the POEA shall provide comprehensive Pre-Employment Orientation Seminars (PEOS) that will discuss topics such as prevention of illegal recruitment and gender-sensitivity.

The Administration shall not engage in the recruitment and placement of overseas workers except on a government-to-government arrangement only.

In the recruitment and placement of workers to service the requirements for trained and competent Filipino workers of foreign governments and their instrumentalities, and such other employers as public interests may require, the Administration shall deploy only to countries where the Philippine has concluded bilateral labor agreements or arrangements: Provided, That such countries shall guarantee to protect the rights of Filipino migrant workers; and Provided, further, That such countries shall observe and/or comply with the international laws and standards for migrant workers. (Subparagraph b.1 was amended by R.A. No. 10022)

(b.2) Overseas Workers Welfare Administration. — The Welfare officer or in his absence, the coordinating officer shall provide the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals. In the performance of this function, he shall make representation and may call on the agencies or entities concerned to conferences or conciliation meetings for the purpose of settling the compliance or problems brought to his attention. The OWWA shall likewise formulate and implement welfare programs for overseas Filipino workers and their families while they are abroad and upon their return. It shall ensure the awareness by the overseas Filipino workers and their families of these programs and other related governmental programs.
In the repatriation of workers to be undertaken by OWWA, the latter shall be authorized to pay repatriation-related expenses, such as fines or penalties, subject to such guidelines as the OWWA Board of Trustees may prescribe. (Subparagraph b.2 was amended by R.A. No. 10022)

(c) Department of Health. — The Department of Health (DOH) shall regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations, hereinafter referred to as health examinations, on Filipino migrant workers as requirement for their overseas employment. Pursuant to this, the DOH shall ensure that:

(c.1) The fees for the health examinations are regulated, regularly monitored and duly published to ensure that the said fees are reasonable and not exorbitant;

(c.2) The Filipino migrant worker shall only be required to undergo health examinations when there is reasonable certainty that he or she will be hired and deployed to the jobsite and only those health examinations which are absolutely necessary for the type of job applied for or those specifically required by the foreign employer shall be conducted;

(c.3) No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations on migrant workers for certain receiving countries;

(c.4) Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his or her rights as a patient are respected. The decking practice, which requires an overseas Filipino worker to go first to an office for registration and then farmed out to a medical clinic located elsewhere, shall not be allowed;

(c.5) Within a period of three (3) years from the effectivity of this Act, all DOH regional and/or provincial hospitals shall establish and operate clinics that can be served the health examination requirements of Filipino migrant workers to provide them easy access to such clinics all over the country and lessen their transportation and lodging expenses; and

(c.6) All DOH-accredited medical clinics, including the DOH-operated clinics, conducting health examinations for Filipino migrant workers shall observe the same standard operating procedures and shall comply with internationally-accepted standards in their operations to conform with the requirements of receiving countries or of foreign employers/principals.

Any Foreign employer who does not honor the results of valid health examinations conducted by a DOH-accredited or DOH-operated clinic shall be temporarily disqualified from the participating in the overseas employment program, pursuant to POEA rules and regulations.

In case an overseas Filipino worker is found to be not medically fit upon his/her immediate arrival in the country of destination, the medical clinic that conducted the health examination/s of such overseas Filipino worker shall pay for his or her repatriation back to the Philippines and the cost of deployment of such worker.

Any DOH-accredited clinic which violates any provision of this section shall, in addition to any other liability it may have incurred, suffer the penalty of revocation of its DOH accreditation.
Any government official or employee who violates any provision of this subsection shall be removed or dismissed from service with disqualification to hold any appointive public office for five (5) years. Such penalty is without prejudice to any other liability which he or she may have incurred under existing laws, rules or regulations.

(d) Local Government Units. — In the fight against illegal recruitment, the local government units (LGUs), in partnership with the POEA, other concerned government agencies, and non-government organizations advocating the rights and welfare of overseas Filipino workers, shall take a proactive stance by being primarily responsible for the dissemination of information to their constituents on all aspects of overseas employment. To carry out this task, the following shall be undertaken by the LGUs:

(d.1) Provide a venue for the POEA, other concerned government agencies and non-government organizations to conduct PEOS to their constituents on a regular basis;

(d.2) Establish overseas Filipino worker help desk or kiosk in their localities with the objective of providing current information to their constituents on all the processes aspects of overseas employment. Such desk or kiosk shall, as far as practicable, be fully computerized and shall be linked to the database of all concerned government agencies, particularly the POEA for its updated lists of overseas job orders and licensed recruitment agencies in good standing. (Paragraph c and d and their subparagraphs were added by R.A. No. 10022)

V. The Legal Assistant for Migrant Workers Affairs

SEC. 24. Legal Assistant for Migrant Workers Affairs. — There is hereby created the position of Legal Assistant for Migrant Workers Affairs under the Department of Foreign Affairs who shall be primarily responsible for the provision and overall coordination of all legal assistance services to be provided to Filipino migrant workers as well as overseas Filipinos in distress. He shall have the rank, salary and privileges equal to that of an undersecretary of said Department.

The said Legal Assistant for Migrant Workers Affairs shall be appointed by the President and must be of proven competence in the field of law with at least ten (10) years of experience as a legal practitioner and must not have been a candidate to an elective office in the last local or national elections.

Among the functions and responsibilities of the aforesaid Legal Assistant are:

(a) To issue the guidelines, procedures and criteria for the provision of legal assistance to Filipino migrant workers;

(b) To establish close linkages with the Department of Labor and Employment, the POEA, the OWWA and other government agencies concerned, as well as with non-governmental organizations assisting migrant workers, to ensure effective coordination and cooperation in the provision of legal assistance to migrant workers;
To tap the assistance of reputable law firms, the Integrated Bar of the Philippines, other bar associations and other government legal experts on overseas Filipino worker laws to complement the government’s efforts to provide legal assistance to our migrant workers (Paragraph c, as amended by R.A. No. 10022);

(d) To administer the legal assistance fund for migrant workers established under Section 25 hereof and to authorize disbursement therefrom in accordance with the purposes for which the fund was set up; and

(e) To keep and maintain the information system as provided in Section 20.

The Legal Assistant for Migrant Workers Affairs shall have authority to hire private lawyers, domestic or foreign, in order to assist him in the effective discharge of the above functions.

SEC. 25. Legal Assistance Fund. — There is hereby established a legal assistance fund for migrant workers, hereinafter referred to as the Legal Assistance Fund, in the amount of One hundred million pesos (P100,000,000.00) to be constituted from the following sources.

Fifty million pesos (P50,000,000.00) from the Contingency Fund of the President;

Thirty million pesos (P30,000,000.00) from the Contingency Fund of the Presidential Social Fund;

Twenty million pesos (P20,000,000.00) from the Welfare Fund for Overseas Workers established under Letter of Instructions No. 537 as amended by Presidential Decree Nos. 1694 and 1809; and

An amount appropriated in the annual General Appropriations Act (GAA) which shall not be less than Thirty million pesos (P30,000,000.00) per year: Provided, that the balance of the Legal Assistance Fund (LAF) including the amount appropriated for the year shall not be less than One hundred million pesos (P100,000,000.00): Provided, further, That the fund shall be treated as a special fund in the National Treasury and its balance, including the amount appropriated in the GAA, which shall form part of the Fund, shall not revert to the General Fund.

Any balances of existing funds which have been set aside by the government specifically as legal assistance or defense fund to help migrant workers shall, upon effectivity of this Act, be turned over to, and form part of, the Fund created under this Act. (As amended by R.A. No. 10022)

SEC. 26. Uses of the Legal Assistance Fund. — The Legal Assistance Fund created under the preceding section shall be used exclusively to provide legal services to migrant workers and overseas Filipinos in distress in accordance with the guidelines, criteria and procedures promulgated in accordance with Section 24(a) herof. The expenditures to be charged against the Fund shall include the fees for the foreign lawyers to be hired by the Legal Assistant for Migrant Workers Affairs to represent migrant workers facing charges or in filing cases against erring or abusive employers abroad, bail bonds to secure the temporary release of workers under detention, court fees and charges and other litigation expenses: Provided, That at the end of every year, the Department of Foreign Affairs shall include in its report to Congress, as
provided for under Section 33 of this Act, the status of the Legal Assistance Fund, including the expenditures from the said fund duly audited by the Commission on Audit (COA): *Provided, further,* That the hiring of foreign legal counsels, when circumstances warrant urgent action, shall be exempt from the coverage of Republic Act No. 9184 or the Government Procurement Act. (As amended by R.A. No. 10022)

VI. Country-Team Approach

**SEC. 27. Priority Concerns of Philippine Foreign Service Posts.** — The country-team approach, as enunciated under Executive Order No. 74, series of 1993, shall be the mode under which Philippine embassies or their personnel will operate in the protection of the Filipino migrant workers as well as in the promotion of their welfare. The protection of the Filipino migrant workers and the promotion of their welfare, in particular, and the protection of the dignity and fundamental rights and freedoms of the Filipino citizen abroad, in general, shall be the highest priority concerns of the Secretary of Foreign Affairs and the Philippine Foreign Service Posts.

**SEC. 28. Country-Team Approach.** — Under the country-team approach, all officers, representatives and personnel of the Philippine government posted abroad regardless of their mother agencies shall, on a per country basis, act as one country-team with a mission under the leadership of the ambassador. In this regard, the ambassador may recommend to the Secretary of the Department of Foreign Affairs the recall of officers, representatives and personnel of the Philippine government posted abroad for acts inimical to the national interest such as, but not limited to, failure to provide the necessary services to protect the rights of overseas Filipinos.

Upon receipt of the recommendation of the ambassador, the Secretary of the Department of Foreign Affairs shall, in the case of officers, representatives and personnel of other departments, endorse such recommendation to the department secretary concerned for appropriate action. Pending investigation by an appropriate body in the Philippines, the person recommended for recall may be placed under preventive suspension by the ambassador.

In host countries where there are Philippine consulates, such consulates shall also constitute part of the country-team under the leadership of the ambassador.

In the implementation of the country-team approach, visiting Philippine delegations shall be provided full support and information.

VII. Deregulation and Phase-Out

**[SEC. 29. Comprehensive Deregulation Plan on Recruitment Activities.** — Pursuant to a progressive policy of deregulation whereby the migration of workers becomes strictly a matter between the worker and his foreign employer, the DOLE, within one (1) year from the effectivity of this Act, is hereby mandated to formulate a five-year comprehensive deregulation plan on recruitment activities taking into account labor market trends, economic conditions of the country and emerging circumstances which may affect the welfare of migrant workers.]* Repealed by R.A. No. 9422 approved on April 10, 2007.*
[SEC. 30. Gradual Phase-out of Regulatory Functions. — Within a period of five (5) years from the effectivity of this Act, the DOLE shall phase-out the regulatory functions of the POEA pursuant to the objectives of deregulation.] Repealed by R.A. No. 9422, approved on April 10, 2007.

VIII. Professional and Other Highly-Skilled Filipinos Abroad

SEC. 31. Incentives to Professionals and Other Highly-Skilled Filipinos Abroad. — Pursuant to the objective of encouraging professionals and other highly-skilled Filipinos abroad especially in the field of science and technology to participate in, and contribute to national development, the government shall provide proper and adequate incentives and programs so as to secure their services in priority development areas of the public and private sectors.

IX. Miscellaneous Provisions

SEC. 32. POEA, OWWA and other Boards; Additional Memberships. — Notwithstanding any provision of law to the contrary, the respective Boards of the POEA and the OWWA shall, in addition to their present composition, have three (3) members each who shall come from the women, sea-based and land-based sectors respectively, to be selected and nominated openly by the general membership of the sector being represented.

The selection and nomination of the additional members from the women, sea-based and land-based sectors shall be governed by the following guidelines:

(a) The POEA and the OWWA shall launch a massive information campaign on the selection of nominees and provide for a system of consultative sessions for the certified leaders or representatives of the concerned sectors, at least three (3) times, within ninety (90) days before the boards shall be convened, for purposes of selection. The process shall be open, democratic and transparent;

(b) Only non-government organizations that protect and promote the rights and welfare of overseas Filipino workers, duly registered with the appropriate Philippine government agency and in good standing as such, and in existence for at least three (3) years prior to the nomination shall be qualified to nominate a representative for each sector to the Board;

(c) The nominee must be at least twenty-five (25) years of age, able to read and write, and a migrant worker at the time of his or her nomination or was a migrant worker with at least three (3) years experience as such; and

(d) A final list of all the nominees selected by the OWWA/POEA governing boards, which shall consist of three (3) names for each sector to be represented, shall be submitted to the President and published in a newspaper of general circulation;

Within thirty (30) days from the submission of the list, the President shall select and appoint from the list the representatives to the POEA/OWWA governing boards.
The additional members shall have a term of three (3) years and shall be eligible for reappointment for another three (3) years. In case of vacancy, the President shall, in accordance with the provisions of this Act, appoint a replacement who shall serve the unexpired term of his or her predecessor.

Any executive issuances or orders issued that contravene the provisions of this section shall have no force and effect.

All other government agencies and government-owned or -controlled corporations which require at least one (1) representative from the overseas workers sector to their respective boards shall follow all the applicable provisions of this section. (As amended by R.A. No. 10022)

SEC. 33. Report to Congress. — In order to inform the Philippine Congress on the implementation of the policy enunciated in Section 4 hereof, the Department of Foreign Affairs and the Department of Labor and Employment shall submit separately to the said body a semi-annual report of Philippine foreign posts located in countries hosting Filipino migrant workers. The mid-year report covering the period January to June shall be submitted not later than October 31 of the same year while the year-end report covering the period July to December shall be submitted not later than May 31 of the following year. The report shall include, but shall not be limited to, the following information (As amended by R.A. No. 10022):

(a) Masterlist of Filipino migrant workers, and inventory of pending legal cases involving them and other Filipino nationals including those serving prison terms;

(b) Working conditions of Filipino migrant workers;

(c) Problems encountered by the migrant workers, specifically violations of their rights;

(d) Initiatives/actions taken by the Philippine foreign posts to address the problems of Filipino migrant workers;

(e) Changes in the laws and policies of host countries; and

(f) States [sic] of negotiations on bilateral labor agreements between the Philippines and the host country.

Any officer of the government who fails to submit the report as stated in this section shall be subject to an administrative penalty of dismissal from the service with disqualification to hold any appointive public office for five (5) years. (As amended by R.A. No. 10022)

SEC. 34. Representation in Congress. — Pursuant to Section 5(2), Article VI of the Constitution and in line with the objective of empowering overseas Filipinos to participate in the policy-making process to address Filipino migrant concerns, two (2) sectoral representatives for migrants workers in the House of Representatives shall be appointed by the President from the ranks of migrant workers: Provided, That at least one (1) of the two (2) sectoral representatives shall come from the women migrant workers sector: Provided, further, That all nominees must have at least two (2) years experiences as a migrant worker.

SEC. 35. Exemption from Travel Tax, Documentary Stamp and Airport Fee. — All laws to the contrary notwithstanding, the migrant workers shall be exempt
from the payment of travel tax and airport-fee upon proper showing of proof of entitlement by the POEA.

The remittances of all overseas Filipino workers, upon showing of the same proof of entitlement by the overseas Filipino worker’s beneficiary or recipient, shall be exempt from the payment of documentary stamp tax. (As amended by R.A. No. 10022)

SEC. 36. Non-increase of Fees; Abolition of Repatriation Bond. — Upon approval of this Act, all fees being charged by any government office on migrant workers shall remain at their present levels and the repatriation bond shall be abolished.

SEC. 37. The Congressional Migrant Workers Scholarship Fund. — There is hereby created a Congressional Migrant Workers Scholarship Fund which shall benefit deserving migrant workers and/or their immediate descendants below twenty-one (21) years of age who intend to pursue courses or training primarily in the field of science and technology. The initial seed fund of Two hundred million pesos (P200,000,000.00) shall be constituted from the following sources:

(a) Fifty million pesos (P50,000,000.00) from the unexpended Countrywide Development Fund for 1995 in equal sharing by all Members of Congress; and

(b) The remaining One hundred fifty million pesos (P150,000,000.00) shall be funded from the proceeds of Lotto draws.

The Congressional Migrant Workers Scholarship Fund as herein created shall be administered by the DOLE in coordination with the Department of Science and Technology (DOST). To carry out the objectives of this section, the DOLE and the DOST shall formulate the necessary rules and regulations.

SEC. 37-A. Compulsory Insurance Coverage for Agency-Hired Workers. — In addition to the performance bond to be filed by the recruitment/manning agency under Section 10, each migrant worker deployed by a recruitment/manning agency shall be covered by a compulsory insurance policy which shall be secured at no cost to the said worker. Such insurance policy shall be effective for the duration of the migrant worker’s employment contract and shall cover, at the minimum:

(a) Accidental death, with at least Fifteen thousand United States dollars (US$10,000.00) survivor’s benefit payable to the migrant worker’s beneficiaries;

(b) Natural death, with at least Ten thousand United States dollars (US$10,000.00) survivor’s benefits payable to the migrant worker’s beneficiaries;

(c) Permanent total disablement, with at least Seven thousand five hundred United States dollars (US$7,500.00) disability benefit payable to the migrant worker. The following disabilities shall be deemed permanent: total, complete loss of sight of both eyes; loss of two (2) limbs at or above the ankles or wrists; permanent complete paralysis of two (2) limbs; brain injury resulting to incurable imbecility or insanity;

(d) Repatriation cost of the worker when his/her employment is terminated without any valid cause, including the transport of his or her personal belongings. In case of death, the insurance provider shall arrange and pay for the repatriation or return of the worker’s remains. The insurance provider shall also render any assistance necessary in the transport including, but not limited to, locating a local
and licensed funeral home, mortuary or direct disposition facility to prepare the body for transport, completing all documentation, obtaining legal clearances, procuring consular services, providing death certificates, purchasing the minimally necessary casket or air transport container, as well as transporting the remains including retrieval from site of death and delivery to the receiving funeral home;

(e) Subsistence allowance benefit, with at least One hundred United States dollars (US$100.00) per month for a maximum of six (6) months for a migrant worker who is involved in a case or litigation for the protection of his/her rights in the receiving country;

(f) Money claims arising from employer’s liability which may be awarded or given to the worker in a judgment or settlement of his or her case in the NLRC. The insurance coverage for money claims shall be equivalent to at least three (3) months for every year of the migrant worker’s employment contract;

In addition to the above coverage, the insurance policy shall also include:

(g) Compassionate visit. When a migrant worker is hospitalized and has been confined for at least seven (7) consecutive days, he shall be entitled to a compassionate visit by one (1) family member or a requested individual. The insurance company shall pay for the transportation cost of the family member or requested individual to the major airport closest to the place of hospitalization of the worker. It is, however, the responsibility of the family member or requested individual to meet all visa and travel document requirements;

(h) Medical evacuation. When an adequate medical facility is not available proximate to the migrant worker, as determined by the insurance company’s physician and/or a consulting physician, evacuation under appropriate medical supervision by the mode of transport necessary shall be undertaken by the insurance provider;

(i) Medical repatriation. When medically necessary as determined by the attending physician, repatriation under medical supervision to the migrant worker’s residence shall be undertaken by the insurance provider at such time that the migrant worker is medically cleared for travel by commercial carrier. If the period to receive medical clearance to travel exceeds fourteen (14) days from the date of discharge from the hospital, an alternative appropriate mode of transportation, such as air ambulance, may be arranged. Medical and non-medical escorts may be provided when necessary.

Only reputable private insurance companies duly registered with the Insurance Commission (IC), which are in existence and operational for at least five (5) years, with a net worth of at least Five hundred million pesos (P500,000,000.00) to be determined by the IC, and with a current year certificate of authority shall be qualified to provide for the worker’s insurance coverage. Insurance companies who have directors, partners, officers, employees or agents with relatives, within the fourth civil degree of consanguinity or affinity, who work or have interest in any of the licensed recruitment/manning agencies or in any of the government agencies involved in the overseas employment program shall be disqualified from providing this workers’ insurance coverage.
The recruitment/manning agency shall have the right to choose from any of the qualified insurance providers the company that will insure the migrant worker it will deploy. After procuring such insurance policy, the recruitment/manning agency shall provide an authenticated copy thereof to the migrant worker. It shall then submit the certificate of insurance coverage of the migrant worker to POEA as a requirement for the issuance of an Overseas Employment Certificate (OEC) to the migrant worker. In the case of seafarers who are insured under policies issued by foreign insurance companies, the POEA shall accept certificates or other proofs of cover from recruitment/manning agencies: Provided, That the minimum coverage under sub-paragraphs (a) to (i) are included therein.

Any person having a claim upon the policy issued pursuant to subparagraphs (a), (b), (c), (d) and (e) of this section shall present to the insurance company concerned a written notice of claim together with pertinent supporting documents. The insurance company shall forthwith ascertain the truth and extent of the claim and make payment within ten (10) days from the filing of the notice of claim.

Any claim arising from accidental death, natural death or disablement under this section shall be paid by the insurance company without any contest and without the necessity of proving fault or negligence of any kind on the part of the insured migrant worker: Provided, That the following documents, duly authenticated by the Philippine foreign posts, shall be sufficient evidence to substantiate the claim:

1. Death Certificate — In case of natural or accidental death;
2. Police or Accident Report — In case of accidental death; and
3. Medical Certificate — In case of permanent disablement;

For repatriation under subparagraph (d) hereof, a certification which states the reason/s for the termination of the migrant worker’s employment and the need for his or her repatriation shall be issued by the Philippine foreign post or the Philippine Overseas Labor Office (POLO) located in the receiving country.

For subsistence allowance benefit under subparagraph (e), the concerned labor attaché or, in his absence, the embassy or consular official shall issue a certification which states the name of the case, the names of the parties and the nature of the cause of action of the migrant worker.

For the payment of money claims under subparagraph (f), the following rules shall govern:

1. After a decision has become final and executory or a settlement/compromise agreement has been reached between the parties at the NLRC, an order shall be released mandating the respondent recruitment/manning agency to pay the amount adjudged or agreed upon within thirty (30) days;
2. The recruitment/manning agency shall then immediately file a notice of claim with its insurance provider for the amount of liability insured, attaching therewith a copy of the decision or compromise agreement;
3. Within ten (10) days from the filing of notice of claim, the insurance company shall make payment to the recruitment/manning agency the amount adjudged or agreed upon, or the amount of liability insured, whichever is lower. After
receiving the insurance payment, the recruitment/manning agency shall immediately pay the migrant worker’s claim in full, taking into account that in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay the balance thereof;

(4) In case the insurance company fails to make payment within ten (10) days from the filing of the claim, the recruitment/manning agency shall pay the amount adjudged or agreed upon within the remaining days of the thirty (30)-day period, as provided in the first subparagraph hereof;

(5) If the worker’s claim was not settled within the aforesaid thirty (30)-day period, the recruitment/manning agency’s performance bond or escrow deposit shall be forthwith garnished to satisfy the migrant worker’s claim;

(6) The provision of compulsory worker’s insurance under this section shall not affect the joint and solidary liability of the foreign employer and the recruitment/manning agency under Section 10;

(7) Lawyers for the insurance companies, unless the latter is impleaded, shall be prohibited to appear before the NLRC in money claims cases under this section.

Any question or dispute in the enforcement of any insurance policy issued under this section shall be brought before the IC for mediation or adjudication.

In case it is shown by substantial evidence before the POEA that the migrant worker who was deployed by a licensed recruitment/manning agency has paid for the premium or the cost of the insurance coverage or that the said insurance coverage was used as basis by the recruitment/manning agency to claim any additional fee from the migrant worker, the said licensed recruitment/manning agency shall lose its license and all its directors, partners, proprietors, officers and employees shall be perpetually disqualified from engaging in the business of recruitment of overseas workers. Such penalty is without prejudice to any other liability which such persons may have incurred under existing laws, rules or regulations.

For migrant workers recruited by the POEA on a government-to-government arrangement, the POEA shall establish a foreign employers guarantee fund which shall be answerable to the workers’ monetary claims arising from breach of contractual obligations. For migrant workers classified as rehires, name hires or direct hires, they may opt to be covered by this insurance coverage by requesting their foreign employers to pay for the cost of the insurance coverage or they may pay for the premium themselves. To protect the rights of these workers, the Department of Labor and Employment and the POEA shall provide them adequate legal assistance, including conciliation and mediation services, whether at home or abroad.

At the end of every year, the Department of Labor and Employment and the IC shall jointly make an assessment of the performance of all insurance providers, based upon the report of the NLRC and the POEA on their respective interactions and experiences with the insurance companies, and they shall have the authority to ban or blacklist such insurance companies which are known to be evasive or not responsive to the legitimate claims of migrant workers. The Department of Labor and Employment shall include such assessment in its year-end report to Congress.
For purposes of this section, the Department of Labor and Employment, IC, NLRC and the POEA, in consultation with the recruitment/manning agencies and legitimate non-government organizations advocating the rights and welfare of overseas Filipino workers, shall formulate the necessary implementing rules and regulations.

The foregoing provisions on compulsory insurance coverage shall be subject to automatic review through the Congressional Oversight Committee immediately after three (3) years from the effectivity of this Act in order to determine its efficacy in favor of the covered overseas Filipino workers and the compliance by recruitment/manning agencies and insurance companies, without prejudice to an earlier review if necessary and warranted for the purpose of modifying, amending and/or repealing these subject provisions. (Section added by R.A. No. 10022)

SEC. 37-B. Congressional Oversight Committee. — There is hereby created a Joint Congressional Oversight Committee composed of five (5) Senators and five (5) Representatives to be appointed by the Senate President and the Speaker of the House of Representatives, respectively. The Oversight Committee shall be co-chaired by the chairpersons of the Senate Committee on Labor and Employment and the House of Representatives Committee on Overseas Workers Affairs. The Oversight Committee shall have the following duties and functions:

(a) To set the guidelines and overall framework to monitor and ensure the proper implementation of Republic Act No. 8042, as amended, as well as all programs, projects and activities related to overseas employment;

(b) To ensure transparency and require the submission of reports from concerned government agencies on the conduct of programs, projects and policies relating to the implementation of Republic Act No. 8042, as amended;

(c) To approve the budget for the programs of the Oversight Committee and all disbursements therefrom, including compensation of all personnel;

(d) To submit periodic reports to the President of the Philippines and Congress on the implementation of the provisions of Republic Act No. 8042, as amended;

(e) To determine weaknesses in the law and recommend the necessary remedial legislation or executive measures; and

(f) To perform such other duties, functions and responsibilities as may be necessary to attain its objectives.

The Oversight Committee shall adopt its internal rules of procedure, conduct hearings and receive testimonies, reports, and technical advice, invite or summon by subpoena ad testificandum any public official or private citizen to testify before it, or require any person by subpoena duces tecum documents or other materials as it may require consistent with the provisions of Republic Act No. 8042, as amended.

The Oversight Committee shall organize its staff and technical panel, and appoint such personnel, whether on secondment from the Senate and the House of Representatives or on temporary, contractual, or on consultancy, and determine their compensation subject to applicable civil service laws, rules and regulations with a view to ensuring a competent and efficient secretariat.
The members of the Oversight Committee shall not receive additional compensation, allowances or emoluments for services rendered thereto except traveling, extraordinary and other necessary expenses to attain its goals and objectives.

The Oversight Committee shall exist for a period of ten (10) years from the effectivity of this Act and may be extended by a joint concurrent resolution. (Section added by R.A. No. 10022)

SEC. 38. Appropriation and Other Sources of Funding. — The amount necessary to carry out the provisions of this Act shall be provided for in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 39. Migrant Workers Day. — The day of signing by the President of this Act shall be designated as the Migrant Workers Day and shall henceforth be commemorated as such annually.

SEC. 40. Implementing Rules and Regulations. — The departments and agencies charged with carrying out the provisions of this Act shall, within ninety (90) days after the effectivity of this Act, formulate the necessary rules and regulations for its effective implementation.

SEC. 41. Repealing Clause. — All laws, decrees, executive orders, rules and regulations, or parts thereof inconsistent with the provisions of this Act are repealed or modified accordingly.

SEC. 42. Separability Clause. — If for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

SEC. 43. Effectivity Clause. — This Act shall take effect after fifteen (15) days from its publication in the Official Gazette or in at least two (2) national newspapers of general circulation whichever comes earlier.

Approved, 7 June 1995.

I-1.1 Rules Implementing R.A. No. 8042, as amended by R.A. No. 10022

OMNIBUS RULES AND REGULATIONS IMPLEMENTING THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED BY REPUBLIC ACT NO. 10022

Pursuant to the authority vested by law on the Secretary of Foreign Affairs, Secretary of Labor and Employment, Secretary of Health, the Chairman of the National Labor Relations Commission, and the Insurance Commissioner, and in the light of Republic Act No. 10022, An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and For Other Purpose, the following Implementing Rules and Regulations are hereby promulgated:
RULE I
GENERAL PROVISIONS

SECTION 1. Declaration of Policies.—

(a) In the pursuit of an independent foreign policy and while considering national sovereignty, territorial integrity, national interest and the right to self-determination paramount in its relations with other states, the State shall, at all times, uphold the dignity of its citizens whether in the country or overseas, in general, and Filipino migrant workers, in particular, continuously monitor international conventions, adopt/be signatory to and ratify those that guarantee protection to our migrant workers, and endeavor to enter into bilateral agreements with countries receiving overseas Filipino workers.

(b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.

(c) While recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated. The State, therefore, shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development.

(d) The State affirms the fundamental equality before the law of women and men and the significant role of women in nation building. Recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers.

(e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, whether regular/documented or irregular/undocumented, are adequately protected and safeguarded.

(f) The right of Filipino migrant workers and all overseas Filipinos to participate in the democratic decision-making processes of the State and to be represented in institutions relevant to overseas employment is recognized and guaranteed.

(g) The State recognizes that the most effective tool for empowerment is the possession of skills by migrant workers. The government shall expand access of migrant workers to free skills development and enhancement programs through
guidelines on scholarships, training subsidies/grants of the concerned agencies. Pursuant to this and as soon as practicable, the government shall deploy and/or allow the deployment only of skilled Filipino workers.

(h) The State recognizes that non-governmental organizations, trade unions, workers associations, stakeholders and other similar entities duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect. The significant contribution of recruitment and manning agencies shall form part of this partnership.

RULE II
DEFINITION OF TERMS

SECTION 1. Definitions. —

(a) Act — refers to the “Migrant Workers and Overseas Filipinos Act of 1995,” as amended by Republic Act No. 9422 and Republic Act No. 10022.

(b) Authority — refers to a document issued by the Secretary of Labor and Employment authorizing the officers, personnel, agents or representatives of a licensed recruitment/manning agency to conduct recruitment and placement activities in a place stated in the license or in a specified place.

(c) BI — Bureau of Immigration

d) Bona fide Non-Government Organizations (NGOs) — refer to non-government, civil society or faith-based organizations duly recognized by the Philippine Embassy as active partners of the Philippine Government in the protection of Filipino migrant workers and the promotion of their welfare.

(e) CICT — Commission on Information and Communications Technology

(f) Contracted workers — refer to Filipino workers with employment contracts already processed by the POEA for overseas deployment.

(g) DFA — Department of Foreign Affairs

(h) DILG — Department of Interior and Local Government

(i) Direct Hires — refer to workers directly hired by employers for overseas employment as authorized by the Secretary of Labor and Employment and processed by the POEA, including:

1. Those hired by international organizations;
2. Those hired by members of the diplomatic corps; and
3. Name hires or workers who are able to secure overseas employment opportunity with employers without the assistance or participation of any agency.

(j) DOH — Department of Health

(k) DOJ — Department of Justice

(l) DOLE — Department of Labor and Employment
Employment Contract — refers to the following:

1. For land-based workers hired by private recruitment/employment agencies — an individual written agreement between the foreign principal/employer and the worker based on the master employment contract approved by the Administration; and

2. For seafarers — written standard POEA-approved employment contract stipulating a specific period of employment and formulated through tripartite consultation, individually adopted and agreed upon by the principal/employer and the seafarer.

Filipino Service Contractor — refers to any person, partnership or corporation duly licensed as a private recruitment agency by the Secretary of Labor and Employment to recruit workers for its accredited projects or contracts overseas.

Gender Sensitivity — refers to cognizance of the inequalities and inequities prevalent in society between women and men and a commitment to address issues with concern for the respective interest of the sexes.

Head or manage — refers to any of the following acts:

1. Control and supervise the operations of the recruitment/manning agency or branch thereof of which they are employed; or

2. Exercise the authority to hire or fire employees and lay down and execute management policies of the recruitment/manning agency or branch thereof.

Joint and several liability – refers to the liability of the principal/employer and the recruitment/manning agency, for any and all claims arising out of the implementation of the employment contract involving Filipino workers for overseas deployment. If the recruitment/manning agency is a juridical being, the corporate officers and directors and partners, as the case may be, shall themselves be jointly and severally liable with the corporation or partnership for the aforesaid claims and damages.

Irregular/Undocumented Filipino migrant workers — refer to the following:

1. Those who acquired their passports through fraud or misrepresentation;

2. Those who possess expired visas or permits to stay;

3. Those who have no travel document whatsoever;

4. Those who have valid but inappropriate visas; or

5. Those whose employment contracts were not processed by the POEA or subsequently verified and registered on-site by the POLO, if required by law or regulation.

Labor Code — Presidential Decree No. 442, as amended
License — refers to the document issued by the Secretary of Labor and Employment authorizing a person, partnership or corporation to operate a private recruitment/manning agency.

LGU — Local Government Unit

Manning Agency — refers to any person, partnership or corporation duly licensed by the Secretary of Labor and Employment to engage in the recruitment and placement of seafarers for ships plying international waters and for related maritime activities.

NBI — National Bureau of Investigation

CNC — National Computer Center

NLRC — National Labor Relations Commission

Non-licensee — refers to any person, partnership or corporation with no valid license to engage in recruitment and placement of overseas Filipino workers or whose license is revoked, cancelled, terminated, expired or otherwise delisted from the roll of licensed recruitment/manning agencies registered with the POEA.

NRCO — National Reintegration Center for Overseas Filipino Workers

NSCB — National Statistical and Coordination Board

NSO — National Statistics Office

NTC — National Telecommunications Commission

Overseas Filipinos — refer to migrant workers, other Filipino nationals and their dependents abroad.

Overseas Filipino in distress — refers to an Overseas Filipino who has a medical, psycho-social or legal assistance problem requiring treatment, hospitalization, counseling, legal representation as specified in Rule IX of these Rules or any other kind of intervention with the authorities in the country where he or she is found.

Overseas Filipino Worker or Migrant Worker — refers to a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes, or on an installation located offshore or on the high seas. A “person to be engaged in a remunerated activity” refers to an applicant worker who has been promised or assured employment overseas.

OWWA — Overseas Workers Welfare Administration

Placement Fees — refer to any and all amounts charged by a private recruitment agency from a worker for its recruitment and placement services as prescribed by the Secretary of Labor and Employment.

POE A — Philippine Overseas Employment Administration, shall be used interchangeably with the term “Administration.”

POLO — Philippine Overseas Labor Office

Principal — refers to an employer or foreign placement agency hiring or engaging Filipino workers for overseas employment through a licensed private recruitment/manning agency.
Private Recruitment/Employment Agency — refers to any person, partnership or corporation duly licensed by the Secretary of Labor and Employment to engage in the recruitment and placement of workers for overseas employment for a fee which is charged, directly or indirectly, from the workers or employers or both.

Rehires — refer to land-based workers who renewed their employment contracts with the same principal.

Regular/Documented Filipino Migrant Workers — refer to the following:

1. Those who possess valid passports and appropriate visas or permits to stay and work in the receiving country; and
2. Those whose contracts of employment have been processed by the POEA, or subsequently verified and registered on-site by the POLO, if required by law or regulation.

Seafarer — refers to any person who is employed or engaged in overseas employment in any capacity on board a ship other than a government ship used for military or non-commercial purposes. The definition shall include fishermen, cruise ship personnel and those serving on mobile offshore and drilling units in the high seas.

Skilled Filipino Workers — refer to those who have obtained an academic degree, qualification, or experience, or those who are in possession of an appropriate level of competence, training and certification, for the job they are applying, as may be determined by the appropriate government agency.

TESDA — Technical Education and Skills Development Authority

Underage Migrant Workers — refers to those who are below 18 years or below the minimum age requirement for overseas employment as determined by the Secretary of Labor and Employment.

RULE III

DEPLOYMENT OF MIGRANT WORKERS

SECTION 1. Guarantees of Migrant Workers' Rights. — The State shall allow the deployment of OFWs only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of OFWs:

(a) It has existing labor and social laws protecting the rights of workers, including migrant workers; or
(b) It is a signatory to and/or a of multilateral conventions, declarations or resolutions relating to the protection of workers including migrant workers; or
(c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers;

Provided, that the receiving country is taking positive and concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b), and (c) hereof.
“Positive and concrete measures” shall include legislative or executive initiatives, diplomatic negotiations, judicial decisions, programs, projects, activities and such other acts by the receiving country aimed at protecting the rights of migrant workers.

For purposes of the preceding paragraphs, the DFA shall issue a certification that a receiving country complies with any of the guarantees under subparagraphs (a), (b), and (c) hereof, and that the receiving country is taking such positive and concrete measures to protect workers, including migrant workers. The DFA shall issue such certification to the POEA, specifying therein the pertinent provisions of the receiving country’s labor/social law, or the convention/declaration/resolution, or the bilateral agreement/arrangement which protect the rights of migrant workers. Such a certification shall be subject to review by the DFA as often as may be deemed necessary.

The POEA Governing Board shall, in a Resolution, allow only the deployment of OFWs to receiving countries which have been certified by the DFA as compliant with the above stated guarantees.

The POEA shall register OFWs only for receiving countries allowed by the POEA Governing Board, subject to existing standards on accreditation of foreign employers/principals and qualification requirements for workers.

SEC. 2. Liability of the Members of the POEA Governing Board, Government Officials and Employees. — The members of the POEA Governing Board who actually voted in favor of a Resolution allowing the deployment of migrant workers without the DFA certification referred to in the preceding section shall suffer the penalties of removal or dismissal from service with disqualification to hold any appointive public office for five (5) years. Further, the government official or employee responsible for the issuance of the permit or for allowing the deployment of migrant workers in violation of this section and in direct contravention of a Resolution by the POEA Governing Board prohibiting deployment shall be meted the same penalties in this section.

SEC. 3. Deployment of OFWs to Ocean-Going Ships. — The State shall also allow the deployment of OFWs to ships navigating the foreign seas or to installations located offshore or on high seas whose owners/employers are compliant with international laws and standards that protect the rights of migrant workers.

SEC. 4. Deployment to Companies and Contractors with International Operations. — The State shall likewise allow the deployment of OFWs to companies and contractors with international operations: Provided, That they are compliant with standards, conditions and requirements, as embodied in the employment contracts prescribed by the POEA and in accordance with internationally-accepted standards.

SEC. 5. Deployment of Skilled Workers. — As soon as adequate mechanisms for determination of skills are in place and consistent with national interest, the Secretary of Labor and Employment shall allow the deployment only of skilled Filipino workers.

SEC. 6. Termination or Ban on Deployment. — Notwithstanding the provisions of Sections 1 and 5 of this Rule, in pursuit of the national interest or when public
welfare so requires, the POEA Governing Board, after consultation with the DFA, may, at any time, terminate or impose a ban on the deployment of migrant workers.

The POEA Governing Board may, after consultation with the DFA, grant exceptions to the ban or lift the ban.

SEC. 7. Travel Advisory. — The DFA shall issue travel advisories as the need arises. A “travel advisory” is a notice to the traveling public normally for a security reason and based on the prevailing peace and order situation in a specific destination.

SEC. 8. Labor Situationer. — The POEA, in consultation with the DFA, shall disseminate information on labor and employment conditions, migration realities and other facts, as well as adherence of particular countries to international standards on human and workers rights which will adequately prepare individuals into making informed and intelligent decisions about overseas employment. The POEA shall publish, in a timely manner, such advisory in a newspaper of general circulation.

The POEA may undertake other programs or resort to other modes of information and dissemination campaigns, such as the conduct of nationwide, comprehensive and sustainable Pre-Employment Orientation Seminars.

**RULE IV**

**ILLEGAL RECRUITMENT**

SECTION 1. Definition. — For purposes of the Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay or acknowledge any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code, or for the purpose of documenting hired workers with the POEA, which include the act of reprocessing workers through a job order that pertains to non-existent work, work different from the actual overseas work, or work with a different employer whether registered or not with the POEA;
(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency or who has formed, joined or supported, or has contacted or is supported by any union or workers’ organization;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing Rules and Regulations;

(l) Failure to actually deploy a contracted worker without valid reason as determined by the Department of Labor and Employment;

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker’s fault; and

(n) To allow a non-Filipino citizen to head or manage a licensed recruitment/manning agency.

SEC. 2. Crime Involving Economic Sabotage. — Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

SEC. 3. Other Prohibited Acts. — In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

a. Grant a loan to an OFW with interest exceeding eight (8%) percent per annum, which will be used for payment of legal and allowable placement fees and
make the migrant worker issue, either personally or through a guarantor or accommodation party, postdated checks in relation to the said loan;

b. Impose a compulsory and exclusive arrangement whereby an OFW is required to avail of a loan only from specifically designated institutions, entities, or persons;

c. Refuse to condone or renegotiate a loan incurred by an OFW after the latter’s employment contract has been prematurely terminated through no fault of his/her own;

d. Impose a compulsory and exclusive arrangement whereby an OFW is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;

e. Impose a compulsory and exclusive arrangement whereby an OFW is required to undergo training, seminar, instruction or schooling of any kind only from specifically designated institutions, entities or persons, except for recommendatory training mandated by principals/shipowners where the latter shoulder the cost of such trainings;

f. For a suspended recruitment/manning agency to engage in any kind of recruitment activity including the processing of pending workers’ applications;

g. For a recruitment/manning agency or a foreign principal/employer to pass-on to the OFW or deduct from his/her salary the payment of the cost of insurance fees, premium or other insurance related charges, as provided under the compulsory worker’s insurance coverage.

SEC. 4. Persons Responsible. — The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having ownership, control, management or direction of their business and the responsible for the commission of the offense and the responsible employees/agents thereof shall be liable.

SEC. 5. Penalties. —

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) nor more than Two million pesos (P2,000,000.00).

(b) The penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) nor more than Five million pesos (P5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

(c) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Five hundred thousand pesos (P500,000.00) nor more than One million pesos (P1,000,000.00).
If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings.

In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment/manning agency, lending institutions, training school or medical clinic.

SEC. 6. Venue. — A criminal action arising from illegal recruitment as defined under this Rule shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense; Provided, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

SEC. 7. Prescription. — Illegal recruitment cases under this Rule shall prescribe in five (5) years; Provided, however, That illegal recruitment cases involving economic sabotage shall prescribed in twenty (20) years.

SEC. 8. Independent Action. — The filing of an offense punishable under this section shall be without prejudice to the filing of cases punishable under other existing laws, rules or regulations.

RULE V

PROHIBITION OF GOVERNMENT PERSONNEL

SECTION 1. Disqualification. — The following personnel shall be prohibited from engaging directly or indirectly in the business of recruitment of migrant workers;

(a) Any official or employee of the DOLE, POEA, OWWA, DFA, DOJ, DOH, BI, IC, NLRC, TESDA, CFO, NBI, Philippine National Police (PNP), Manila International Airport Authority (MIAA), Civil Aviation Authority of the Philippines (CAAP), and other government agencies involved in the implementation of the Act, regardless of the status of his/her employment; and

(b) Any of his/her relatives within the fourth civil degree of consanguinity or affinity.

Any government official or employee found to be violating this section shall be charged administratively, according to Civil Service Rules and Regulations without prejudice to criminal prosecution.

The government agency concerned shall monitor and initiate, upon its initiative or upon the petition of any private individual, action against erring officials and employees, and/or their relatives.

RULE VI

ANTI-ILLEGAL RECRUITMENT PROGRAMS

SECTION 1. POEA Anti-Illegal Recruitment Programs. — The POEA adopts policies and procedures, prepares and implements intensified programs and strategies towards the eradication of illegal recruitment activities such as, but not limited to the following:
(a) Providing legal assistance to victims of illegal recruitment and related cases which are administrative or criminal in nature, such as but not limited to documentation and counseling.

(b) Prosecution of illegal recruiters, during preliminary investigation and during trial in collaboration with the DOJ prosecutors;

(c) Special operations such as surveillance and closure of establishment or entities suspected to be engaged in illegal recruitment; and

(d) Information and education campaign.

Whenever necessary, the POEA shall coordinate with other appropriate entities in the implementation of said programs.

SEC. 2. Legal Assistance. — The POEA shall provide free legal service to victims of illegal recruitment and related cases which are administrative or criminal in nature in the form of legal advice, assistance in the preparation of complaints and supporting documents, institution of criminal actions.

SEC. 3. Receiving of Complaints for Illegal Recruitment. — Victims of illegal recruitment and related cases which are administrative or criminal in nature may file with the POEA a report or complaint in writing and under oath for assistance purposes.

In regions outside the National Capital Region, complaints and reports involving illegal recruitment may be filed with the appropriate regional office of the POEA or DOLE.

The complaints and reports received by the DOLE shall be endorsed to the POEA for proper evaluation.

SEC. 4. Endorsement of Case to the Proper Prosecution Office. — The POEA, after evaluation and proper determination that sufficient evidence exists for illegal recruitment and other related cases, shall endorse the case to the proper Prosecution Office for the conduct of preliminary investigation.

During preliminary investigation, the complainant may avail of legal assistance or counseling from the POEA.

SEC. 5. Institution of Criminal Action. — The Secretary of Labor and Employment, the POEA Administrator or the DOLE Regional Director, or their duly authorized representatives, or any aggrieved person, may initiate the corresponding criminal action with the appropriate office.

SEC. 6. Affidavits and Testimonies of Operatives. — Affidavits and testimonies of operatives or personnel from the DOLE, POEA and law enforcement agencies who witnessed the acts constituting the offense shall be sufficient basis to prosecute the accused.

SEC. 7. Legal Assistance During Trial. — In the prosecution of offenses punishable under Section 6 of the Act, the Anti-Illegal Recruitment Branch of the POEA shall collaborate with the public prosecutors of the DOJ and, in certain cases, allow the POEA lawyers to take the lead in prosecution.

SEC. 8. Special Allowance for Lawyers of the Prosecution Division. — The POEA lawyers who act as special counsels during preliminary investigation and/
or as collaborating attorneys of the public prosecutors of the DOJ during court hearings shall be entitled to receive additional allowances in such amounts as may be determined by the Administrator.

SEC. 9. Action on the Complaint/Report. — Where the complaint/report alleges that illegal recruitment activities are ongoing, surveillance shall be undertaken at the premises where the alleged illegal recruitment activities are conducted. If illegal recruitment activities are confirmed, the POEA Director of the Licensing and Regulation Office (LRO) shall recommend to the POEA Administrator the institution of criminal action and/or the issuance of a closure order or order of preventive suspension.

SEC. 10. Surveillance. — The POEA and/or designated officials in the DOLE regional offices may, on their own initiative, conduct surveillance on the alleged illegal recruitment activities.

Within two (2) days from the termination of surveillance, a report supported by an affidavit shall be submitted to the Director-LRO or the Regional Director concerned, as the case may be.

SEC. 11. Issuance of Closure Order. — The POEA Administrator or the concerned DOLE Regional Director may conduct an ex parte preliminary examination to determine whether the activities of a non-licensee constitute a danger to national security and public order or will lead to further exploitation of job seekers. For this purpose, the POEA Administrator or the Regional Director concerned or their duly authorized representatives, may examine personally the complainants and/or their witnesses in the form of searching questions and answers and shall take their testimony under oath. The testimony of the complainants and/or witnesses shall be reduced in writing and signed by them and attested by an authorized officer.

If based on a surveillance report, or preliminary examination of the complainants, the POEA Administrator or DOLE Regional Director, or their authorized representative is satisfied that such danger or exploitation exists, a written order may shall be issued by the POEA Administrator for the closure of the establishment being used for illegal recruitment activity.

In case of a business establishment whose license or permit to operate a business was issued by the local government, the Secretary of Labor and Employment, the POEA Administrator or the Regional Director concerned shall likewise recommend to the granting authority the immediate cancellation/revocation of the license or permit to operate its business.

SEC. 12. Implementation of Closure Order. — A closure order shall be served upon the offender or the person in charge of the subject establishment. The closure shall be effectuated by sealing and padlocking the establishment and posting of notice of such closure in bold letters at a conspicuous place in the premises of the establishment. Whenever necessary, the assistance and support of the appropriate law enforcement agencies may be requested for this purpose.

SEC. 13. Report on Implementation. — A report on the implementation of the closure order executed under oath, stating the details of the proceedings undertaken
shall be submitted to the Director-LRO or the Regional Director concerned, as the case may be, within two (2) days from the date of implementation.

SEC. 14. Institution of Criminal Action Upon Closure Order. — The POEA Administrator or the DOLE Regional Director, or their duly authorized representatives, or any law enforcement agencies or any aggrieved person may initiate the corresponding criminal action with the appropriate prosecutor’s office.

SEC. 15. Effect of Closure Order. — All officers and responsible employees of the entity engaged in illegal recruitment activities shall be ordered included in the List of Persons with Derogatory Record and be disqualified/barred from participating in the overseas employment program of the government.

SEC. 16. Who May File a Motion to Reopen the Establishment. — The motion to re-open may be filed only by the following:

(a) The owner of the building or his/her duly authorized representative;
(b) The building administrator or his/her duly authorized representative;
(c) Any other person or entity legitimately operating within the premises closed/padlocked whose operations/activities are distinct from the recruitment activities of the person/entity subject of the closure order.

SEC. 17. Grounds for Reopening the Establishment. —

(a) That the office is not the subject of the closure order;
(b) That the contract of lease with the owner of the building or the building administrator has already been cancelled or terminated. The request to re-open shall be duly supported by an affidavit of undertaking either of the owner of the building or the building administrator that the same will not be leased/rented to any other person/entity for recruitment purposes without the necessary license from the POEA;
(c) That the office is shared by a person/entity not involved in illegal recruitment activities, whether directly or indirectly; or
(d) Any other analogous ground that the POEA may consider as valid and meritorious.

SEC. 18. Motion to Lift a Closure Order. — A motion to lift a closure order which has already been implemented may be entertained only when filed with the Licensing and Regulation Office (LRO) within ten (10) calendar days from the date of implementation. The motion shall be verified and shall clearly state the grounds upon which it is based, attaching supporting documents. A motion to lift which does not conform to the requirements herein set forth shall be denied.

SEC. 19. Who May File Motion to Lift a Closure Order. — The verified motion to lift closure order may be filed only by the person or entity against whom the closure order was issued and implemented or a duly authorized representative.

SEC. 20. Grounds for Lifting A Closure Order. — Lifting of the closure order may be granted on any of the following grounds:

(a) The person/entity is later found out or has proven that it is not involved in illegal recruitment activities, whether directly or indirectly; or
(b) Any other analogous ground that the POEA may consider as valid and meritorious.

Lifting of a closure order is without prejudice to the filing of criminal complaints with the appropriate office against the person alleged to have conducted illegal recruitment activities.

SEC. 21. Appeal. — The order of the POEA Administrator denying the motion to lift a closure order and/or motion to re-open may be appealed to the Secretary of Labor and Employment within ten (10) days from receipt thereof.

SEC. 22. Monitoring of Establishments. — The POEA shall monitor establishments that are subject of closure orders.

Where a re-opened office is subsequently confirmed as still being used for illegal recruitment activities, a new closure order shall be issued which shall not be subject to a motion to lift.

SEC. 23. Pre-Employment Orientation Seminar (PEOS). — The POEA shall strengthen its comprehensive Pre-Employment Orientation Program through the conduct of seminars that will discuss topics such as legal modes of hiring for overseas employment, rights, responsibilities and obligations of migrant workers, health issues, prevention and modus operandi of illegal recruitment and gender sensitivity.

The POEA shall inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights.

SEC. 24. Partnership with LGUs, other Government Agencies and NGOs. — The POEA shall maintain and strengthen its partnership with LGUs, other government agencies and NGOs advocating the rights and welfare of OFWs for the purpose of dissemination of information on all aspects of overseas employment.

For this purpose, the POEA shall continuously provide the concerned entities with updated lists of licensed agencies and entities and information materials such as brochures, pamphlets, posters as well as recent anti-illegal recruitment laws and regulations for distribution to their respective constituents.

RULE VII
MONEY CLAIMS

SECTION 1. Jurisdiction of Labor Arbiters. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the NLRC shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the compliant, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

SEC. 2. Updates in the Global Services Industry. — Consistent with the mandate in the preceding section, the NLRC shall:

a. Endeavor to update and keep abreast with the developments in the global services industry; and
b. Participate in international or local conferences involving migration issues and in relevant overseas missions.

SEC. 3. Joint and Several Liability. — The liability of the principal/employer and the recruitment/placement agency on any and all claims under this Rule shall be joint and several. This liability shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers.

If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners, as the case may be, shall themselves be jointly and severally liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification of the contract made locally or in a foreign country.

SEC. 4. Compromise Agreement. — Any compromise, amicable settlement or voluntary agreement on money claims inclusive of damages under this Rule shall be paid within thirty (30) days from the approval of the settlement by the appropriate authority, unless a different period is agreed upon by the parties and approved by the appropriate authority.

SEC. 5. Effect of Illegal Termination and/or Deduction. — In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deduction from the migrant worker’s salary, the worker shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or three (3) months for every year of the unexpired term, whichever is less. (Note: In Serrano v. Gallant Maritime Services, et al., G.R. No. 167614, March 24, 2009, the Supreme Court declared the phrase “whichever is less” as unconstitutional. Hence, the alternative to pay three months’ salary is no longer available. – CAA)

In case of any unauthorized deduction, the worker shall be entitled to the refund of the deductions made, with interest of twelve per cent (12%) per annum, from the date the deduction was made.

SEC. 6. Effect of Final and Executory Judgment. — In case of final and executory judgment against a foreign employer/principal, it shall be automatically disqualified, without further proceedings, from participating in the Philippine Overseas Employment Program and from recruiting and hiring Filipino workers until and unless it fully satisfies the judgment award.

For this purpose, the NLRC or any party in interest shall furnish the POEA a certified true copy of the sheriff’s return indicating the failure to fully satisfy a final and executory judgment against a foreign employer/principal.

Should the disqualified foreign employer/principal fully satisfy the judgment award, the NLRC or any party in interest shall furnish the POEA a certified true copy of the sheriff’s return indicating full compliance with the judgment which may be a basis to lift the disqualification.
SEC. 7. Voluntary Arbitration. — For OFWs with collective bargaining agreements, the case shall be submitted for voluntary arbitration in accordance with Articles 261 [273] and 262 [274] of the Labor Code. (Note: Labor Code renumbered by R.A. 10150)

RULE VIII
ROLE OF DFA

SECTION 1. Assistance to Nationals as the Third Pillar of Philippine Foreign Policy. — Assistance to nationals is the third pillar of the Philippine foreign policy. Pursuant to the Philippine Foreign Service Act of 1991 and the Migrant Workers and Overseas Filipino Act, as amended, the DFA is mandated to formulate and implement policies and programs to promote and protect the rights and welfare of Filipino migrants, and provide consular and legal assistance to overseas Filipinos in distress.

SEC. 2. International, Regional and Bilateral Initiatives to Protect Overseas Filipino Workers. — The DFA shall continue to advocate in international and regional fora the protection and promotion of the rights and welfare of overseas Filipino workers by taking the lead and/or actively participating in the crafting of international and regional conventions/declarations/agreements that protect their rights and promote their welfare.

The DFA, through its foreign service posts, shall endeavor to improve the conditions of overseas Filipino workers. It shall establish harmonious working relations with the receiving countries through, among others, the forging of bilateral agreements/arrangements or other forms of cooperation.

SEC. 3. One Country-Team Approach. — Under the country-team approach, all officers, representatives and personnel posted abroad, regardless of their mother agencies shall, on a per country basis, act as one country-team with a mission under the leadership of the ambassador.

In receiving countries where there are Philippine consulates, such consulates shall also constitute part of the country-team under the leadership of the ambassador.

In the implementation of the country-team approach, visiting Philippine delegations shall be provided full support and information.

SEC. 4. Negotiations of International Agreements. — The DFA shall be the lead agency that shall advise and assist the President in planning, organizing, directing, coordinating and evaluating the total national effort in the field of foreign relations pursuant to the Revised Administrative Code (Executive Order No. 292).

RULE IX
LEGAL ASSISTANT FOR MIGRANT WORKERS AFFAIRS

SECTION 1. Function and Responsibilities. — The Legal Assistant for Migrant Workers Affairs under the Department of Foreign Affairs shall be primarily responsible
for the provision and over-all coordination of all legal assistance services to Filipino Migrant Workers as well as Overseas Filipinos in distress. In the exercise of these primary responsibilities, he/she shall discharge the following duties and functions:

(a) Issue the guidelines, procedures and criteria for the provision of legal assistance services to Filipino Migrant Workers;

(b) Establish close linkages with the DOLE, POEA, OWWA and other government agencies concerned, as well as with non-governmental organizations assisting migrant workers, to ensure effective coordination in providing legal assistance to migrant workers;

(c) When necessary, tap the assistance of the Integrated Bar of the Philippines (IBP), other bar associations, legal experts on labor, migration and human rights laws, reputable law firms, and other civil society organizations, to complement government services and resources to provide legal assistance to migrant workers;

(d) Administer the Legal Assistance Fund for Migrant Workers and to authorize its disbursement, subject to approved guidelines and procedures, governing its use, disposition and disbursement;

(e) Keep and maintain an information system for migration as provided in Section 20 of the Act;

(f) Prepare its budget for inclusion in the Department of foreign Affair’s budget in the annual General Appropriations Act; and

(g) Perform such other functions and undertake other responsibilities as may be useful, necessary or incidental to the performance of his/her mandate.

SEC. 2. Qualifications and Authority. — The Legal Assistant for Migrant Workers Affairs shall be headed by a lawyer of proven competence in the field of law with at least ten (10) years experience as a legal practitioner and who must not have been a candidate to an elective office in the last local or national elections. He/she shall be appointed by the President of the Philippines. He/she shall have the title, rank, salary, and privileges of an Undersecretary of Foreign Affairs, and shall head the Office of the Undersecretary for Migrant Workers’ Affairs (OUMWA) of the Department of Foreign Affairs.

He/she shall have authority to hire private lawyers, domestic or foreign, in order to assist him/her in the effective discharge of the functions of his/her Office.

SEC. 3. Legal Assistance Fund. — The Legal Assistance Fund created under the Act shall be used exclusively to provide legal services for Migrant Workers and Overseas Filipinos in distress in accordance with approved guidelines, criteria and procedures of the DFA.

It shall be used inter alia for the following specific purposes:

(a) In the absence of a counsel de oficio or court-appointed lawyer, payment of attorney’s fees to foreign lawyers for their services in representing migrant workers facing criminal and labor cases abroad, or in filing cases against erring or abusive employers abroad, provided, that no amount shall be disbursed for the appeal of cases
except when the penalty meted is life imprisonment or death or under meritorious circumstances as determined by the Undersecretary for Migrant Workers Affairs;

(b) Bail bonds to secure the temporary release of workers under detention upon the recommendation of the lawyer and the foreign service post concerned; and

(c) Court fees, charges and other reasonable litigation expenses when so recommended by their lawyers.

RULE X
ROLE OF DOLE

SECTION 1. On-Site Protection. — The DOLE shall see to it that labor and social welfare laws in the foreign countries are fairly applied to migrant workers and whenever applicable, to other overseas Filipinos, including the grant of legal assistance and the referral to proper medical centers or hospitals.

SEC. 2. POLO Functions. — The DOLE overseas operating arm shall be the POLO, which shall have the following functions and responsibilities:

(a) Ensure the promotion and protection of the welfare and interests of OFWs and assist them in all problems arising out of employer-employee relationships;

(b) Coordinate the DOLE’s employment promotion mandate, consistent with the principles of the Act;

(c) Verify employment contracts and other employment-related documents;

(d) Monitor and report to the Secretary of Labor and Employment on situations and policy developments in the receiving country that may affect OFWs in particular and Philippine labor policies, in general;

(e) Supervise and coordinate the operations of the Migrant Workers and Other Overseas Filipinos Resource Center; and

(f) Such other functions and responsibilities as may be assigned by the Secretary of Labor and Employment.

A. POEA

SEC. 3. Regulation of Private Sector. — The POEA shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements. It shall be responsible for the regulation and management of overseas employment from the pre-employment stage, securing the best possible employment terms and conditions for overseas Filipino workers, and taking into consideration the needs of vulnerable sectors and the peculiarities of sea-based and land-based workers.
SEC. 4. Hiring through the POEA. — The Administration shall recruit and place workers primarily on government-to-government arrangements. In the recruitment and placement to service the requirements for trained and competent Filipino workers of foreign governments and their instrumentalities, and such other employers as public interests may require, the Administration shall deploy only to countries where the Philippines has concluded bilateral agreements or arrangements: Provided that such countries shall guarantee to protect the rights of Filipino migrant workers; and provided further that such countries shall observe and/or comply with the international laws and standards for migrant workers.

SEC. 5. Foreign Employers Guarantee Fund. — For migrant workers recruited by the POEA on a government to government arrangement, the POEA shall, through relevant guidelines, establish and administer a Foreign Employers Guarantee Fund which shall be answerable for the workers’ monetary claims arising from breach of contractual obligations.

SEC. 6. Jurisdiction of the POEA. — The POEA shall exercise original and exclusive jurisdiction to hear and decide:

(a) all pre-employment/recruitment violation cases which are administrative in character, involving or arising out of violations of Rules and Regulations relating to licensing and registration, including refund of fees collected from the workers and violation of the conditions for issuance of license or authority to recruit workers; and

(b) disciplinary action cases and other special cases, which are administrative in character, involving employers, principals, contracting partners and OFWs processed by the POEA.

SEC. 7. Venue. — Pre-employment/recruitment violation cases may be filed with the POEA Adjudication Office or at any DOLE/POEA regional office of the place where the complainant applied or was recruited, at the option of the complainant. The office where the complaint was first filed shall take cognizance of the case.

Disciplinary action cases and other special cases shall be filed with the POEA Adjudication Office.

SEC. 8. Who may file. — Any aggrieved person may file a complaint in writing and under oath for violation of the Labor Code and the POEA Rules and Regulations and other issuances.

For this purpose, an aggrieved person is one who is prejudiced by the commission of a violation or any of the grounds for disciplinary actions provided in the POEA Rules and Regulations.

However, the Administration, on its own initiative, may conduct proceedings based on reports of violations or any of the grounds for disciplinary actions provided in the POEA Rules and Regulations and other issuances on overseas employment, subject to preliminary evaluation.

SEC. 9. Prescriptive Period. — All pre-employment/recruitment violation and disciplinary action cases shall be barred if not commenced or filed with the Administration within three (3) years after such cause of action accrued.
SEC. 10. Imposition of Administrative Penalty. — For pre-employment/recruitment violation cases, the Administrator, in the exercise of adjudicatory power, may impose the penalty of reprimand, suspension, or cancellation or revocation of license.

Where the penalty of suspension is imposed, the Administrator shall, in appropriate cases, allow the lifting of suspension of erring recruitment/manning agencies upon the payment of fine of fifty thousand pesos (P50,000.00) for every month of suspension.

For disciplinary action cases against employees, the Administrator may impose disqualification from the overseas employment program. For disciplinary action cases against workers, the Administrator may likewise impose suspension or disqualification.

SEC. 11. Appeal. — The decision of the Administration may be appealed to the Secretary of Labor and Employment within fifteen (15) days from the receipt of the Decision.

B. OWWA

SEC. 12. Programs and Services. — The OWWA shall continue to formulate and implement welfare programs for overseas Filipino workers and their families in all phases of overseas employment. It shall also ensure the awareness by the OFWs and their families of these programs and other related government programs.

SEC. 13. Assistance in the Enforcement of Contractual Obligations. — In the implementation of OWWA welfare programs and services and in line with the One-Country Team Approach for on-site services, the Welfare Officer or in his/her absence, the coordinating officer shall:

1. Provide the Filipino migrant worker and his/her family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals; and
2. Make representation and may call on the agencies or entities concerned to conferences or conciliation meetings for the purpose of settling the complaints or problems brought to his/her attention. If there is no final settlement at the jobsite and the worker is repatriated back to the Philippines, conciliation may continue at the OWWA Central Office, or in any OWWA Regional Welfare Office.

C. NRCO

SEC. 14. Establishment of the National Reintegration Center for OFWs. — The NRCO is hereby created in the Department of Labor and Employment for returning Filipino migrant workers, which shall provide the mechanism of their reintegration into Philippine society, serve as a promotion house for their local employment, and tap their skills and potentials for national development.

The NRCO shall, in coordination with appropriate government and non-government agencies, serve as a One-Stop Center that shall address the multi-faceted needs of OFW-returnees and their families.
For this purpose, TESDA, the Technology Resource Center (TRC), and other government agencies involved in training and livelihood development shall give priority to household service workers and entertainers.

The NRCo shall be attached to the Office of the Administrator of OWWA for supervision and policy guidance.

SEC. 15. Functions of the NRCo. — The NRCo shall undertake the following:

(a) Develop and support programs and projects for livelihood, entrepreneurship, savings, investments and financial literacy for returning Filipino migrant workers and their families in coordination with relevant stakeholders, service providers and international organizations;

(b) Coordinate with appropriate stakeholders, service providers and relevant international organizations for the promotion, development and the full utilization of overseas Filipino worker returnees and their potentials;

(c) Institute, in cooperation with other government agencies concerned, a computer-based information system on returning Filipino migrant workers which shall be accessible to all local recruitment agencies and employers, both public and private;

(d) Provide a periodic study and assessment of job opportunities for returning Filipino migrant workers;

(e) Develop and implement other appropriate programs to promote the welfare of returning Filipino migrant workers;

(f) Maintain an internet-based communication system for on-line registration of returning OFWs and interaction with clients, and maintain and upgrade computer-based service capabilities of the NRCo;

(g) Develop capacity-building programs for returning overseas Filipino workers and their families, implementers, service providers, and stakeholders;

(h) Conduct research for policy recommendations and program development; and

(i) Undertake other programs and activities as may be determined by the Secretary of Labor and Employment.

SEC. 16. Formulation of Program. — The DOLE, OWWA, TESDA, and POEA shall, within sixty (60) days from effectivity of these Rules, formulate a program that would motivate migrant workers to plan for productive options such as entry into highly technical jobs or undertakings, livelihood and entrepreneurial development, better wage employment, and investment of savings.

D. Migrant Workers and Other Overseas Filipinos Resource Center

SEC. 17. Establishment of Migrant Workers and other Overseas Filipino Resource Center. — A Migrant Workers and other Overseas Filipinos Resource Center shall be established in countries where there are large concentration of OFWs,
as determined by the Secretary of Labor and Employment. It shall be established within the premises of the Philippine Embassy or the Consulate and be under the administrative jurisdiction of the Philippine Embassy.

When the Migrant Workers and other Overseas Filipinos Resource Center is established outside the premises of the Embassy or Consulate, the Department of Foreign Affairs shall exert its best effort to secure appropriate recognition from the receiving government in accordance with applicable laws and practices.

**SEC. 18. Services.** — The Migrant Workers and other Overseas Filipinos Resource Center shall provide the following services:

(a) Counseling and legal services;
(b) Welfare assistance including the procurement of medical and hospitalization services;
(c) Information, advisory programs to promote social integration such as post-arrival orientation, settlement and community networking services and activities for social interaction;
(d) Registration of irregular/undocumented workers to bring them within the purview of the Act;
(e) Implementation of DOLE and OWWA Programs;
(f) Human resource development, such as training and skills upgrading;
(g) Gender-sensitive programs and activities to assist particular needs of migrant workers;
(h) Orientation program for returning workers and other migrants;
(i) Monitoring of the daily situation, circumstances and activities affecting migrant workers and other overseas Filipinos;
(j) Ensuring that labor and social welfare laws in the receiving country are fairly applied to migrant workers and other overseas Filipinos; and
(k) Conciliation of disputes arising from employer-employee relationship, in accordance with this Rule.

**SEC. 19. Personnel.** — Each Migrant Workers and Other Overseas Filipinos Resource Center shall be staffed by Foreign Service personnel, a Labor Attaché and other service attachés or officers who represent Philippine government agencies abroad.

The following personnel may be assigned to the Center:

a. Psychologists, Social Workers, and a Shari’a or Human Rights Lawyer, in highly problematic countries as categorized by the DFA and DOLE and where there is a concentration of Filipino migrant workers;
b. Individual volunteers and representatives from bona fide non-government organizations from the receiving countries, if available and necessary as determined by the Labor Attaché in consultation with the Chief of Mission;
c. Public Relations Officer or Case Officer conversant, orally and in writing, with the local language, laws, customs and practices; and/or
d. Legal Officers (POEA/NLRC/DOLE) and such other professionals deemed necessary by the Secretary of Labor and Employment.

SEC. 20. Administration of the Center. — The POLO through the Labor Attaché shall supervise and coordinate the operations of the Migrant Workers and other Overseas Filipinos Resource Center and shall keep the Chief of Mission informed and updated on all matters affecting it at least quarterly through a written report addressed to the Chief of Mission.

SEC. 21. Round-the Clock Operations. — The Migrant Workers and other Overseas Filipino Resource Center shall operate on a 24-hour basis including Saturdays, Sundays and holidays. A counterpart 24-hour Information and Assistance Center to ensure a continuous network and coordinative mechanism shall be established at the DFA and the DOLE/OWWA.

SEC. 22. Budget. — The establishment, yearly maintenance and operating costs of the Migrant Workers and other Overseas Filipinos Resource Centers, including the costs of services and programs not specially funded under the Act, shall be sourced from the General Appropriations Act (GAA) and shall be included in the annual budget of the DOLE.

However, the salaries and allowances of overseas personnel shall be sourced from the respective agencies’ budgets.

RULE XI
ROLE OF DOH

SECTION 1. Regulation of Medical Clinics. — The Department of Health (DOH) shall regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations, hereinafter referred to as health examinations, on Filipino migrant workers as requirement for their overseas employment. Pre-Employment Medical Examinations (PEME) for overseas work applicants shall be performed only in DOH-accredited medical clinics and health facilities utilizing the standards set forth by DOH. Pursuant to this, the DOH shall ensure that:

(a) The fees for the health examinations are regulated, regularly monitored and duly published to ensure that the said fees are reasonable and not exorbitant. The DOH shall set a minimum and maximum range of fees for the different examinations to be conducted, based on a thorough and periodic review of the cost of health examinations and after consultation with concerned stakeholders. The applicant-worker shall pay directly to the DOH-accredited medical clinics or health facilities where the PEME is to be conducted.

(b) The Filipino migrant workers shall only be required to undergo health examinations when there is reasonable certainty by the hiring recruitment/manning agency pursuant to POEA Rules and Regulations that he/she will be hired and deployed to the jobsite and only those health examinations which are absolutely necessary for the type of job applied for those specifically required by the foreign employer shall be conducted;
(c) No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations on migrant workers for certain receiving countries;

(d) Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his/her rights as a patient are respected. The decking practice, which requires overseas Filipino workers to go first to an office for registration and then farmed out to a medical clinic located elsewhere, shall not be allowed;

(e) Within a period of three (3) years from the effectivity of the Act, all DOH regional and/or provincial hospitals under local government units shall establish and operate clinics that can serve the health examination requirements of Filipino migrant workers to provide them easy access to such clinics all over the country and lessen their transportation and lodging expenses; and

(f) All DOH-accredited medical clinics, including the DOH-operated clinics, conducting health examinations for Filipino migrant workers shall observe the same standard operating procedures and shall comply with internationally-accepted standards in their operations to conform with the requirements of receiving countries or of foreign employers/principals.

SEC. 2. Temporary Disqualification of Foreign Employers. — Any foreign employer who does not honor the results of valid health examinations conducted by a DOH-accredited or DOH-operated clinic shall be temporarily disqualified from participating in the overseas employment program, pursuant to POEA Rules and Regulations. The temporary disqualification of the employer may be lifted only upon the latter’s unqualified acceptance of the result of the examination.

SEC. 3. Liability of Medical Clinic or Health Facility. — In case an OFW is found to be not medically fit within fifteen (15) days upon his/her arrival in the country of destination, the medical clinic or health facility that conducted the health examination/s of such OFW shall pay for his/her repatriation back to the Philippines and the cost of deployment of such worker.

Any DOH-accredited clinic which violates any provisions of this section shall, in addition to any other liability it may have incurred, suffer the penalty of revocation of its DOH-accredited if after investigation, the medical reason for repatriation could have been detected at the time of examination using the DOH PEME package as required by the employer/principal or the receiving country.

SEC. 4. Liability of Government Personnel for Nonfeasance and Malfeasance of their Duties under the Act. — Any government official or employee who violates any provision of this Rule shall be removed or dismissed from service with disqualification to hold any appointive public office for five (5) years. Such penalty is without prejudice to any other liability which he/she may have incurred under existing laws, rules or regulations.

SEC. 5. Issuance of Guidelines. — Within sixty (60) days from effectivity of these Rules, the DOH shall issue the pertinent guidelines to implement the provisions of this Rule.
RULE XII
ROLE OF LGUs

SECTION 1. Role in Anti-Illlegal Recruitment and the Overseas Employment Program. — In the fight against illegal recruitment, the local government units (LGUs) and the Department of the Interior and Local Government (DILG), in partnership with the POEA, other concerned government agencies, and non-government organizations advocating the rights and welfare of OFWs, shall take a proactive stance by being primarily responsible for the dissemination of information to their constituents on all aspects of overseas employment. To carry out this task, the following shall be undertaken by the LGUs:

a. Launch an aggressive campaign against illegal recruitment. They shall provide legal assistance to victims of illegal recruitment and, when necessary, coordinate with appropriate government agencies regarding the arrest and/or prosecution of illegal recruiters. They shall report any illegal recruitment activity to the POEA for appropriate action;

b. Provide a venue for the POEA, other government agencies, NGOs, and trained LGU personnel to conduct Pre-Employment Orientation Seminars (PEOS) to their constituents on a regular basis;

c. Establish OFW help desks or kiosks in their localities with the objective of providing current information to their constituents on all the processes and aspects of overseas employment. Such desks or kiosks shall, as far as practicable, be fully computerized and shall be linked to the database of all concerned government agencies, particularly the POEA for its updated lists of overseas job orders and licensed agencies in good standing; and

d. Establish and maintain a database pertaining to a master list of OFWs residing in their respective localities, classified according to occupation, job category, civil status, gender, by country or state of destination, including visa classification, name, address, and contact number of the employer.

RULE XIII
REPARTIATION OF WORKERS

SECTION 1. Primary Responsibility for Repatriation. — The repatriation of the worker or his/her remains, and the transport of his/her personal effects shall be the primary responsibility of the principal, employer or agency that recruited or deployed him/her abroad. All costs attendant thereto shall be borne by the principal, employer or the agency concerned.

SEC. 2. Obligation to Advance Repatriation Costs. — Notwithstanding the provisions of Section 37-A of the Act, the primary responsibility to repatriate entails the obligation on the part of the principal or agency to advance the repatriation and other attendant costs, including plane fare, deployment cost of the principal, and immigration fines and penalties, to immediately repatriate the worker should the need for it arise, without a prior determination of the cause of the termination of
the worker’s employment. However, after the worker has returned to the country, the principal or agency may recover the cost of repatriation from the worker if the termination of employment was due solely to his/her fault.

In countries where there is a need to secure an exit visa for the worker’s repatriation, the principal or employer shall be primarily responsible for securing the visa at no cost to the worker. The agency shall coordinate with the principal or employer in securing the visa.

Every contract for overseas employment shall provide for the primary responsibility of the principal or employer and agency to advance the cost of plane fare, and the obligation of the worker to refund the cost thereof in case his/her fault is determined by the Labor Arbiter.

SEC. 3. Repatriation Procedure. — When a need for repatriation arises and the foreign employer fails to provide for its cost, the POLO or responsible personnel on-site shall simultaneously notify OWWA and the POEA of such need. The POEA shall issue a notice requiring the agency concerned to provide, within 48 hours from such notice, the plane ticket or the prepaid ticket advice (PTA) to the POLO or Philippine Embassy. The agency shall notify the POEA of such compliance, which shall then inform OWWA of the action of the agency.

In case there is a need to secure an exit visa for the repatriation of the worker, the employer or principal shall have fifteen (15) days from notice to secure such an exit visa. Moreover, any agency involved in the worker’s recruitment, processing, and/or deployment shall also coordinate with the principal or employer in securing the visa.

SEC. 4. Action on Non-Compliance. — If the employment agency fails to provide the ticket or PTA within 48 hours from receipt of the notice, the POEA shall suspend the documentary processing of the agency or impose such sanctions as it may deem necessary. Upon notice from the POEA, OWWA shall advance the costs of repatriation with recourse to the agency or principal. The administrative sanction shall not be lifted until the agency reimburses the OWWA of the cost of repatriation with legal interest.

If the principal or employer and/or agency fail to secure the exit visa within a period of fifteen (15) days from receipt of the POEA notice, the POEA shall suspend the employer or principal from participating in the overseas employment program, and may impose suspension of documentary processing on the agency, if warranted.

SEC. 5. Emergency Repatriation. — The OWWA, in coordination with DFA, and in appropriate situations, with international agencies, shall undertake the repatriation of workers in cases of war, epidemic, disasters or calamities, natural or man-made, and other similar events without prejudice to reimbursement by the responsible principal or agency within sixty (60) days from notice. In such case, the POEA shall simultaneously identify and give notice to the agencies concerned.

SEC. 6. Mandatory Repatriation of Underage Migrant Workers. — Upon discovery or upon being informed of the presence of migrant workers whose actual ages fall below the minimum age requirement for overseas deployment, the
responsible officers in the Foreign Service shall without delay repatriate said workers and advise the DFA through the fastest means of communication available of such discovery and other relevant information.

In addition to requiring the recruitment/manning agency to pay or reimburse the costs of repatriation, the POEA shall cancel the license of the recruitment/manning agency that deployed an underage migrant worker after notice and hearing and shall impose a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00). The POEA shall also order the recruitment/manning agency to refund all fees pertinent to the processing of papers or documents in the deployment, to the underage migrant worker or to his parents or guardian in a summary proceeding conducted.

The refund shall be independent of and in addition to the indemnification for the damages sustained by the underage migrant worker. The refund shall be paid within thirty (30) days from the date the POEA is officially informed of the mandatory repatriation as provided for in the Act.

SEC. 7. Other Cases of Repatriation. — In all cases where the principal or agency of the worker cannot be identified, cannot be located or had ceased operations, and the worker is in need and without means, the OWWA personnel at the jobsite, in coordination with the DFA, shall cause the repatriation in appropriate cases. All costs attendant to repatriation borne by the OWWA may be charged to the Emergency Repatriation Fund provided in the Act, without prejudice to the OWWA requiring the agency/employer/insurer or the worker to reimburse the cost of repatriation.

SEC. 8. Emergency Repatriation Fund. — When repatriation becomes immediate and necessary, the OWWA shall advance the needed costs from the Emergency Repatriation Fund without prejudice to reimbursement by the deploying agency and/or principal, or the worker in appropriate cases. Simultaneously, the POEA shall ask the concerned agency to work towards reimbursement of costs advanced by the OWWA. In cases where the cost of repatriation shall exceed One hundred million pesos (P100,000,000.00), the OWWA shall make representation with the Office of the President for immediate funding in excess of said amount.

SEC. 9. Prohibition on Bonds and Deposits. — In no case shall a private recruitment/manning agency require any bond or cash deposit from the worker to guarantee performance under the contract or his/her repatriation.

RULE XIV

SHARED GOVERNMENT INFORMATION SYSTEM FOR MIGRATION

SECTION 1. Composition. — An Inter-Agency Committee shall be established to implement a shared government information system for migration. The Inter-Agency Committee shall be composed of the following agencies:

a) Department of Foreign Affairs;

b) Department of Labor and Employment and concerned attached agencies;

c) Department of Justice;
d) Department of the Interior and Local Government;

e) Department of Health and concerned attached agencies;

f) Department of Social Welfare and Development;

g) Department of Tourism;

h) Insurance Commission;

i) Commission on Filipinos Overseas;

j) Bureau of Immigration;

k) National Bureau of Investigation;

l) National Telecommunications Commission;

m) Commission on Information and Communications Technology;

n) National Computer Center;

o) National Statistical and Coordination Board;

p) National Statistics Office;

q) Home Development Mutual Fund; and

r) Other government agencies concerned with overseas employment.

SEC. 2. Availability, Accessibility and Linkaging of Computer Systems. — Initially, the Inter-Agency Committee shall make available to itself the information contained in existing data bases/files of its member agencies. The second phase shall involve linkaging of computer facilities systems in order to allow the free-flow data exchanges and sharing among concerned agencies.

SEC. 3. Chair and Technical Assistance. — The Inter-Agency Committee shall be co-chaired by the Department of Foreign Affairs and the Department of Labor and Employment. The National Computer Center shall provide the necessary technical assistance and shall set the appropriate information and communications technology standards to facilitate the sharing of information among the member agencies.

SEC. 4. Declassification and Sharing of Existing Information. — The Inter-Agency Committee shall convene to identify existing databases, which shall be declassified and shared among member agencies. These shared databases shall initially include, but not be limited to, the following information:

a) Master lists of Filipino migrant workers/overseas Filipinos classified according to occupation/job category, civil status, by country/state of destination including visa classification;

b) Inventory of pending legal cases involving Filipino migrant workers and other Filipino migrant workers and other Filipino nationals, including those serving prison terms;

c) Master list of departing/arriving Filipinos;

d) Statistical profile on Filipino migrant workers/overseas Filipinos/tourists;

e) Blacklisted foreigners/undesirable aliens;

f) Basic data on legal systems, immigration policies, marriage laws and civil and criminal codes in receiving countries particularly those with large numbers of Filipinos;
APPENDIX I-1.1: Rules Implementing R.A. No. 8042  
(As amended by R.A. No. 10022)

g) List of labor and other human rights instruments where receiving countries are signatories;  
h) A tracking system of past and present gender desegregated cases involving male and female migrant workers, including minors; and  
i) List of overseas posts, which may render assistance to overseas Filipinos in general, and migrant workers, in particular.  
j) List of licensed recruiters and recruitment agencies;  
k) List of accredited foreign employers;  
l) List of recruiters and recruitment agencies with decided/pending criminal/civil/administrative cases, and their dispositions; and  
m) Such other information as may be deemed necessary by the Inter-Agency Committee.

The Inter-Agency Committee shall establish policies, guidelines, and procedures in implementing this Rule, including declassification of information.

SEC. 5. Confidentiality of Information. — Information and data acquired through this shared information system shall be treated as confidential and shall only be used for official and lawful purposes, related to the usual functions of the Inter-Agency Committee members, and for purposes envisioned by the Act.

SEC. 6. Regular Meetings. — The Inter-Agency Committee shall meet regularly to ensure the immediate and full implementation of Section 20 of the Act and shall explore the possibility of setting up a central storage facility for the data on migration. The progress of the implementation shall be included in the report of the DFA and the DOLE under Section 33 of the Act.

The Inter-Agency Committee shall convene thirty (30) days from effectivity of these Rules to prioritize the discussion of the following, inter alia: data to be shared, frequency of reporting, and timeless and availability of data.

SEC. 7. Secretariat. — A secretariat, which shall provide administrative and support services to the Inter-Agency Committee shall be based in the DFA.

SEC. 8. Funds. — The Philippine Charity Sweepstakes Office shall allocate an initial amount of P10 Million to carry out the provisions of this Rule. Thereafter, the actual budget of the Inter-Agency Committee shall be drawn from the General Appropriations Act in accordance with Section 26 of Republic Act No. 10022.

The E-Government Fund may be tapped for purposes of fund sourcing by the Inter-Agency Committee.

RULE XV
MIGRANT WORKERS LOAN GUARANTEE FUND

SECTION 1. Definitions. —

(a) Pre-Departure Loans — refer to loans granted to departing migrant workers covered by new contracts to satisfy their pre-departure requirements such as payments for placement/processing fees, airplane fare, subsistence allowance, cost of clothing and pocket money.
(b) *Family Assistance Loans* — refer to loans granted to currently employed migrant workers or their eligible dependents/families in the Philippines to tide them over during emergency situations.

(c) *Guarantee Agreement* — refers to a contract between the participating financial institution and OWWA whereby the latter pledges to pay a loan obtained by a migrant worker from the former in case the worker defaults.

(d) *GFIs* — refer to government financial institutions.

**SEC. 2. Loan Guarantee Fund.** — The Migrant Workers Loan Guarantee Fund is hereby established:

(a) to prevent any recruiter from taking advantage of workers seeking employment abroad by expanding the grant of Pre-Departure and Family Assistance Loans to covered migrant workers;

(b) to establish and operate a guarantee system in order to provide guarantee cover on the pre-departure and family assistance loans of migrant workers who lack or have insufficient collateral or securities; and

(c) to ensure the participation of GFIs in extending loan assistance to needy migrant workers who are to be engaged or is engaged for a remunerated activity abroad.

**SEC. 3. Coverage and Scope.** — All departing migrant workers who need financial assistance to pay or satisfy their pre-departure expenses may avail of the Pre-Departure Loans.

Currently employed migrant workers or their eligible dependents who need emergency financing assistance may avail of the Family Assistance Loan.

**SEC. 4. Administration of the Fund.** — Pursuant to Section 21 of the Act, the amount of One hundred million pesos (P100,000,000.00) from the Capital Funds of OWWA shall constitute the Migrant Workers Loan Guarantee Fund. The Fund, which shall be administered by the OWWA, shall be used exclusively to guarantee the repayment of Pre-Departure and Family Assistance Loans granted by participating GFIs.

All existing revolving funds earmarked for the Pre-Departure and Family Assistance Loans shall revert back to the OWWA Capital Fund.

**SEC. 5. Financing Scheme.** — The OWWA shall initiate arrangements with GFIs to implement mutually agreed financing schemes, that will expand the Pre-Departure and Family Assistance Loans.

**SEC. 6. Guarantee Agreement.** — No loan shall be considered covered by a guarantee unless a Guarantee Agreement has been prepared and approved by both the participating financial institution and the OWWA.

**RULE XVI**

**COMPULSORY INSURANCE COVERAGE FOR AGENCY-HIRED WORKERS**

**SECTION 1. Migrant Workers Covered.** — In addition to the performance bond to be filed by the recruitment/manning agency under Section 10 of the Act,
each migrant worker deployed by a recruitment/manning agency shall be covered by a compulsory insurance policy which shall be secured at no cost to the said worker.

SEC. 2. Policy Coverage. — Such insurance policy shall be effective for the duration of the migrant worker’s employment contract and shall cover, at the minimum:

(a) Accidental death, with at least Fifteen Thousand United States Dollars (US$15,000.00) survivor’s benefit payable to the migrant worker’s beneficiaries;

(b) Natural death, with at least Ten Thousand United States Dollars (US$10,000.00) survivor’s benefit payable to the migrant worker’s beneficiaries;

(c) Permanent total disablement, with at least Seven Thousand Five Hundred United States Dollars (US$7,500) disability benefit payable to the migrant worker. The following disabilities shall be deemed permanent: total, complete loss of sight of both eyes; loss of two limbs at or above the ankles or wrists; permanent complete paralysis of two limbs; brain injury resulting to incurable imbecility or insanity;

(d) Repatriation cost of the worker when his/her employment is terminated by the employer without any valid cause, or by the employee with just cause, including the transport of his/her personal belongings. In case of death, the insurance provider shall arrange and pay for the repatriation or return of the worker’s remains. The insurance provider shall also render any assistance necessary in the transport, including but not limited to, locating a local and licensed funeral home, mortuary or direct disposition facility to prepare the body for transport, completing all documentation, obtaining legal clearances, procuring consular services, providing death certificates, purchasing the minimally necessary casket or air transport container, as well as transporting the remains including retrieval from site of death and delivery to the receiving funeral home. This provision shall be without prejudice to the provisions of Rule XIII of these Rules and Regulations.

(e) Subsistence allowance benefit, with at least One Hundred United States Dollars (US$100) per month for a maximum of six (6) months for a migrant worker who is involved in a case or litigation for the protection of his/her rights in the receiving country.

(f) Money claims arising from employer’s liability which may be awarded or given to the worker in a judgment or settlement of his/her case in the NLRC. The insurance coverage for money claims shall be equivalent to at least three (3) months salaries for every year of the migrant worker’s employment contract;

(g) Compassionate visit. When a migrant worker is hospitalized and has been confined for at least seven (7) consecutive days, he shall be entitled to a compassionate visit by one (1) family member or a requested individual. The insurance company shall pay for the transportation cost of the family member or requested individual to the major airport closest to the place of hospitalization of the worker. It is, however, the responsibility of the family member or requested individual to meet all visa and travel document requirements;
(h) Medical evacuation. When an adequate medical facility is not available proximate to the migrant worker, as determined by the insurance company’s physician and a consulting physician, evacuation under appropriate medical supervision by the mode of transport necessary shall be undertaken by the insurance provider; and

(i) Medical repatriation. When medically necessary as determined by the attending physician, repatriation under medical supervision to the migrant worker’s residence shall be undertaken by the insurance provider at such time that the migrant worker is medically cleared for travel by commercial carrier. If the period to receive medical clearance to travel exceeds fourteen (14) days from the date of discharge from the hospital, an alternative appropriate mode of transportation, such as air ambulance, may be arranged. Medical and non-medical escorts may be provided when necessary. This provision shall be without prejudice to the provisions of Rule XIII of these Rules and Regulations.

SEC. 3. Duty to Disclose and Assist. — It shall be the duty of the recruitment/manning agency, in collaboration with the insurance provider, to sufficiently explain to the migrant worker, before his/her departure, and to at least one of his/her beneficiaries the terms and benefits of the insurance coverage, including the claims procedure.

Also, in filing a claim with the insurance provider, it shall be the duty of the recruitment/manning agency to assist the migrant worker and/or the beneficiary and to ensure that all information and documents in the custody of the agency necessary for the claim must be readily accessible to the claimant.

SEC. 4. Qualification of Insurance Companies. — Only reputable private insurance companies duly registered with the (IC), which are in existence and operational for at least five (5) years, with a net worth of at least Five hundred million pesos (P500,000,000.00) to be determined by the IC, and with a current year certificate of authority shall be qualified to provide for the worker’s insurance coverage. Insurance companies who have directors, partners, officers, employees or agents with relatives, within the fourth civil degree of consanguinity or affinity, who work or have interest in any of the licensed recruitment/manning agencies or in any of the government agencies involved in the overseas employment program shall be disqualified from providing this workers’ insurance coverage. It shall be the duty of the said directors, partners, officers, employees or agents to disclose any such interest to the IC and POEA.

SEC. 5. Requirement for Issuance of OEC. — The recruitment/manning agency shall have the right to choose from any of the qualified insurance providers the company that will insure the migrant worker it will deploy. After procuring such insurance policy, the recruitment/manning agency shall provide an authenticated copy thereof to the migrant worker. It shall then submit the certificate of insurance coverage of the migrant worker to POEA as a requirement for the issuance of Overseas Employment Certificate (OEC) to the migrant worker. In the case of seafarers who are insured under policies issued by foreign insurance companies, the POEA shall accept certificates or other proofs of cover from recruitment/manning agencies:
Provided, that the minimum coverage under sub-paragraphs (a) to (i) are included therein. For this purpose, foreign insurance companies shall include entities providing indemnity cover to the vessel.

SEC. 6. Notice of Claim. — Any person having a claim upon the policy issued pursuant to subparagraphs (a), (b), (c), (d) and (e) of Section 2 of this Rule shall present to the insurance company concerned a written notice of claim together with pertinent supporting documents. The insurance company shall forthwith ascertain the truth and extent of the claim and make payment within ten (10) days from the filing of the notice of claim.

SEC. 7. Documentary Requirements for Accidental or Natural Death or Disablement Claims. — Any claim arising from accidental death, natural death or permanent total disablement under Section 2 (a), (b) and (c) shall be paid by the insurance company without any contest and without the necessity of proving fault or negligence of any kind on the part of the insured migrant worker: Provided the following documents, duly authenticated by the Philippine foreign posts, shall be sufficient evidence to substantiate the claim:

(1) Death Certificate — in case of natural or accidental death;
(2) Police or Accident Report — in case of accidental death; and
(3) Medical Certificate — in case of permanent disablement.

In case of a seafarer, the amounts provided in Section 2 (a), (b), or (c), as the case may be, within ten (10) days from submission of the above-stated documents, be paid by the foreign insurance company through its Philippine representative to the seafarer/beneficiary without any contest and without any necessity of proving fault or negligence on the part of the seafarer. Such amount received by the seafarer/beneficiary shall form part of and be deducted from whatever benefits the seafarer/beneficiary may be entitled to under the provisions of the POEA-Standard Employment Contract or collective bargaining agreement (CBA). Any claim in excess of the amount paid pursuant to the no contest, no fault or negligence provision of this section shall be determined in accordance with the POEA-SEC or CBA.

SEC. 8. Documentary Requirement for Repatriation Claim. — For repatriation under subparagraph (d) of Section 2 of this Rule, a certification which states the reason/s for the termination of the migrant worker’s employment and the need for his/her repatriation shall be issued by the Philippine foreign post or the Philippine Overseas Labor Office (POLO) located in the receiving country. Such certification shall be solely for the purpose of complying with this section.

SEC. 9. Documentary Requirements for Subsistence Allowance Benefit Claim. — For subsistence allowance benefit under sub-paragraph (e) of Section 2 of this Rule, the concerned Labor Attaché or, in his absence, the embassy or consular official shall issue a certification which states the title of the case, the names of the parties and the nature of the cause of action of the migrant worker.

SEC. 10. Settlement of Money Claims. — For the payment of money claims under sub-paragraph (f) of Section 2 of this Rule, the following rules shall govern:
(1) After a decision has become final and executory or a settlement/compromise agreement has been reached between the parties at the NLRC, the Labor Arbiter shall, motu proprio or upon motion, and following the conduct of pre-execution conference, issue a writ of execution mandating the respondent recruitment/manning agency to pay the amount adjudged or agreed upon within thirty (30) days from receipt thereof;

(2) The recruitment/manning agency shall then immediately file a notice of claim with its insurance provider for the amount of liability insured, attaching therewith a certified true copy of the decision or compromise agreement;

(3) Within ten (10) days from the filing of notice of claim, the insurance company shall make payment to the recruitment/manning agency the amount adjudged or agreed upon, or the amount of liability insured, whichever is lower. After receiving the insurance payment, the recruitment/manning agency shall immediately pay the migrant worker’s claim in full, taking into account that in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, it is liable to pay the balance thereof;

(4) In case the insurance company fails to make payment within ten (10) days from the filing of claim, the recruitment/manning agency shall pay the amount adjudged or agreed upon within the remaining days of the thirty-day period, as provided in the first sub-paragraph hereof;

(5) If the worker’s claim was not settled within the aforesaid thirty-day period, the recruitment/manning agency’s performance bond or escrow deposit shall be forthwith garnished to satisfy the migrant worker’s claim;

(6) The provision of compulsory worker’s insurance under this section shall not affect the joint and several liability of the foreign employer and the recruitment/manning agency under Section 10 of the Act;

(7) Lawyers for the insurance companies, unless the latter are impleaded, shall be prohibited to appear before the NLRC in money claims cases under Rule VII.

SEC. 11. Disputes in the Enforcement of Insurance Claims. — Any question or dispute in the enforcement of any insurance policy issued under this Rule shall be brought before the IC for mediation or adjudication.

Notwithstanding the preceding paragraph, the NLRC shall have the exclusive jurisdiction to enforce against the recruitment/manning agency its decision, resolution or order, that has become final and executory or a settlement/compromise agreement reached between the parties.

SEC. 12. Liability of Recruitment/Manning Agency. — In case it is shown by substantial evidence before the POEA that the migrant worker who was deployed by a licensed recruitment/manning agency has paid for the premium or the cost of the insurance coverage or that the said insurance coverage was used as basis by the recruitment/manning agency to claim any additional fee from the migrant worker, the said licensed recruitment/manning agency shall lose its license and all its directors, partners, proprietors, officers and employees shall be perpetually disqualified from
engaging in the business of recruitment of overseas workers. Such penalty is without prejudice to any other liability which such persons may have incurred under existing laws, rules or regulations.

SEC. 13. Foreign Employers Guarantee Fund. — For migrant workers recruited by the POEA on a government-to-government arrangement, the POEA Foreign Employers Guarantee Fund referred to under Section 5, Rule X of these Rules shall be answerable for the workers’ monetary claims arising from breach of contractual obligations.

SEC. 14. Optional Coverage. — For migrant workers classified as rehires, name hires or direct hires, they may opt to be covered by this insurance coverage by requesting their foreign employers to pay for the cost of the insurance coverage or they may pay for the premium themselves. To protect the rights of these workers, the DOLE and POEA shall provide them adequate legal assistance, including conciliation and mediation services, whether at home or abroad.

SEC. 15. Formulation of Implementing Rules and Regulations. — Within thirty (30) days from the effectivity of these Rules, and pursuant to Section 37-A of the Act, the IC, as the lead agency, shall, together with DOLE, NLRC, and POEA, in consultation with the recruitment/manning agencies and legitimate non-government organizations advocating the rights and welfare of OFWs, issue the necessary implementing rules and regulations, which shall include the following:

1. Qualifications of participating insurers;
2. Accreditation of insurers;
3. Uniform Standard Policy format;
4. Premium rate;
5. Benefits;
6. Underwriting Guidelines;
7. Claims procedure;
8. Dispute settlement;
9. Administrative monitoring and supervision; and
10. Other matters deemed necessary.

Within five (5) days from effectivity of these Rules, the IC shall convene the inter-agency committee to commence the formulation of the aforesaid necessary rules and regulations.

SEC. 16. Assessment of Performance of Insurance Providers. — At the end of every year, the DOLE and the IC shall jointly make an assessment of the performance of all insurance providers, based upon the report of NLRC and POEA on their respective interactions and experiences with the insurance companies, and they shall have the authority to ban or blacklist such insurance companies which are known to be evasive or not responsive to the legitimate claims of migrant workers. The DOLE shall include such assessment in its year-end report to Congress.

SEC. 17. Automatic Review. — The foregoing provisions on mandatory insurance coverage shall be subject to automatic review through the Congressional
Oversight Committee immediately after three (3) years from the effectivity of the Act in order to determine its efficacy in favor of the covered OFWS and the compliance by recruitment/manning agencies and insurance companies, without prejudice to an earlier review if necessary and warranted for the purpose of modifying, amending and/or repealing these subject provisions.

RULE XVII
MISCELLANEOUS PROVISIONS

SECTION 1. POEA, OWWA, and other Boards. — Notwithstanding any provision of law to the contrary, the respective boards of the POEA and the OWWA shall have three (3) members each who shall come from the women, sea-based and land-based sectors respectively, to be selected and nominated openly by the general membership of the sector being represented.

The selection and nomination of the additional members from the women, sea-based and land-based sectors shall be governed by the following guidelines:

(a) The POEA and OWWA shall launch a massive information campaign on the selection of nominees and provide for a system of consultative sessions for the certified leaders or representatives of the concerned sectors, at least three (3) times, within ninety days (90) before the Boards shall be convened, for purposes of selection. The process shall be open, democratic and transparent.

(b) Only non-government organizations that protect and promote the rights and welfare of overseas Filipino workers, duly registered with the appropriate Philippine government agency and in good standing as such, and in existence for at least three (3) years prior to the nomination shall be qualified to nominate a representative for each sector to the Board;

(c) The nominee must be at least 25 years of age, able to read and write, and a migrant worker at the time of his/her nomination or was a migrant worker with at least three (3) years experience as such;

(d) A Selection and Screening Committee shall be established within the POEA and OWWA by the Secretary of Labor and Employment to formulate the procedures on application, screening and consultation, and shall be responsible to provide the list of qualified nominees to the respective Governing Boards; and

(e) The final list of all the nominees selected by the OWWA/POEA Governing Boards, which shall consist of three (3) names for each sector to be represented, shall be submitted to the President and published in a newspaper of general circulation.

Incumbent representatives appointed pursuant to this section and who are eligible for re-appointment shall be automatically included in the list referred to under subsection (d).

Within thirty (30) days from the submission of the final list referred to under subsection (e), the President shall select and appoint from the list the representatives to the POEA/OWWA Governing Boards.
The members shall have a term of three (3) years and shall be eligible for reappointment for another three (3) years. In case of vacancy, the President shall, in accordance with the provisions of the Act, appoint a replacement who shall serve the unexpired term of his/her predecessor.

All other government agencies and government-owned or controlled corporations which require at least one (1) representative from the overseas workers sector to their respective boards shall follow all the applicable provisions of this section, subject to the respective Charters, Implementing Rules and Regulations, and internal policies of such agencies and corporations.

The existing members of the Governing Boards of POEA and OWWA representing the women, land-based, or sea-based sectors shall serve the remaining portion of their three-year terms. Thereafter, their positions shall be deemed vacant, and the process of selection of their replacements shall be in accordance with this section. If the incumbent is eligible for re-appointment, he/she shall continue to serve until re-appointed or another person is appointed in accordance with this section.

Incumbent representatives in the Governing Board with no fixed term shall remain in holdover capacity, until a replacement is appointed in accordance with this section.

SEC. 2. Report to Congress.—In order to inform the Philippine Congress on the implementation of the policy enunciated in Section 4 of the Act, the DFA and the DOLE shall submit separately to the said body a semi-annual report of Philippine foreign posts located in, or exercising consular jurisdiction over, countries receiving Filipino migrant workers. The mid-year report covering the period January to June shall be submitted not later than October 31 of the same year while the year-end report covering the period July to December shall be submitted not later than May 31 of the following year. The report shall include, but shall not be limited to, the following information:

(a) Master list of Filipino migrant workers, and inventory of pending cases involving them and other Filipino nationals including those serving prison terms;
(b) Working conditions of Filipino migrant workers;
(c) Problems encountered by the migrant workers, specifically violations of their rights;
(d) Initiatives/actions taken by the Philippine foreign posts to address the problems of Filipino migrant workers;
(e) Changes in the laws and policies of host countries; and
(f) Status of negotiations on bilateral labor agreements between the Philippines and the receiving country.

SEC. 3. Effect on Failure to Report.—Any officer of the government who has the legal duty to report, yet fails to submit the aforesaid Report to Congress, without justifiable cause, shall be subject to an administrative penalty of dismissal from the service with disqualification to hold any appointive public officer for five (5) years.
SEC. 4. Government Fees, Administrative Costs and Taxes. — All fees for services being charged by any government agency on migrant workers prevailing at the time of the effectiveness of this Rule shall not be increased. All other services rendered by the DOLE and other government agencies in connection with the recruitment and placement of and assistance to migrant workers shall be rendered free. The administrative cost thereof shall not be borne by the worker.

The migrant worker shall be exempt from the payment of travel tax and airport fee upon proper showing of the Overseas Employment Certificate (OEC) issued by the POEA.

The remittances of all OFWs, upon showing of the OEC or valid OWWA Membership Certificate by the OFW beneficiary or recipient, shall be exempt from the payment of documentary stamp tax (DST) as imposed under Section 181 of the National Internal Revenue Code, as amended.

In addition to the original copy, a duplicate copy or a certified true copy of the valid proof of entitlement referred to above shall be secured by the OFW from the POEA or OWWA, which shall be held and used by his/her beneficiary in the availment of the DST exemption.

In case of OFWs whose remittances are sent through the banking system, credited to beneficiaries or recipient’s account in the Philippines and withdrawn through an automatic teller machine (ATM), it shall be the responsibility of the OFW to show the valid proof of entitlement when making arrangement that for his/her remittance transfers.

A proof of entitlement that is no longer valid shall not entitle an OFW to DST payment exemption.

The Bureau of Internal Revenue (BIR), under the Department of Finance, may promulgate revenue regulations deemed necessary and appropriate for the effective implementation of the exemption of OFWs from DST and travel tax.

SEC. 5. Establishment of the Congressional Migrant Workers Scholarship Fund. — There is hereby created a Congressional Migrant Workers Scholarship Fund which shall benefit deserving migrant workers and/or their immediate descendants who intend to pursue courses or training primarily in the field of science and technology, as defined by the DOST.

The fund of One hundred fifty million pesos (P150,000,000.00) shall be sourced from the proceeds of Lotto draws.

SEC. 6. Creation of the Scholarship Fund Committee. — There is hereby created a Scholarship Fund Committee to be composed of representatives from the DOLE, DOST, POEA, OWWA, TESDA and two (2) representatives of migrant workers to be appointed by the Secretary of Labor and Employment.

SEC. 7. Functions of the Scholarship Fund Committee. —

(a) To set the coverage, criteria and standards of admission to the Scholarship Program;

(b) To determine the amount of availment;
(c) To monitor and evaluate the program;
(d) To identify/accredit training and testing institutions; and
(e) To perform such other functions necessary to attain the purpose of the Fund.

SEC. 8. Implementing Agency. — The OWWA shall be the Secretariat of the Scholarship Fund Committee. As such, it shall administer the Scholarship Program, in coordination with the DOST.

RULE XVIII
FUNDING

SECTION 1. Sources of Funds. — The departments, agencies, instrumentalities, bureaus, offices and government-owned and controlled corporations charged with carrying out the provisions of the Act shall include in their respective programs the implementation of the Act, the funding of which shall be included in the General Appropriations Act.

RULE XIX
MIGRANT WORKERS DAY

SECTION 1. Commemoration. — The DOLE shall lead and enlist the cooperation of other government agencies in the commemoration of a Migrant Workers Day on 7 June of every year.

RULE XX
TRANSITORY PROVISIONS

SECTION 1. Applicability of Criteria for Receiving Countries. — In compliance with Section 4 of the Act, the DFA shall, within 90 days from effectivity of these Rules and Regulations, issue the certification for countries where the Philippines maintains an embassy.

In countries where the Philippine Embassy exercises concurrent jurisdiction and where the Ambassador is non-resident, the DFA shall have one hundred twenty days (120) from the effectivity of these Rules to issue the certification required in Section 4 of the Act. Prior to the expiration of the aforesaid period, the Secretary of Foreign Affairs, in consultation with the Secretary of Labor and Employment, shall allow the reasonable extension of the period for the issuance of the certification upon a determination that there is a need therefor.

Pending the issuance of the required certifications of compliance or determinations of non-compliance and within the periods mentioned in the preceding paragraphs, the deployment of migrant workers overseas shall proceed on a status quo basis.

For purposes of issuance of the certifications, the DFA shall, in consultation with the POEA, issue a standard format to be accomplished by all Foreign Service posts.
SEC. 2. Effectivity of Compulsory Insurance Requirement. — All OFWs who were issued Overseas Employment Certificates prior to the effectivity of the necessary rules and regulations referred to under Section 15 of Rule XVI shall not be covered by the compulsory insurance requirement.

RULE XXI
FINAL PROVISIONS

SECTION 1. Repealing Clause. — All Department Orders, Circulars and implementing Rules and Regulations inconsistent with these Omnibus Rules and Regulations are hereby repealed or amended accordingly.

SEC. 2. Effectivity. — The provisions of these Rules and Regulations shall take effect fifteen days (15) after publication in two (2) newspapers of general circulation.

Done in the City of Manila, this 8th day of July, 2010.

(Sgd.) ALBERTO G. ROMULO
Secretary
Department of Foreign Affairs

(Sgd.) ROSALINDA DIMAPILIS-BALDOZ
Secretary
Department of Labor and Employment

(Sgd.) ENRIQUE T. ONA
Secretary
Department of Health

(Sgd.) GERARDO BENJAMIN C. NOGRALES
Chairman
National Labor Relations Commission (NLRC)

(Sgd.) VIDA T. CHIONG
Officer-In-Charge
Insurance Commission
APPENDIX TO BOOK II

APPENDIX II-1: The TESDA Act of 1994

Republic Act No. 7796

AN ACT CREATING THE TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY, PROVIDING FOR ITS POWERS, STRUCTURE AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Title. — This Act shall be known as the “Technical Education and Skills Development Act of 1994” or the “TESDA Act of 1994.”

SEC. 2. Declaration of Policy. — It is hereby declared the policy of the State to provide relevant, accessible, high quality and efficient technical education and skills development in support of the development of high quality Filipino middle-level manpower responsive to and in accordance with Philippine development goals and priorities.

The State shall encourage active participation of various concerned sectors, particularly private enterprises, being direct participants in and immediate beneficiaries of a trained and skilled workforce, in providing technical education and skills development opportunities.

SEC. 3. Statement of Goals and Objectives. — It is the goal and objective of this Act to:

a) Promote and strengthen the quality of technical education and skills development programs to attain international competitiveness;

b) Focus technical education and skills development on meeting the changing demands for quality middle-level manpower;

c) Encourage critical and creative thinking by disseminating the scientific and technical knowledge base of middle-level manpower development programs;

d) Recognize and encourage the complementary roles of public and private institutions in technical education and skills development and training systems; and

e) Inculcate desirable values through the development of moral character with emphasis on work ethic, self-discipline, self-reliance and nationalism.

SEC. 4. Definition of Terms. — As used in this Act:

a) “Skill” shall mean the acquired and practiced ability to carry out a task or job;

b) “Skills Development” shall mean the process through which learners and workers are systematically provided with learning opportunities to acquire or
upgrade, or both, their ability, knowledge and behavior pattern required as qualifications for a job or range of jobs in a given occupational area;

c) “Technical Education” shall refer to the education process designed at post-secondary and lower tertiary levels, officially recognized as non-degree programs aimed at preparing technicians, paraprofessionals and other categories of middle-level workers by providing them with a broad range of general education, theoretical, scientific and technological studies, and related job skills training;

d) “Trade” shall mean any group of interrelated jobs or any occupation which is traditionally or officially recognized as craft or artisan in nature requiring specific qualifications that can be acquired through work experience and/or training;

e) “Middle-Level Manpower” refers to those:

1) persons who have acquired practical skills and knowledge through formal or nonformal education and training equivalent to at least a secondary education but preferably a post-secondary education with a corresponding degree or diploma; or

2) skilled workers who have become highly competent in their trade or craft as attested by industry;

f) “Private Enterprises” refers to an economic system under which property of all kinds can be privately owned and in which individuals, alone or in association with another, can embark on a business activity. This includes industrial, agricultural, or agro-industrial establishments engaged in the production, manufacturing, processing, repacking or assembly of goods including service-oriented enterprises;

g) “Trainers” shall mean persons who direct the practice of skills towards immediate improvement in some tasks;

h) “Trainors/trainers” shall mean persons who provide training to trainers aimed at developing the latter’s capacities for imparting attitudes, knowledge, skills and behavior patterns required for specific jobs, tasks, occupations or group of related occupations;

i) “Trainees” shall mean persons who are participants in a vocational, administrative, or technical training program for the purpose of acquiring and developing job-related skills;

j) “Apprenticeship” training within employment with compulsory related theoretical instructions involving a contract between an apprentice and an employer on an approved apprenticeable occupation;

k) “Apprentice” is a person undergoing training for an approved apprenticeable occupation during an established period assured by an apprenticeship agreement;

l) “Apprenticeship Agreement” is a contract wherein a prospective employer binds himself to train the apprentice who in turn accepts the terms of training for a recognized apprenticeable occupation emphasizing the rights, duties, and responsibilities of each party;

m) “Apprenticeable Occupation” is an occupation officially endorsed by a tripartite body and approved for apprenticeship by the Authority;
n) “Learners” refer to persons hired as trainees in semi-skilled and other industrial occupations which are nonapprenticeable. Learnership programs must be approved by the Authority.

o) “User-Led” or “Market-Driven Strategy” refers to a strategy which promotes strengthened linkages between educational/training institutions and industry to ensure that appropriate skills and knowledge are provided by the educational system;

p) “Dual System/Training” refers to a delivery system of quality technical and vocational education which requires training to be carried out alternately in two venues: in school and in the production plant. In-school training provides the trainee the theoretical foundation, basic training, guidance and human formation, while in-plant training develops his skills and proficiency in actual work conditions as it continues to inculcate personal discipline and work values;

q) “Levy Grant System” refers to a legal contribution from participating employers who would be beneficiaries of the program (often as a percentage of the payroll) which is subsequently turned over or rebated to enterprises offering employee training programs.

SEC. 5. Technical Education and Skills Development Authority, Creation. — To implement the policy declared in this Act, there is hereby created a Technical Education and Skills Development Authority (TESDA), hereinafter referred to as the Authority, which shall replace and absorb the National Manpower and Youth Council (NMYC), the Bureau of Technical and Vocational Education (BTVE) and the personnel and functions pertaining to technical-vocational education in the regional offices of the Department of Education, Culture and Sports (DECS) and the apprenticeship program of the Bureau of Local Employment of the Department of Labor and Employment.

SEC. 6. Composition of the Authority. — The Authority shall be composed of the TESDA Board and the TESDA Secretariat.

SEC. 7. Composition of the TESDA Board. — The TESDA Board shall be composed of the following:

| The Secretary of Labor and Employment | Chairperson |
| Secretary of Education, Culture and Sports | Co-Chairperson |
| Secretary of Trade and Industry | Co-Chairperson |
| Secretary of Agriculture | Member |
| Secretary of Interior and Local Government | Member |
| Director-General of the TESDA Secretariat | Member |

In addition, the President of the Philippines shall appoint the following members from the private sector: two (2) representatives, from the employer/industry organization, one of whom shall be a woman; three (3) representatives from the labor sector, one of whom shall be a woman; three (3) representatives of the national
associations of private technical-vocational education and training institutions, one of whom shall be a woman. As soon as all the members of the private sector are appointed, they shall so organize themselves that the term of office of one-third (1/3) of their number shall expire every year. The member from the private sector appointed thereafter to fill vacancies caused by expiration of terms shall hold office for three (3) years.

The President of the Philippines may, however, revise the membership of the TESDA Board, whenever the President deems it necessary for the effective performance of the Board’s functions through an administrative order.

The TESDA Board shall meet at least twice a year, or as frequently as may be deemed necessary by its Chairperson. In the absence of the Chairperson, a Co-Chairperson shall preside. In case any member of the Board representing the Government cannot attend the meeting, he or she shall be regularly represented by an undersecretary or deputy director-general, as the case may be, to be designated by such member for the purpose.

The benefits, privileges and emoluments of the Board shall be consistent with existing laws and rules.

SEC. 8. Powers and Functions of the Board. — The Authority shall primarily be responsible for formulating, continuing, coordinating and fully integrating technical education and skills development policies, plans and programs taking into consideration the following:

- The State policy declared herein of giving new direction and thrusts to efforts in developing the quality of Filipino human resource through technical education and skills development;
- The implementation of the above-mentioned policy requires the coordination and cooperation of policies, plans, and programs of different concerned sectors of Philippine society;
- Equal participation of representatives of industry groups, trade associations, employers, workers and government shall be the rule in order to ensure that urgent needs and recommendations are readily addressed; and
- Improved linkages between industry, labor and government shall be given priority in the formulation of any national-level plan.

The Board shall have the following powers:

1) promulgate, after due consultation with industry groups, trade associations, employers, workers, policies, plans, programs and guidelines as may be necessary for the effective implementation of this Act;

2) organize and constitute various standing committees, subsidiary groups, or technical working groups for efficient integration, coordination and monitoring technical education and skills development programs at the national, regional, and local levels;

3) enter into, make, execute, perform and carry out domestic and foreign contracts subject to existing laws, rules, and regulations;
4) restructure the entire subsector consisting of all institutions and programs involved in the promotion and development of middle-level manpower through upgrading, merger and/or phase-out following a user-led strategy;

5) approve trade skills standards and trade tests as established and conducted by private industries;

6) establish and administer a system of accreditation of both public and private institutions;

7) establish, develop and support institutions’ trainors’ training and/or programs;

8) lend support and encourage increasing utilization of the dual training system as provided for by Republic Act No. 7696;

9) exact reasonable fees and charges for such tests and trainings conducted and retain such earnings for its own use, subject to guidelines promulgated by the Authority;

10) allocate resources, based on the Secretariat’s recommendations, for the programs and projects it shall undertake pursuant to approved National Technical Education and Skills Development Plan;

11) determine and approve systematic funding schemes such as the Levy and Grant scheme for technical education and skills development purposes;

12) create, when deemed necessary, an Advisory Committee which shall provide expert and technical advice to the Board to be chosen from the academe and the private sector; Provided, That in case the Advisory Committee is created, the Board is hereby authorized to set aside a portion of its appropriation for its operation; and

13) perform such other duties and functions necessary to carry out the provisions of this Act consistent with the purposes of the creation of TESDA.

**SEC. 9. Power to Review and Recommend Action.** — The Authority shall review and recommend action to concerned authorities on proposed technical assistance programs and grants-in-aid for technical education or skills development, or both, including those which may be entered into between the Government of the Philippines and other nations, including international and foreign organizations, both here and abroad.

**SEC. 10. The TESDA Secretariat.** — There is hereby created a Technical Education and Skills Development Authority Secretariat which shall have the following functions and responsibilities:

a) to establish and maintain a planning process and formulate a national technical education and skills development plan in which the member-agencies and other concerned entities of the Authority at various levels participate;

b) to provide analytical inputs to policy decision-making of the Authority on allocation of resources and institutional roles and responsibilities as shall be
embodied in annual agencies technical education and skills development plans, in accordance with the manpower plan for middle-level skilled workers as approved by the Authority;

c) to recommend measures, and implement the same upon approval by the Authority, for the effective and efficient implementation of the national technical education and skills development plan;

d) to propose to the Authority the specific allocation of resources for the programs and projects it shall undertake pursuant to approved national technical education and skills development plan;

e) to submit to the Authority periodic reports on the progress and accomplishment of work programs of implementation of plans and policies for technical education and skills development;

f) to prepare for approval by the Authority on annual report to the President on technical education and skills development;

g) to implement and administer the apprenticeship program as provided for in Section 18 of this Act;

h) to prepare and implement upon approval by the Authority a program for the training of trainers, supervisors, planners and managers as provided for in Section 23 of this Act.

i) to enter into agreement to implement approved plans and programs and perform activities as shall implement the declared policy of this Act; and

j) to perform such other functions and duties as may be assigned by the Board.

SEC. 11. Director-General.— The TESDA Secretariat shall be headed by a Director-General, who shall likewise be a member of the TESDA Board. The Director-General shall be appointed by the President of the Philippines and shall enjoy the benefits, privileges and emoluments equivalent to the rank of Undersecretary.

As Chief Executive Officer of the TESDA Secretariat, the Director-General shall exercise general supervision and control over its technical and administrative personnel.

SEC. 12. Deputy Directors-General.— The Director-General shall be assisted by two (2) Deputy Directors-General to be appointed by the President of the Philippines on recommendation of the TESDA Board. One will be responsible for Vocational and Technical Education and Training and one will be responsible for Policies and Planning.

The Deputy Directors-General shall enjoy the benefit, privileges, and emoluments equivalent to the rank of Assistant Secretary.

SEC. 13. Chief of Services for Administration.— The Director-General shall also be assisted by a Chief of Services for Administration who shall be a Career Civil Service Official to be appointed by the TESDA Board.

SEC. 14. Structural Organization and Personnel.— The TESDA Secretariat, in addition to the offices of the Director-General, Deputy Director-General and Chief of
Services for Administration shall be composed of the following offices to be headed by an Executive Director to be appointed by the Director-General and shall have the rank and emoluments of Director IV.

a) Planning Office (PO). — The Planning Office shall be under the Office of the Deputy Director-General and shall have the following functions:

1) to design and establish planning processes and methodologies which will particularly enhance the efficiency of resource allocation decisions within the technical education and skills development sector;

2) to lead in the preparation and periodic updating of a national plan for technical education and skills development which shall become the basis for resource allocation decisions within the sector;

3) to conduct researches, studies and develop information systems for effective and efficient planning and policy making within the sector;

4) to develop and implement programs and projects aimed at building up planning capabilities of various institutions within the sector; and

5) to perform such other powers and functions as may be authorized by the Authority.

b) Skills Standards and Certification Office (SSCO). — The Skills Standards and Certification Office shall be under the office of the Deputy Director-General and shall have the following functions:

1) to develop and establish a national system of skills standardization, testing, and certification in the country;

2) to design, innovate and adopt processes and methodologies whereby industry groups and workers’ guilds take note on progressively the responsibility of setting skills standards for identified occupational areas, and the local government units actively participate in promoting skills standards, testing, and certification;

3) to establish and implement a system of accrediting private enterprises, workers’ associations and guilds and public institutions to serve as skills testing venues;

4) to conduct research and development on various occupational areas in order to recommend policies, rules and regulations for effective and efficient skills standardization, testing and certification system in the country; and

5) to perform such other duties and functions as may be authorized.

c) National Institute for Technical Vocational and Education Training (NITVET). — The National Institute for Technical Vocational and Education Training will be under the office of the Deputy Director-General and shall have the following functions:
APPENDIX

1) to serve as the research and development arm of the government in the field of technical-vocational education and training;

2) to develop curricula and program standards for various technical-vocational education and training areas;

3) to develop and implement an integrated program for continuing development of trainors, teachers and instructors within the technical education and skills and development sector;

4) to develop programs and projects which will build up institutional capabilities within the sector; and

5) to perform such other powers and functions as may be authorized.

d) Office of Formal Technical Vocational Education and Training (OFTVET). — The Office of Formal Technical Vocational Education and Training will be under the office of the Deputy Director-General and shall have the following functions:

1) to provide policies, measures and guidelines for effective and efficient administration of formal technical-vocational education and training programs implemented by various institutions in the country;

2) to establish and maintain a system for accrediting, coordinating, integrating, monitoring and evaluating the different formal technical-vocational education and training program vis-à-vis the approved national technical education and skills development plan;

3) to establish and maintain a network of institutions engaged in institutionalized technical-vocational education and training particularly with local government units; and

4) to perform such other duties and functions as may be authorized.

e) Office of the Non-Formal Technical Vocational Education and Training (ONFTVET). — The Office of the Non-Formal Technical Vocational Education and Training to be under the Office of the Deputy Director-General and shall have the following functions:

1) to provide direction, policies and guidelines for effective implementation of nonformal community-based technical-vocational education and training;

2) to accredit, coordinate, monitor and evaluate various nonformal technical-vocational education and training programs implemented by various institutions, particularly by local government units;

3) to establish and maintain a network of institutions including local government units, nongovernment organizations implementing nonformal, community-based technical-vocational education and training;

4) to perform such other powers and functions as may be authorized.
f) Office of Apprenticeship (OA). — The Office of Apprenticeship shall be under the office of the Deputy Director-General and shall have the following functions:

1) to provide direction, policies and guidelines on the implementation of the Apprenticeship system;
2) to accredit, coordinate, monitor and evaluate all apprenticeship schemes and program implemented by various institutions and enterprises;
3) to establish a network of institutions and enterprises conducting apprenticeship schemes and programs;
4) to perform such other powers and functions as may be authorized.

g) Regional TESDA Offices. — The Regional TESDA Offices shall be headed by Regional Directors with the rank and emoluments of Director IV to be appointed by the President.

The Regional TESDA Offices shall be under the direct control of the Director-General and shall have the following functions:

1) to serve as Secretariat to Regional Technical Education Skills Development (TESDA) Committees;
2) to provide effective supervision, coordination and integration of technical education and skills development programs, projects and related activities in their respective jurisdiction.
3) to develop and recommend TESDA programs for regional and local-level implementation within the policies set by the Authority;
4) to perform such other duties and functions as may be deemed necessary.

SEC. 15. The Provincial TESDA Offices. — The Provincial Offices shall be headed by Skills Development Officers who shall have the rank and emoluments of a Director III.

The Provincial TESDA Offices shall be under the direct control of the Director-General and shall have the following functions:

1) to serve as Secretariat to Provincial TESDA Committees;
2) to provide technical assistance particularly to local government units for effective supervision, coordination, integration and monitoring of technical-vocational education and training programs within their localities;
3) to review and recommend TESDA programs for implementation within their localities; and
4) to perform such other duties and functions as may be authorized.

Furthermore, the TESDA Secretariat may be further composed by such offices as may be deemed necessary by the Authority. The Director-General shall appoint such personnel necessary to carry out the objectives, policies and functions of the Authority subject to Civil Service laws, rules and regulations.

SEC. 16. Compliance with the Salaries Standardization Law. — The compensation and emoluments of the officials and employees of the Authority shall be in
accordance with the salary standardization law and other applicable laws under the national compensation and classification plan.

SEC. 17. Consultants and Technical Assistance, Publication and Research. — In pursuing its objectives, the Authority is hereby authorized to set aside a portion of its appropriation for the hiring of services of qualified consultants, and private organizations for research work and publication in the field of technical education and skills development. It shall avail itself of the services of other agencies of the Government as may be required.

SEC. 18. Transfer of the Apprenticeship Program. — The Apprenticeship Program of the Bureau of Local Employment of the Department of Labor and Employment shall be transferred to the Authority which shall implement and administer said program in accordance with existing laws, rules and regulations.

SEC. 19. Technical Education and Skills Development Committees. — The Authority shall establish Technical Education and Skills Development Committees at the regional and local levels to coordinate and monitor the delivery of all skills development activities by the public and private sectors. These committees shall likewise serve as the Technical Education and Skills Development Committees of the regional and local development councils. The composition of the Technical Education and Skills Development Committees shall be determined by the Director-General subject to the guidelines to be promulgated by the Authority.

SEC. 20. Skills Development Centers. — The Authority shall strengthen the network of national, regional and local skills training centers for the purpose of promoting skills development.

This network shall include skills training centers in vocational and technical schools, technical institutes, polytechnic colleges, and all other duly accredited public and private dual system educational institutions. The technical education and skills development centers shall be administered and operated under such rules and regulations as may be established by the Authority in accordance with the National Technical Education and Skills Development Plan.

SEC. 21. Formulation of a Comprehensive Development Plan for Middle-Level Manpower. — The Authority shall formulate a comprehensive development plan for middle-level manpower based on a national employment plan or policies for the optimum allocation, development and utilization of skilled workers for employment entrepreneurship and technology development for economic and social growth. This plan shall, after adoption by the Authority, be updated periodically and submitted to the President of the Philippines for approval. Thereafter, it shall be the plan for technical education and skills development for the entire country within the framework of the National Development Plan. The Authority shall direct the TESDA Secretariat to call on its member-agencies, the private sector and the academe to assist in this effort.

The comprehensive plan shall provide for a reformed industry-based training program including apprenticeship dual training system and other similar schemes intended to:
a) promote maximum protection and welfare of the worker-trainee;
b) improve the quality and relevance and social accountability of technical education and skills development;
c) accelerate the employment-generation efforts of the government; and
d) expand the range of opportunities for upward social mobility of the school-going population beyond the traditional higher levels of formal education.

All government and nongovernment agencies receiving financial and technical assistance from the government shall be required to formulate their respective annual agency technical education and skills development plan in line with the national technical education and skills development plan. The budget to support such plans shall be subject to review and endorsement by the Authority to the Department of Budget and Management.

The Authority shall evaluate the efficiency and effectiveness of agencies skills development program and schemes to make them conform with the quantitative and qualitative objectives of the national technical education and skills development plan.

SEC. 22. Establishment and Administration of National Trade Skills Standards. — There shall be national occupational skills standards to be established by TESDA-accredited industry committees. The Authority shall develop and implement a certification and accreditation program in which private industry groups and trade associations are accredited to conduct approved trade tests, and the local government units to promote such trade testing activities in their respective areas in accordance with the guidelines to be set by the Authority.

The Secretary of Labor and Employment shall determine the occupational trades for mandatory certification.

All certificates relating to the national trade skills testing and certification system shall be issued by the Authority through the TESDA Secretariat.

SEC. 23. Administration of Training Programs. — The Authority shall design and administer training programs and schemes that will develop the capabilities of public and private institutions to provide quality and cost-effective technical education and skills development and related opportunities. Such training programs and schemes shall include teacher’s trainors’ training, skills training for entrepreneur development and technology development, cost-effective training in occupational trades and related fields of employment, and value development as an integral component of all skills training programs.

SEC. 24. Assistance to Employers and Organizations. — The Authority shall assist any employer or organization engaged in skills training schemes designed to attain its objective under rules and regulations which the Authority shall establish for this purpose.

SEC. 25. Coordination of All Skills Training Schemes. — In order to integrate the national skills development efforts, all technical education and skills training schemes as provided for in this Act shall be coordinated with the Authority particularly those having to do with the setting of trade skills standards. For this purpose, existing
technical education and skills training programs in the Government and in the private sector, specifically those wholly or partly financed with government funds, shall be reported to the Authority which shall assess and evaluate such programs to ensure their efficiency and effectiveness.

SEC. 26. Industry Boards. — The Authority shall establish effective and efficient institutional arrangements with industry boards and such other bodies or associations to provide direct participation of employers and workers in the design and implementation of skills development schemes, trade skills standardization and certification and such other functions in the fulfillment of the Authority’s objectives.

SEC. 27. Incentive Schemes. — The Authority shall develop and administer appropriate incentive schemes to encourage government and private industries and institutions to provide high-quality technical education and skills development opportunities.

SEC. 28. Skills Development Opportunities. — The Authority shall design and implement an effective and efficient delivery system for quality technical education and skills development opportunities particularly in disadvantaged sectors, with new tools of wealth creation and with the capability to take on higher value-added gainful activities and to share equitably in productivity gains.

SEC. 29. Devolution of TESDA’s Training Function to Local Governments. — In establishing the delivery system provided for in the preceding Section, the Authority shall formulate, implement, and finance a specific plan to develop the capability of local government units to assume ultimately the responsibility for effectively providing community-based technical education and skills development opportunities; Provided, however, That there shall be formulated and implemented an effective and timely retraining of TESDA personnel that would be affected by the devolution to ensure their being retained if the concerned local government units would not be able to absorb them.

SEC. 30. Skills Olympics. — To promote quality skills development in the country and with the view of participating in international skills competitions, the Authority, with the active participation of private industries, shall organize and conduct annual National Skills Olympics. The Authority, through the TESDA Secretariat, shall promulgate the necessary rules and guidelines for the effective and efficient conduct of Annual National Skills Olympics and for the country’s participation in international skills olympics.

SEC. 31. The TESDA Development Fund. — A TESDA Development Fund is hereby established, to be managed/administered by the Authority, the income from which shall be utilized exclusively in awarding of grants and providing assistance to training institutions, industries, local government units for upgrading their capabilities and to develop and implement training and training-related activities. The contribution to the fund shall be the following:

a) a one-time lump sum appropriation from the National Government;

b) an annual contribution from the Overseas Workers Welfare Administration Fund, the amount of which should be part of the study of financing in conjunction with letter (D) of Section 34;
c) donations, grants, endowments, and other bequests or gifts; and

d) any other income generated by the Authority.

The TESDA Board shall be the administrator of the fund, and as such, shall formulate the necessary implementing guidelines for the management of the fund, subject to the following: a) unless otherwise stipulated by the private donor, only earnings of private contributions shall be used; and (b) no part of the seed capital of the fund, including earnings, thereof, shall be used to underwrite expenses for administration.

The Board shall appoint a reputable government-accredited investment institution as fund manager, subject to guidelines promulgated by the Board.

SEC. 32. Scholarship Grants. — The Authority shall adopt a system of allocation and funding of scholarship grants which shall be responsive to the technical education and skills development needs of the different regions in the country.

SEC. 33. TESDA Budget. — The amount necessary to finance the initial implementation of this Act shall be charged against the existing appropriations of the NMYC and the BTVE. Thereafter, such funds as may be necessary for the continued implementation of this Act shall be included in the annual General Appropriations Act.

SEC. 34. Transitory Provisions. — a) Within two (2) months after the approval of this Act, the President shall, in consultation with the Secretary of Labor and Employment and the Secretary of Education, Culture and Sports, appoint the private sector representatives of the TESDA Board.

b) Within three (3) months after the appointment of the private sector representatives, the President shall, upon the recommendation of the Board, appoint the Director-General.

c) Within four (4) months after the appointment of the Director-General, the Board shall convene to determine the organizational structure and staffing pattern of the Authority.

d) Within one (1) year after the organization of the Authority, the Board shall commission an expert group on funding schemes for the TESDA Development Fund, as provided in Section 31, the result of which shall be used as the basis for appropriate action by the Board.

e) The personnel of the existing National Manpower and Youth Council (NMYC) of the Department of Labor and Employment and the Bureau of Technical and Vocational Education (BTVE) of the Department of Education, Culture and Sports, shall, in a hold-over capacity, continue to perform their respective duties and responsibilities and receive their corresponding salaries and benefits until such time when the organizational structure and staffing pattern of the Authority shall have been approved by the Board: Provided, That the preparation and approval of the said new organizational structure and staffing pattern shall, as far as practicable, respect and ensure the security of tenure and seniority rights of affected government employees.
Those personnel whose positions are not included in the new staffing pattern approved by the Board or who are not reappointed or who choose to be separated as a result of the reorganizations shall be paid their separation or retirement benefits under existing laws.

SEC. 35. Automatic Review. — Every five (5) years, after the effectivity of this Act, an independent review panel composed of three (3) persons appointed by the President shall review the performance of the Authority and shall make recommendations, based on its findings to the President and to both Houses of Congress.

SEC. 36. Implementing Rules and Guidelines. — The TESDA Board shall issue, within a period of ninety (90) days after the effectivity of this Act, the rules and regulations for the effective implementation of this Act.

The TESDA Board shall submit to the Committees on Education, Arts and Culture of both Houses of Congress copies of the implementing rules and guidelines within thirty (30) days after its promulgation.

Any violation of this Section shall render the official/s concerned liable under RA No. 6713, otherwise known as the “Code of Conduct and Ethical Standards for Public Officials and Employees” and other existing administrative and/or criminal laws.

SEC. 37. Repealing Clause. — All laws, presidential decrees, executive orders, presidential proclamations, rules and regulations or parts thereof contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 38. Separability Clause. — If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SEC. 39. Effectivity. — This Act shall take effect fifteen (15) days after its complete publication in two (2) newspapers of general circulation.

Approved: August 25, 1994

(SGD.) FIDEL V. RAMOS
President of the Philippines
RULES AND REGULATIONS IMPLEMENTING
THE TESDA ACT OF 1994

Pursuant to Sec. 36 of the TESDA Act of 1994, the TESDA Board hereby promulgates the Implementing Rules and Regulations of the Act, as follows:

Rule I
POLICIES AND OBJECTIVES

SECTION. 1. Title. — These Rules shall be known and cited as the Rules and Regulations Implementing the TESDA Act of 1994.

SEC. 2. Declaration of Policy. — It is the declared policy of the State to provide relevant, accessible, high quality and efficient technical education and skills development in support of the development of high quality Filipino middle-level manpower responsive to and in accordance with Philippine development goals and priorities.

a) Private Sector Participation. — The State shall encourage the active participation of various concerned sectors, particularly private enterprises, being direct participants in and immediate beneficiaries of a trained and skilled workforce, in providing technical education and skills development opportunities.

SEC. 3. Statement of Goals and Objectives. — The goals and objectives of the TESDA Act of 1994 (hereinafter cited as Act) are as follows:

a) International Competitiveness. — To promote and strengthen the quality of technical education and skills development programs to attain international competitiveness;

b) Quality Middle-Level Manpower. — To focus technical education and skills development on meeting the changing demands for quality middle-level manpower;

c) Scientific and Technical Knowledge Base. — To encourage critical and creative thinking by disseminating the scientific and technical knowledge base of middle-level manpower development programs;

d) Roles of Public and Private Institutions. — To recognize and encourage the complementary roles of public and private institutions in technical education and skills development and training systems; and

e) Desirable Values. — To inculcate desirable values through the development of moral character, with emphasis on work ethic, self-discipline, self-reliance and nationalism.

Rule II
TECHNICAL EDUCATION AND SKILLS DEVELOPMENT PLAN

SECTION 1. Formulation of a Comprehensive Development Plan for Middle-Level Manpower. — The Technical Education and Skills Development Authority (TESDA) shall formulate a comprehensive development plan for middle-level man-
power based on a national employment plan or policies for the optimum allocation, development and utilization of skilled workers for employment, entrepreneurship and technology development for economic and social growth, to be known as the National Education and Skills Development Plan.

SEC. 2. President’s Approval. — This plan, after adoption by the TESDA Board, shall be updated periodically and submitted to the President of the Philippines for approval. Thereafter, it shall be the plan for technical education and skills development for the entire country within the framework of the National Development Plan.

SEC. 3. Assistance of Private Sector and the Academe. — The TESDA Board shall direct the TESDA Secretariat to call on its member-agencies, the private sector and the academe to assist in the formulation of the plan.

SEC. 4. Reformed Industry-based Training Program. — The comprehensive plan shall provide for a reformed industry-based training program including apprenticeship, dual training system and other similar schemes intended to:  
   a) provide maximum protection and welfare of the worker-trainee;  
   b) improve the quality and relevance and social accountability of technical education and skills development;  
   c) accelerate the employment-generation efforts of the government; and  
   d) expand the range of opportunities for upward social mobility of the school-going population beyond the traditional higher levels of formal education.

SEC. 5. Review and Endorsement of Agencies’ Budgets. — All government and nongovernment agencies receiving financial and technical assistance from the government shall be required to formulate their respective annual agency technical education and skills development plans in line with the national technical education and skills development plan. The budget to support such plans shall be subject to review and endorsement to the Department of Budget and Management by the TESDA.

SEC. 6. TESDA’s Evaluation of Agencies’ Programs. — The TESDA shall evaluate the efficiency and effectiveness of the agencies’ skills development program and schemes to make them conform with the quantitative and qualitative objectives of the national technical education and skills development plan.

SEC. 7. Submission of Reports to TESDA. — In such form as the TESDA may prescribe, the agencies mentioned in Section 5 hereof shall submit reports on how they have implemented their technical education and skills development plans annually to the TESDA or as often as it may require.

Rule III
    TESDA BOARD

SECTION 1. Creation of the Technical Education and Skills Development Authority. — To implement the policy declared in the Act, a Technical Education and Skills Development Authority is created (hereinafter referred to as the Authority or TESDA).
The Authority shall be composed of the TESDA Board as its governing body, and the TESDA Secretariat as its executive arm.

The TESDA shall replace and absorb the National Manpower and Youth Council (NMYC), the Bureau of Technical and Vocational Education (BTVE) and the personnel and functions pertaining to technical-vocational education in the regional offices of the Department of Education, Culture and Sports (DECS), and the apprenticeship program of the Bureau of Local Employment of the Department of Labor and Employment.

SEC. 2. Composition of the TESDA Board. — The TESDA Board is composed of the following:

The Secretary of Labor and Employment Chairperson
Secretary of Education, Culture and Sports Co-Chairperson
Secretary of Trade and Industry Co-Chairperson
Secretary of Agriculture Member
Secretary of Interior and Local Government Member
Director-General of the TESDA Secretariat Member

Private sector representatives appointed by the President:

a) Two (2) representatives from the employer/industry organization, one of whom shall be a woman;
b) Three (3) representatives from the labor sector, one of whom shall be a woman; and
c) Two (2) representatives of national associations of private technical-vocational education and training institutions, one of whom shall be a woman.

SEC. 3. Term of Office. — As soon as all the members of the private sector are appointed, they shall so organize themselves that the term of office of one-third (1/3) of their number shall expire every year. The members from the private sector appointed thereafter to fill vacancies caused by expiration of terms shall hold office for three (3) years.

SEC. 4. Change of Membership. — The President of the Philippines may revise the membership of the TESDA Board through an administrative order whenever the President deems it necessary for the effective performance of the Board’s functions.

SEC. 5. Meetings, Emoluments. — The TESDA Board shall meet at least twice a year, or as frequently as may be deemed necessary by its Chairperson. In the absence of the Chairperson, a Co-Chairperson shall preside. In case any member of the Board representing the Government cannot attend the meeting, he or she shall be regularly represented by an undersecretary or deputy-director general, as the case may be, to be designated by such member for the purpose.

The benefits, privileges and emoluments of the Board shall be consistent with existing laws and rules.

SEC. 6. Functions and Powers of the Board.

a) Functions. — The TESDA Board shall be primarily responsible for the formulation of continuing, coordinated and fully integrated technical education
APPENDIX

and skills development policies, plans and programs taking into consideration the following:

1) the State policy declared in the Act of giving new direction and thrusts to efforts in developing the quality of Filipino human resources through technical education and skills development;

2) the implementation of the above-mentioned policy requires the coordination and cooperation of policies, plans and programs of different concerned sectors of Philippine society;

3) equal participation of representatives of industry groups, trade associations, employers, association of technical-vocational schools, workers and government shall be made the rule in order to ensure that urgent needs and recommendations are readily addressed; and

4) improved linkages between industry, labor and government shall be given priority in the formulation of any national-level plan.

b) **Powers.** — The TESDA Board shall have the following powers:

1) approve and promulgate, after due consultation with industry groups, trade associations, association of technical-vocational schools, employers and workers the National Technical Education and Skills Development Plan for middle-level manpower and the policies, programs and guidelines as may be necessary for the effective implementation of the plan and of the Act;

2) organize and constitute various standing committees, subsidiary groups, or technical working groups for efficient integration, coordination and monitoring technical education and skills development programs at the national, regional, and local levels;

3) enter into, make, execute, perform and carry out domestic and foreign contracts subject to existing laws, rules and regulations;

4) restructure the entire subsector consisting of all institutions and programs involved in the promotion and development of middle-level manpower through upgrading, merger and/or phase-out following a user-led strategy;

5) approve trade skills standards and trade tests as established and conducted by private industries;

6) establish and administer a system of accreditation of both public and private institutions;

7) establish, develop and support trainors’ training and/or programs;

8) lend support and encourage increasing utilization of the dual training system as provided for by Republic Act No. 7686;

9) exact reasonable fees and charges for such tests and training conducted and retain such earnings for the use of the TESDA, subject to guidelines promulgated by the TESDA Board;
10) allocate resources, based on the TESDA Secretariat’s recommendations, for the programs and projects it shall undertake pursuant to an approved National Technical Education and Skills Development Plan; 
11) determine and approve systematic funding schemes such as the Levy-and-Grant scheme for technical education and skills development purposes; 
12) create, when deemed necessary, an Advisory Committee which shall provide expert and technical advice to the Board to be chosen from the academe and the private sector: Provided, That in case the Advisory Committee is created, the Board is hereby authorized to set aside a portion of its appropriation for its operation; 
13) create such offices as it may deem necessary to carry out objectives, policies and functions of the TESDA; 
14) review and approve annual and other reports to the President on technical education and skills development; 
15) manage and administer the TESDA Development Fund and formulate its implementing guidelines; and 
16) perform such other duties and functions necessary to carry out the provisions of the Act.

Rule IV
TESDA SECRETARIAT

SECTION 1. TESDA Secretariat. — The TESDA Secretariat, created under Sec. 10 of the Act, is composed of the Officer mentioned in this Rule.

SEC. 2. Functions and Responsibilities of the TESDA Secretariat. — The Secretariat shall have the following functions and responsibilities:

a) to establish and maintain a planning process and formulate a national technical education and skills development plan in consultation with the member agencies and other concerned entities of the TESDA at various levels;

b) to provide analytical inputs to policy and decision-making of the TESDA on allocation of resources and on institutional roles and responsibilities as shall be embodied in the agencies annual technical education and skills development plans, in accordance with the manpower plan for middle-level skilled workers as approved by the TESDA Board;

c) to recommend measures and implement the same upon approval by the TESDA Board for the effective and efficient implementation of the national technical education and skills development plan;

d) to propose to the TESDA Board the specific allocation of resources for the programs and projects it shall undertake pursuant to the approved national technical education and skills development plan;

e) to submit to the TESDA Board periodic reports on the progress and accomplishment of work programs and on the implementation of plans and policies for technical education and skills development;
APPENDIX

f) to prepare for approval by the TESDA Board an annual report to the President on technical education and skills development;
g) to implement and administer the apprenticeship program;
h) to prepare and implement, upon approval by the TESDA Board, programs for the training of trainers, supervisors, planners and managers;
i) to enter into agreements to implement plans and programs approved by the TESDA Board and perform activities as shall implement the declared policy of the Act;
j) to propose to the TESDA Board the policies and guidelines for the organization and constitution of the regional and local Technical Education and Skills Development Committees, industry boards and technical working groups, as may be deemed necessary, and after their approval, to implement such policies and guidelines; Provided, That the Director-General shall determine the composition of these bodies subject to the guidelines adopted by the TESDA Board for the purpose;
k) to review and endorse to the Department of Budget and Management in accordance with the guidelines approved by the TESDA Board the annual agency technical education and skills development plans of all government and nongovernment agencies receiving financial technical assistance from the government;
l) upon proper delegation of authority from the TESDA Board, the TESDA Secretariat, thru the Director-General, shall also:

1. review and recommend action to concerned authorities proposed technical assistance programs and grants-in-aid programs for the technical education and skills development, or both, including those which may be entered into between the Government of the Philippines and other nations, including international and foreign organizations both here and abroad.

2. develop and administer appropriate incentive schemes to government and private industries and institutions to provide high quality technical education and skills development opportunities.

3. set policies for technical education and skills development programs for regional and local-level implementation.

4. direct and approve institutional arrangements with industry boards and such other bodies or associations for the direct participation of employers and workers in technical education and skills development including trade skills standardization and testing, apprenticeship, and dual training system.

5. hire the services of qualified consultants and private organizations for research work and publication in the field of technical education and skills development and also avail itself of the services of other agencies of the Government as may be required.

m) to perform such other functions and duties as may be assigned by the TESDA Board.
APPENDIX II-1.1: Implementing Rules of the TESDA Act of 1994

DIRECTOR-GENERAL

SEC. 3. Director-General. — The TESDA Secretariat shall be headed by a Director-General who shall likewise be a member of the TESDA Board. The Director-General shall enjoy the benefits, privileges and emoluments equivalent to the rank of Undersecretary.

As Chief Executive Officer of the TESDA Secretariat, the Director-General shall exercise general supervision and control over its technical and administrative personnel.

SEC. 4. Deputy Directors-General. — The Director-General shall be assisted by two (2) Deputy Directors-General, one to be responsible for Vocational and Technical Education and Training and one to be responsible for Policies and Planning.

The Deputy Directors-General shall enjoy the benefits, privileges and emoluments equivalent to the rank of Assistant Secretary.

SEC. 5. Chief of Services for Administration. — The Director-General shall also be assisted by a Chief of Services for Administration who shall be a Career Civil Service Official.

SEC. 6. Appointment of TESDA Officials and Personnel. — The President shall appoint the Director-General and the two Deputy Directors-General, upon recommendation of the TESDA Board. The President shall also appoint the heads of the regional offices. The Chief of Services for Administration shall be appointed by the TESDA Board.

The Director-General shall appoint an Executive-Director for each of the Offices under the two Deputy-Directors-General who shall have the rank and emoluments of Director IV. The Director-General shall also appoint such personnel as may be necessary to carry out the objectives, policies and functions of the TESDA subject to Civil Service laws, rules and regulations.

SEC. 7. Compliance with the Salaries Standardization Law. — The composition and emoluments of the officials and employees of the TESDA shall be in accordance with the salary standardization law and other applicable laws under the national compensation and classification plan.

SEC. 8. Continuous Assessment and Study. — The TESDA Secretariat shall conduct continuous assessment and study of the nature, behavior and the use of the country’s stock of human resources and study areas directly or indirectly related to technical education and skills development. This, it shall do by:

a) engaging directly in studies, researches and surveys; and

b) engaging the services of duly recognized and competent individuals, groups of individuals, schools, universities or research institutions, through contracts, grants or any appropriate arrangement.

Documents, materials or whatever output or results obtained from the activities above shall form part of the property of the TESDA.

SEC. 9. Automatic Review; Recommendations to the President and Congress. — Every five (5) years, after the effectivity of the Act, an independent review panel
composed of three (3) persons appointed by the President shall review the performance of the TESDA and shall make recommendations based on its findings to the President and to both Houses of Congress.

OFFICES OF THE TESDA SECRETARIAT

SEC. 10. The Planning Office (PO). — The PO shall:
   a) design and establish planning process and methodologies which will particularly enhance the efficiency of resource allocation decisions within the technical education and skills development sector;
   b) lead in the preparation and periodic updating of a national plan for technical education and skills development which shall become the basis for resource allocation decisions within the sector;
   c) conduct researches, studies and develop information systems for effective and efficient planning and policy-making within the sector;
   d) develop and implement programs and projects aimed at building up planning capabilities of various institutions within the sector; and
   e) perform such other powers and functions as may be authorized.

SEC. 11. Skills Standards and Certification Office (SSCO). — The SSCO shall:
   a) develop and establish a national system of skills standardization, testing and certification in the country;
   b) design, innovate, and adopt processes and methodologies whereby industry groups and workers’ guilds take on progressively the responsibility of setting skills standards for identified occupational areas, and the local government units actively participate in promoting skills standards, testing and certification;
   c) establish and implement a system of accrediting private enterprises, workers’ associations and guilds and public institutions to serve as skills testing venues;
   d) conduct research and development on various occupational areas in order to recommend policies, rules and regulations for effective and efficient skills standardization, testing and certification system in the country; and
   e) perform such other duties and functions as may be authorized.

SEC. 12. National Institute for Technical-Vocational Education and Training (NITVET). — The NITVET shall:
   a) serve as the research and development arm of the government in the field of technical-vocational education and training;
   b) develop curricula and program standards for various technical-vocational education and training areas;
   c) develop and implement an integrated program for continuing development of trainors, teachers and instructors within the technical education and skills development sector;
   d) develop programs and projects which will build up institutional capabilities within the sector; and
   e) perform such other powers and functions as may be authorized.
SEC. 13. Office of Formal Technical-Vocational Education and Training (OFTVET). — The OFTVET shall:
   a) provide policies, measures and guidelines for effective and efficient administration of formal technical-vocational education and training programs implemented by various institutions in the country;
   b) establish and maintain a system for accrediting, coordinating, integrating, monitoring and evaluating the different formal technical-vocational education and training programs vis-à-vis the approved national technical education and skills development plan;
   c) establish and maintain a network of institutions engaged in institution-ized technical-vocational education and training, particularly with local government units; and
   d) perform such other powers and functions as may be authorized.

SEC. 14. Office of the Non-Formal Technical-Vocational Education and Training (ONFTVET). — The ONFTVET shall:
   a) provide direction, policies and guidelines for effective implementation of non-formal community-based technical-vocational education and training;
   b) accredit, coordinate, monitor and evaluate various non-formal technical-vocational education and training programs implemented by various institutions, particularly by local government units;
   c) establish and maintain a network of institutions including local government units, nongovernment organizations implementing non-formal community-based technical-vocational education and training; and
   d) perform such other powers and functions as may be authorized.

SEC. 15. Office of Apprenticeship (OA). — The OA shall:
   a) provide direction, policies and guidelines on the implementation of the apprenticeship system;
   b) accredit, coordinate, monitor, and evaluate all apprenticeship schemes and programs implemented by various institutions and enterprises;
   c) establish a network of institutions and enterprises conducting apprenticeship schemes and programs; and
   d) perform such other powers and functions as may be authorized.

REGIONAL AND PROVINCIAL TESDA OFFICES

SEC. 16. Regional TESDA Offices. — The TESDA shall establish regional offices headed by Regional Directors with the rank and emoluments of Director IV. The offices shall be under the direct control of the Director-General and shall:
   a) serve as Secretariat to Regional TESDA Committees;
   b) supervise, coordinate and integrate, thru its Provincial TESDA Offices, all technical education skills development programs, projects and related activities in their respective jurisdiction;
c) develop and recommend TESDA programs for regional and local-level implementation within the policies set by the TESDA; and

d) perform other duties and functions as may be authorized.

SEC. 17. Provincial TESDA Offices. — The TESDA shall also establish Provincial Offices headed by Skill Development Officers with the rank and emoluments of a Director III. These offices shall be under the direct control of the Director-General and shall:

a) serve as Secretariat to Provincial TESDA Committees;

b) provide technical assistance particularly to local government units for effective supervision, coordination, integration and monitoring of technical-vocational education and training programs within their localities; and

c) review and recommend TESDA programs for implementation within their localities; and

d) perform such other duties and functions as may be authorized.

SEC. 18. Additional Offices. — The TESDA Secretariat may be further composed by such offices as may be deemed necessary by the TESDA Board.

Rule V
TESDA COMMITTEES

SECTION 1. Technical Education and Skills Development Committees. — The TESDA shall establish Technical Education and Skills Development Committees at the regional and local levels to coordinate and monitor the delivery of all technical education and skills development activities of the public and private sectors. The TESDA Board is authorized to set aside a portion of the appropriation of the TESDA for the operation of the TESDA Committees.

SEC. 2. TESDA Committees’ Relations to Local Development Councils. — The TESDA Committees shall establish linkages with the appropriate regional and local development councils in order that they may likewise serve as the Technical Education and Skills Development Committees of the said development councils.

SEC. 3. Composition of TESDA Committees. — The composition of the Technical Education and Skills Development Committees shall be determined by the Director-General subject to the guidelines promulgated by the TESDA Board.

Rule VI
PROGRAMS AND ACTIVITIES

SECTION 1. Programs and Activities in Technical Education and Skills Development. — The TESDA shall accredit, coordinate, integrate, monitor and evaluate all the different formal and non-formal technical-vocational education and training programs pursuant to the goals and objectives of the Act.

Encouraging the active participation of the private sector, including industry groups, trade associations, employers and workers, and particularly private enterprises,
the TESDA shall promote and strengthen the quality of these technical education and skills development programs:

a) middle-level manpower development programs;
b) vocational, administrative or training programs for the purpose of acquiring and developing job-related skills;
c) programs and projects which will build up institutional capabilities within the sector;
d) technical education and skills development programs at national, regional and local levels;
e) formal technical-vocational education and training programs implemented by various institutions in the country;
f) non-formal community-based technical-vocational education and training programs;
g) training programs and schemes focused on skills training for entrepreneur development and technology development; cost-effective training in occupational trades and related fields of employment and value development as an integral component of all skills training programs;
h) training programs and schemes that include teachers’ trainors’ training and for the continuing development of trainors, teachers and instructors within the technical education and skills development sector; and
i) programs for the training of supervisors, planners and managers.

SEC. 2. User-Led or Market-Driven Strategy. — Adopting a user-led or market-driven strategy, the TESDA shall promote strengthened linkages between educational/training institutions and industry to ensure that appropriate skills and knowledge are provided by the educational system.

SEC. 3. Apprenticeship and Learnership Programs. — Using the above-mentioned strategy, in accordance with existing laws, rules and regulations, the TESDA shall implement and administer reformed industry-based apprenticeship and learnership programs which have been transferred from the Department of Labor and Employment to the TESDA by the Act.

SEC. 4. Dual Training System. — Also using the strategy mentioned in Section 2 hereof, the TESDA shall implement Republic Act No. 7686 otherwise known as the “Dual Training System Act of 1994” and lend support and encourage increasing utilization of the dual training system as provided for in the aforementioned Act.

SEC. 5. Administration of Training Programs. — The TESDA shall design and administer training programs and schemes that will develop the capabilities of public and private institutions to provide quality and cost-effective technical education and skills development and related opportunities.

SEC. 6. Establishment and Administration of National Trade Skills Standards. — There shall be national occupational skills standards to be established by TESDA-accredited industry committees. The TESDA shall develop and implement a certification and accreditation program in which private groups and trade associations
are accredited to conduct approved trade tests, and the local government units to promote such trade testing activities in their respective areas in accordance with the guidelines to be set by the TESDA.

The Secretary of Labor and Employment shall determine the occupational trades for mandatory certification.

All certificates relating to the national trade skills testing and certification system shall be issued by the TESDA through its Secretariat.

SEC. 7. Industry Boards. — The TESDA shall establish effective and efficient institutional arrangements with industry boards and such other bodies or associations to provide direct participation of employers and workers in the design and implementation of skills development schemes, trade skills standardization and certification and such other functions in the fulfillment of the TESDA’s objectives.

SEC. 8. Skills Development Centers. — The TESDA shall strengthen the network of national, regional and local skills training centers for the purpose of promoting skills development.

This network shall include skills training centers in vocational and technical schools, technical institutions, polytechnic colleges, and all other duly accredited public and private dual system educational institutions. The technical education and skills development centers shall be administered and operated under such rules and regulations as may be established by the TESDA in accordance with the National Technical Education and Skills Development Plan.

SEC. 9. Coordination of All Skills Training Schemes. — In order to integrate the national skills development efforts, all technical education and skills training schemes as provided for in the Act shall be coordinated with the TESDA particularly those having to do with the setting of trade skills standards. For this purpose, existing technical education and skills training programs in the Government and in the private sector, specifically those wholly or partly financed with government funds, shall be reported to the TESDA which shall assess and evaluate such programs to ensure their efficiency and effectiveness.

SEC. 10. Skills Development Opportunities. — The TESDA shall design and implement an effective and efficient delivery system for quality technical education and skills development opportunities particularly in disadvantaged sectors, with new tools of wealth creation and with the capability to take on higher value-added gainful activities and to share equitably in productivity gains.

SEC. 11. Devolution of TESDA’s Training Function to Local Governments. — In establishing the delivery system provided for in the preceding Section, the TESDA shall formulate, implement and finance a specific plan to develop the capability of local government units to assume ultimately the responsibility for effectively providing community-based technical education and skills development opportunities; Provided, however, That there shall be formulated and implemented an effective and timely retraining of TESDA personnel that would be affected by the devolution to ensure their being retained if the concerned local government units would not be able to absorb them.
APPENDIX II-1.1: Implementing Rules of the TESDA Act of 1994

Rule VII
TECHNICAL AND VOCATIONAL SCHOOLS AND TRAINING CENTERS

SECTION 1. Public Technical and Vocational Schools. — The public technical and vocational schools whose budgets are included in the TESDA budget for the annual General Appropriations Act, including those funded by local governments, shall be under the supervision of the TESDA. The pertinent DECS Orders and Memoranda shall continue to apply to said schools until they are modified or revoked by the TESDA Board.

SEC. 2. Private Technical and Vocational Schools. — The private technical and vocational schools shall be subject to reasonable supervision by the TESDA, in accordance with the 1992 Manual of Regulations for Private Schools, particularly its Article IV. Supervision and Regulation of Private Schools and Article V. Accreditation, until the aforementioned regulations are modified or revoked by the TESDA Board.

SEC. 3. Training Centers. — In its supervision of the public and private training centers, the TESDA shall ensure that appropriate skills and knowledge are provided to industry by these training centers.

Rule VIII
PROMOTION, ASSISTANCE, SCHOLARSHIP GRANTS AND INCENTIVES

SECTION 1. Skills Olympics. — To promote quality skills development in the country and with the view of participating in international skills competitions, the TESDA, with the active participation of private industries, shall organize and conduct annual National Skills Olympics. The TESDA, through its Secretariat, shall promulgate the necessary rules and guidelines for the effective and efficient conduct of Annual National Skills Olympics and for the country’s participation in international skills olympics.

SEC. 2. Assistance to Employers and Organizations. — The TESDA shall assist any employer or organization engaged in skills training schemes designed to attain its objectives under rules and regulations which the TESDA shall establish for this purpose.

SEC. 3. Scholarship Grants. — The TESDA shall adopt a system of allocation and funding of scholarship grants which shall be responsive to the technical education and skills development needs of the different regions in the country.

SEC. 4. Incentive Schemes. — The TESDA shall develop and administer appropriate incentive schemes to encourage government and private industries and institutions to provide high-quality technical education and skills development opportunities.
APPENDIX

Rule IX
FINANCING FOR TECHNICAL EDUCATION
AND SKILLS DEVELOPMENT

SECTION 1. TESDA Budget. — The amount necessary to finance the initial implementation of the Act shall be charged against the existing appropriations of the NMYC and the BTVE. Thereafter, such funds as may be necessary for the continued implementation of the Act shall be included in the annual General Appropriations Act.

SEC. 2. The TESDA Development Fund. — A TESDA Development Fund is established, to be managed/administered by the TESDA, the income from which shall be utilized exclusively in awarding of grants and providing assistance to schools, training institutions, industries, local government units for upgrading their capabilities, and to develop and implement technical education and skills development programs. The Fund shall be set up through:

a) a one-time lump sum appropriation from the National Government;

b) an annual contribution from the Overseas Workers Welfare Administration Fund, the amount of which should be part of the study on financing provided for in Section 4 of this Rule;

c) donations, grants, endowments, and other bequests or gifts; and

d) any other income generated by the TESDA.

SEC. 3. Administrator and Fund Manager. — The TESDA Board shall be the administrator of the Fund, and as such, shall formulate the necessary implementing guidelines for the management of the Fund, subject to the following: a) unless otherwise stipulated by the private donor, only earnings of private contributions shall be used; and b) no part of the seed capital of the Fund, including earnings, thereof, shall be used to underwrite expenses for administration.

The Board shall appoint a reputable government-accredited investment institution as Fund manager, subject to guidelines promulgated by the Board.

SEC. 4. Expert Group on Funding Scheme. — Within one (1) year after the organization of the TESDA, the TESDA Board shall commission an expert group on funding schemes for the TESDA Development Fund, the results of which shall be used as the basis for appropriate action by the Board.

SEC. 5. Levy and Grant Scheme. — The TESDA may determine and approve systematic funding schemes for technical education and skills development purposes such as a levy and grant scheme whereby there shall be legal contributions from participating employers who would be beneficiaries of the employee training programs (often as a percentage of the payroll) which contributions are subsequently turned over or rebated to enterprise offering such program.

SEC. 6. Fees and Charges. — The TESDA may exact reasonable fees and charges for such tests and training it may conduct and retain such earnings for its own use, subject to guidelines promulgated by the TESDA Board.

SEC. 7. Instructional Improvement Fund. — The instructional improvement fund in public technical-vocational schools and institutions shall be used for the
expansion, upgrading or maintenance of school facilities, particularly machinery, equipment and other learning resources.

**Rule X**

**DEFINITION OF TERMS**

**SECTION 1. Definition of Terms under the Act.** —

“Apprentice” is a person undergoing training for an approved apprenticeable occupation during an established period assured by an apprenticeship agreement.

“Apprenticeship” is training within employment with compulsory related theoretical instructions involving a contract between an apprentice and an employer on an approved apprenticeable occupation.

“Apprenticeship Agreement” is a contract wherein a prospective employer binds himself to train the apprentice who in turn accepts the terms of training for a recognized apprenticeable occupation, emphasizing the rights, duties and responsibilities of each party.

“Apprenticeable Occupation” is an occupation officially endorsed by a tripartite body and approved for apprenticeship by the Authority.

“Dual System/Training” refers to a delivery system of quality technical and vocational education which requires training to be carried out alternately in two venues: in school and in the production plant. In-school training provides the trainee the theoretical foundation, basic training, guidance and human formation, while in-plant training develops his skills and proficiency in actual work conditions as it continues to inculcate personal discipline and work values.

“Learners” refer to persons hired as trainees in semi-skilled and other industrial occupations which are nonapprenticeable. Learnership programs must be approved by the Authority.

“Levy-and-Grant System” refers to a legal contribution (often a percentage of the payroll) from participating employers who would be beneficiaries of a vocational or technical education or training program which is subsequently turned over or rebated to enterprises offering employee training programs.

“Middle-Level Manpower” refers to those:

a) who have acquired practical skills and knowledge through formal or non-formal education and training equivalent to at least a secondary education but preferably a post-secondary education with a corresponding degree or diploma; or

b) skilled workers who have become highly competent in their trade or craft as attested by industry.

“Private Enterprise” refers to an economic system under which property of all kinds can be privately owned and in which individuals, alone or in association with another, can embark on a business activity. This includes industrial, agricultural, agro-industrial or service establishment engaged in the production, manufacturing, processing, repacking, assembly, or production of goods.

“Skill” means the acquired and developed ability to carry out a task or job.
“Skills Development” means the process through which learners and workers are systematically provided with learning opportunities to acquire or upgrade, or both, their ability, knowledge and behavior pattern required as qualifications for a job or range of jobs in a given occupational area.

“Technical Education” refers to the education process designed at post-secondary and lower tertiary levels, officially recognized as non-degree programs aimed at preparing technicians, para-professionals and other categories of middle-level workers by providing them with a broad range of general education, theoretical, scientific and technological studies, and related job skills training.

“Trade” means any group of interrelated jobs or any occupation which is traditionally or officially recognized as craft or artisan in nature requiring specific qualifications that can be acquired through work experience and/or training.

“Trainees” are participants in a vocational, administrative or technical training program for the purpose of acquiring and developing job-related skills.

“Trainers” are persons who direct the practice of skills towards immediate improvement in some tasks.

“Trainors/Trainers” are persons who provide training to trainers aimed at developing the latter’s capacities for imparting attitudes, knowledge, skills and behavior patterns required for specific jobs, tasks, occupations or group of related occupations.

“User-Led” or “Market-Driven Strategy” refers to a strategy which promotes strengthened linkages between educational/training institutions and industry to ensure that appropriate skills and knowledge are provided by the educational system. Market-driven strategy relies principally on market forces to determine supply/demand ratios including the pricing of training and education.

Rule XI
TRANSITORY AND FINAL PROVISIONS

SECTION 1. Private Sector Representatives. — Within two (2) months after the approval of the Act, the President shall, in consultation with the Secretary of Labor and Employment and the Secretary of Education, Culture and Sports, appoint the private sector representatives of the TESDA Board.

SEC. 2. Appointment of the Director-General. — Within three (3) months after the appointment of the private sector representatives, the President shall, upon the recommendation of the Board, appoint the Director-General.

SEC. 3. Organizational Structure and Staffing Pattern. — Within four (4) months after the appointment of the Director-General, the Board shall convene to determine the organizational structure and staffing pattern of the TESDA.

SEC. 4. Personnel of Absorbed Agencies. — The personnel of the existing National Manpower and Youth Council (NMYC) of the Department of Labor and Employment and the Bureau of Technical and Vocational Education (BTVE) of the Department of Education, Culture and Sports, shall, in a holdover capacity continue
to perform their respective duties and responsibilities and receive their corresponding salaries and benefits until such time when the organizational structure and staffing pattern of the TESDA shall have been approved by the Board: Provided, That the preparation and approval of the said new organizational structure and staffing pattern shall, as far as practicable, respect and ensure the security of tenure and seniority rights of affected government employees, as clarified in Sections 5, 6, and 7 of this Rule.

SEC. 5. Holdover Capacity in Respective Duties and Responsibilities. — A position is composed of a set of duties and responsibilities. Thus, even if the title of said position is changed or the salary therefor is upgraded, the absorbed personnel who is performing the duties and responsibilities shall continue to hold such position and receive the appropriate upgraded salary of said retitled position, in a holdover capacity.

SEC. 6. Respecting and Insuring Security of Tenure. — As long as the duties and responsibilities of his position are needed by the TESDA, the absorbed personnel concerned shall not be forced to resign and be dismissed without just cause and without due process. If new and higher positions are created, the absorbed personnel who meets the qualification standards of the new position shall be given preference in the filling up of said position.

SEC. 7. Respecting Seniority Rights. — In filling up new positions, there shall be an open competition among the absorbed personnel taking into consideration their qualifications, performance and eligibility.

If the absorbed personnel has to be retired under the provision of the next succeeding section, it is understood that his other previous service in the government shall be included or considered in the computation of his retirement benefits.

SEC. 8. Separation or Retirement Benefits. — Those personnel whose positions are not included in the new staffing pattern approved by the TESDA Board or who are not reappointed or who choose to be separated as a result of the reorganization shall be paid their separation or retirement benefits under existing laws.

SEC. 9. Consultation with Commission on Higher Education and the Appropriate Department for Basic Education. — Upon the consultation of the TESDA Board, the TESDA may work out with the Commission on Higher Education and the appropriate Department for Basic Education a system of cooperation and program management with respect to educational institutions offering basic tertiary and post-secondary programs paying special attention to delineation of programs, functions, responsibilities, personnel and facilities.

SEC. 10. Existing Policies and Projects in Force until Revoked. — All policies and projects of the agencies replaced and absorbed by the TESDA involving technical education and skills development programs shall remain in force unless or until modified or revoked by these Rules or by the TESDA.

SEC. 11. Permits and Certificates. — All permits, certificates of recognition, and other certificates issued by the agencies replaced and absorbed by the TESDA prior to these Rules affecting technical education and skills development shall continue to be in force and in effect. However, further action on such permits and certificates shall henceforth be undertaken by the TESDA.
SEC. 12. Separability Clause. — If any provision of these Rules is held invalid or unconstitutional, any other provision not so affected shall continue to be valid and effective.

SEC. 13. Repealing Clause. — Any law, presidential decree, executive order, letter of instruction, and its rules and regulations, or any part thereof, which is inconsistent with any of the provisions of the Act and these Rules is hereby repealed or amended accordingly.

SEC. 14. Effectivity Clause. — These Rules shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

SEC. 15. Issuances on Policies and Guidelines After Effectivity of the Rules. — The TESDA Board shall, after due consultations as required by Section 8, paragraph 1 of the Act, promulgate from time to time issuances on policies and guidelines for the effective implementation of these Rules and Regulations.

Done in Manila, Republic of the Philippines this 24th day of January 1995.
APPENDIX TO BOOK III

APPENDIX III-1: Kasambahay Law

Republic Act No. 10361

AN ACT INSTITUTING POLICIES FOR THE PROTECTION AND WELFARE OF DOMESTIC WORKERS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

ARTICLE I
GENERAL PROVISIONS

SECTION 1. Short Title. – This Act shall be known as the “Domestic Workers Act” or “Batas Kasambahay.”

SEC. 2. Declaration of Policies. – It is hereby declared that:

(a) The State strongly affirms labor as a primary social force and is committed to respect, promote, protect and realize the fundamental principles and rights at work including, but not limited to, abolition of child labor, elimination of all forms of forced labor, discrimination in employment and occupation, and trafficking in persons, especially women and children;

(b) The State adheres to internationally accepted working conditions for workers in general, and establishes labor standards for domestic workers in particular, towards decent employment and income, enhanced coverage of social protection, respect for human rights and strengthened social dialogue;

(c) The State recognizes the need to protect the rights of domestic workers against abuse, harassment, violence, economic exploitation and performance of work that is hazardous to their physical and mental health; and

(d) The State, in protecting domestic workers and recognizing their special needs to ensure safe and healthful working conditions, promotes gender-sensitive measures in the formulation and implementation of policies and programs affecting the local domestic work.

SEC. 3. Coverage. – This Act applies to all domestic workers employed and working within the country.

SEC. 4. Definition of Terms. – As used in this Act, the term:

(a) Debt bondage refers to the rendering of service by the domestic worker as security or payment for a debt where the length and nature of service
is not clearly defined or when the value of the service is not reasonably applied in the payment of the debt.

(b) Deployment expenses refers to expenses that are directly used for the transfer of the domestic worker from place of origin to the place of work covering the cost of transportation. Advances or loans by the domestic worker are not included in the definition of deployment expenses.

(c) Domestic work refers to work performed in or for a household or households.

(d) Domestic worker or “Kasambahay” refers to any person engaged in domestic work within an employment relationship such as, but not limited to, the following: general househelp, nursemaid or “yaya”, cook, gardener, or laundry person, but shall exclude any person who performs domestic work only occasionally or sporadically and not on an occupational basis.

The term shall not include children who are under foster family arrangement, and are provided access to education and given an allowance incidental to education, i.e., “baon”, transportation, school projects and school activities.

(e) Employer refers to any person who engages and controls the services of a domestic worker and is party to the employment contract.

(f) Household refers to the immediate members of the family or the occupants of the house that are directly provided services by the domestic worker.

(g) Private Employment Agency (PEA) refers to any individual, legitimate partnership, corporation or entity licensed to engage in the recruitment and placement of domestic workers for local employment.

(h) Working children, as used under this Act, refers to domestic workers who are fifteen (15) years old and above but below eighteen (18) years old.

ARTICLE II
RIGHTS AND PRIVILEGES

SEC. 5. Standard of Treatment. – The employer or any member of the household shall not subject a domestic worker or “kasambahay” to any kind of abuse nor inflict any form of physical violence or harassment or any act tending to degrade the dignity of a domestic worker.

SEC. 6. Board, Lodging and Medical Attendance. – The employer shall provide for the basic necessities of the domestic worker to include at least three (3) adequate meals a day and humane sleeping arrangements that ensure safety.

The employer shall provide appropriate rest and assistance to the domestic worker in case of illnesses and injuries sustained during service without loss of benefits.

At no instance shall the employer withdraw or hold in abeyance the provision of these basic necessities as punishment or disciplinary action to the domestic worker.
SEC. 7. Guarantee of Privacy. – Respect for the privacy of the domestic worker shall be guaranteed at all times and shall extend to all forms of communication and personal effects. This guarantee equally recognizes that the domestic worker is obliged to render satisfactory service at all times.

SEC. 8. Access to Outside Communication. – The employer shall grant the domestic worker access to outside communication during free time: Provided, That in case of emergency, access to communication shall be granted even during work time. Should the domestic worker make use of the employer’s telephone or other communication facilities, the costs shall be borne by the domestic worker, unless such charges are waived by the employer.

SEC. 9. Right to Education and Training. – The employer shall afford the domestic worker the opportunity to finish basic education and may allow access to alternative learning systems and, as far as practicable, higher education or technical and vocational training. The employer shall adjust the work schedule of the domestic worker to allow such access to education or training without hampering the services required by the employer.

SEC. 10. Prohibition Against Privileged Information. – All communication and information pertaining to the employer or members of the household shall be treated as privileged and confidential, and shall not be publicly disclosed by the domestic worker during and after employment. Such privileged information shall be inadmissible in evidence except when the suit involves the employer or any member of the household in a crime against persons, property, personal liberty and security, and chastity.

ARTICLE III
PRE-EMPLOYMENT

SEC. 11. Employment Contract. – An employment contract shall be executed by and between the domestic worker and the employer before the commencement of the service in a language or dialect understood by both the domestic worker and the employer. The domestic worker shall be provided a copy of the duly signed employment contract which must include the following:

(a) Duties and responsibilities of the domestic worker;
(b) Period of employment;
(c) Compensation;
(d) Authorized deductions;
(e) Hours of work and proportionate additional payment;
(f) Rest days and allowable leaves;
(g) Board, lodging and medical attention;
(h) Agreements on deployment expenses, if any;
(i) Loan agreement;
(j) Termination of employment; and
(k) Any other lawful condition agreed upon by both parties.
The Department of Labor and Employment (DOLE) shall develop a model employment contract for domestic workers which shall, at all times, be made available free of charge to domestic workers, employers, representative organizations and the general public. The DOLE shall widely disseminate information to domestic workers and employers on the use of such model employment contract.

In cases where the employment of the domestic worker is facilitated through a private employment agency, the PEA shall keep a copy of all employment contracts of domestic workers and shall be made available for verification and inspection by the DOLE.

SEC. 12. Pre-Employment Requirement. – Prior to the execution of the employment contract, the employer may require the following from the domestic worker:

(a) Medical certificate or a health certificate issued by a local government health officer;
(b) Barangay and police clearance;
(c) National Bureau of Investigation (NBI) clearance; and
(d) Duly authenticated birth certificate or if not available, any other document showing the age of the domestic worker such as voter’s identification card, baptismal record or passport.

However, Section 12(a), (b), (c) and (d) shall be standard requirements when the employment of the domestic worker is facilitated through the PEA.

The cost of the foregoing shall be borne by the prospective employer or agency, as the case may be.

SEC. 13. Recruitment and Finder’s Fees. – Regardless of whether the domestic worker was hired through a private employment agency or a third party, no share in the recruitment or finder’s fees shall be charged against the domestic worker by the said private employment agency or third party.

SEC. 14. Deposits for Loss or Damage. – It shall be unlawful for the employer or any other person to require a domestic worker to make deposits from which deductions shall be made for the reimbursement of loss or damage to tools, materials, furniture and equipment in the household.

SEC. 15. Prohibition on Debt Bondage. – It shall be unlawful for the employer or any person acting on behalf of the employer to place the domestic worker under debt bondage.

SEC. 16. Employment Age of Domestic Workers. – It shall be unlawful to employ any person below fifteen (15) years of age as a domestic worker. Employment of working children, as defined under this Act, shall be subject to the provisions of Section 10(A), paragraph 2 of Section 12-A, paragraph 4 of Section 12-D, and Section 13 of Republic Act No. 7610, as amended, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.”

Working children shall be entitled to minimum wage, and all benefits provided under this Act.
Any employer who has been sentenced by a court of law of any offense against a working child under this Act shall be meted out with a penalty one degree higher and shall be prohibited from hiring a working child.

SEC. 17. Employer’s Reportorial Duties. – The employers shall register all domestic workers under their employment in the Registry of Domestic Workers in the barangay where the employer’s residence is located. The Department of the Interior and Local Government (DILG) shall, in coordination with the DOLE, formulate a registration system for this purpose.

SEC. 18. Skills Training, Assessment and Certification. – To ensure productivity and assure quality services, the DOLE, through the Technical Education and Skills Development Authority (TESDA), shall facilitate access of domestic workers to efficient training, assessment and certification based on a duly promulgated training regulation.

ARTICLE IV
EMPLOYMENT – TERMS AND CONDITIONS

SEC. 19. Health and Safety. – The employer shall safeguard the health and safety of the domestic worker in accordance with laws, rules and regulations, with due consideration of the peculiar nature of domestic work.

SEC. 20. Daily Rest Period. – The domestic worker shall be entitled to an aggregate daily rest period of eight (8) hours per day.

SEC. 21. Weekly Rest Period. – The domestic worker shall be entitled to at least twenty-four (24) consecutive hours of rest in a week. The employer and the domestic worker shall agree in writing on the schedule of the weekly rest day of the domestic worker: Provided, That the employer shall respect the preference of the domestic worker as to the weekly rest day when such preference is based on religious grounds. Nothing in this provision shall deprive the domestic worker and the employer from agreeing to the following:

(a) Offsetting a day of absence with a particular rest day;
(b) Waiving a particular rest day in return for an equivalent daily rate of pay;
(c) Accumulating rest days not exceeding five (5) days; or
(d) Other similar arrangements.

SEC. 22. Assignment to Nonhousehold Work. – No domestic worker shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage rate lower than that provided for agricultural or nonagricultural workers. In such cases, the domestic worker shall be paid the applicable minimum wage.

SEC. 23. Extent of Duty. – The domestic worker and the employer may mutually agree for the former to temporarily perform a task that is outside the latter’s household for the benefit of another household. However, any liability that will be incurred by the domestic worker on account of such arrangement shall be borne by the original employer. In addition, such work performed outside the household shall entitle the domestic worker to an additional payment of not less than the existing minimum wage rate of a domestic worker. It shall be unlawful for the original employer...
to charge any amount from the said household where the service of the domestic worker was temporarily performed.

**SEC. 24. Minimum Wage.** – The minimum wage of domestic workers shall not be less than the following:

(a) Two thousand five hundred pesos (P2,500.00) a month for those employed in the National Capital Region (NCR);

(b) Two thousand pesos (P2,000.00) a month for those employed in chartered cities and first class municipalities; and

(c) One thousand five hundred pesos (P1,500.00) a month for those employed in other municipalities.

After one (1) year from the effectivity of this Act, and periodically thereafter, the Regional Tripartite and Productivity Wage Boards (RTPWBs) shall review, and if proper, determine and adjust the minimum wage rates of domestic workers.

**SEC. 25. Payment of Wages.** – Payment of wages shall be made on time directly to the domestic worker to whom they are due in cash at least once a month. The employer, unless allowed by the domestic worker through a written consent, shall make no deductions from the wages other than that which is mandated by law. No employer shall pay the wages of a domestic worker by means of promissory notes, vouchers, coupons, tokens, tickets, chits, or any object other than the cash wage as provided for under this Act.

The domestic worker is entitled to a thirteenth month pay as provided for by law.

**SEC. 26. Pay Slip.** – The employer shall at all times provide the domestic worker with a copy of the pay slip containing the amount paid in cash every pay day, and indicating all deductions made, if any. The copies of the pay slip shall be kept by the employer for a period of three (3) years.

**SEC. 27. Prohibition on Interference in the Disposal of Wages.** – It shall be unlawful for the employer to interfere with the freedom of any domestic worker to dispose of the latter’s wages. The employer shall not force, compel or oblige the domestic worker to purchase merchandise, commodities or other properties from the employer or from any other person, or otherwise make use of any store or services of such employer or any other person.

**SEC. 28. Prohibition Against Withholding of Wages.** – It shall be unlawful for an employer, directly or indirectly, to withhold the wages of the domestic worker. If the domestic worker leaves without any justifiable reason, any unpaid salary for a period not exceeding fifteen (15) days shall be forfeited. Likewise, the employer shall not induce the domestic worker to give up any part of the wages by force, stealth, intimidation, threat or by any other means whatsoever.

**SEC. 29. Leave Benefits.** – A domestic worker who has rendered at least one (1) year of service shall be entitled to an annual service incentive leave of five (5) days with pay: Provided, That any unused portion of said annual leave shall not be cumulative or carried over to the succeeding years. Unused leaves shall not be convertible to cash.
SEC. 30. Social and Other Benefits. – A domestic worker who has rendered at least one (1) month of service shall be covered by the Social Security System (SSS), the Philippine Health Insurance Corporation (PhilHealth), and the Home Development Mutual Fund or Pag-IBIG, and shall be entitled to all the benefits in accordance with the pertinent provisions provided by law.

Premium payments or contributions shall be shouldered by the employer. However, if the domestic worker is receiving a wage of Five thousand pesos (P5,000.00) and above per month, the domestic worker shall pay the proportionate share in the premium payments or contributions, as provided by law.

The domestic worker shall be entitled to all other benefits under existing laws.

SEC. 31. Rescue and Rehabilitation of Abused Domestic Workers. – Any abused or exploited domestic worker shall be immediately rescued by a municipal or city social welfare officer or a social welfare officer from the Department of Social Welfare and Development (DSWD) in coordination with the concerned barangay officials. The DSWD and the DILG shall develop a standard operating procedure for the rescue and rehabilitation of abused domestic workers, and in coordination with the DOLE, for possible subsequent job placement.

ARTICLE V
POST EMPLOYMENT

SEC. 32. Termination of Service. – Neither the domestic worker nor the employer may terminate the contract before the expiration of the term except for grounds provided for in Sections 33 and 34 of this Act. If the domestic worker is unjustly dismissed, the domestic worker shall be paid the compensation already earned plus the equivalent of fifteen (15) days work by way of indemnity. If the domestic worker leaves without justifiable reason, any unpaid salary due not exceeding the equivalent fifteen (15) days work shall be forfeited. In addition, the employer may recover from the domestic worker costs incurred related to the deployment expenses, if any: Provided, That the service has been terminated within six (6) months from the domestic worker’s employment.

If the duration of the domestic service is not determined either in stipulation or by the nature of the service, the employer or the domestic worker may give notice to end the working relationship five (5) days before the intended termination of the service.

The domestic worker and the employer may mutually agree upon written notice to pre-terminate the contract of employment to end the employment relationship.

SEC. 33. Termination Initiated by the Domestic Worker. – The domestic worker may terminate the employment relationship at any time before the expiration of the contract for any of the following causes:

(a) Verbal or emotional abuse of the domestic worker by the employer or any member of the household;

(b) Inhuman treatment including physical abuse of the domestic worker by the employer or any member of the household;
APPENDIX

(c) Commission of a crime or offense against the domestic worker by the employer or any member of the household;

(d) Violation by the employer of the terms and conditions of the employment contract and other standards set forth under this law;

(e) Any disease prejudicial to the health of the domestic worker, the employer, or member/s of the household; and

(f) Other causes analogous to the foregoing.

SEC. 34. Termination Initiated by the Employer. – An employer may terminate the services of the domestic worker at any time before the expiration of the contract, for any of the following causes:

(a) Misconduct or willful disobedience by the domestic worker of the lawful order of the employer in connection with the former’s work;

(b) Gross or habitual neglect or inefficiency by the domestic worker in the performance of duties;

(c) Fraud or willful breach of the trust reposed by the employer on the domestic worker;

(d) Commission of a crime or offense by the domestic worker against the person of the employer or any immediate member of the employer’s family;

(e) Violation by the domestic worker of the terms and conditions of the employment contract and other standards set forth under this law;

(f) Any disease prejudicial to the health of the domestic worker, the employer, or member/s of the household; and

(g) Other causes analogous to the foregoing.

SEC. 35. Employment Certification. – Upon the severance of the employment relationship, the employer shall issue the domestic worker within five (5) days from request a certificate of employment indicating the nature, duration of the service and work performance.

ARTICLE VI
PRIVATE EMPLOYMENT AGENCIES

SEC. 36. Regulation of Private Employment Agencies (PEAs). – The DOLE shall, through a system of licensing and regulation, ensure the protection of domestic workers hired through the PEAs.

The PEA shall be jointly and severally liable with the employer for all the wages, wage-related benefits, and other benefits due a domestic worker.

The provision of Presidential Decree No. 442, as amended, otherwise known as the “Labor Code of the Philippines”, on qualifications of the PEAs with regard to nationality, networth, owners and officers, office space and other requirements, as well as nontransferability of license and commission of prohibited practices, shall apply.
In addition, PEAs shall have the following responsibilities:

(a) Ensure that domestic workers are not charged or levied any recruitment or placement fees;
(b) Ensure that the employment agreement between the domestic worker and the employer stipulates the terms and conditions of employment and all the benefits prescribed by this Act;
(c) Provide a pre-employment orientation briefing to the domestic worker and the employer about their rights and responsibilities in accordance with this Act;
(d) Keep copies of employment contracts and agreements pertaining to recruited domestic workers which shall be made available during inspections or whenever required by the DOLE or local government officials;
(e) Assist domestic workers with respect to complaints or grievances against their employers; and
(f) Cooperate with government agencies in rescue operations involving abused or exploited domestic workers.

ARTICLE VII
SEtTLEMENT OF DISPUTES

SEC. 37. Mechanism for Settlement of Disputes. – All labor-related disputes shall be elevated to the DOLE Regional Office having jurisdiction over the workplace without prejudice to the filing of a civil or criminal action in appropriate cases. The DOLE Regional Office shall exhaust all conciliation and mediation efforts before a decision shall be rendered.

Ordinary crimes or offenses committed under the Revised Penal Code and other special penal laws by either party shall be filed with the regular courts.

ARTICLE VIII
SPECIAL PROVISIONS

SEC. 38. Information Program. – The DOLE shall, in coordination with the DILG, the SSS, the PhilHealth and Pag-IBIG develop and implement a continuous information dissemination program on the provisions of this Act, both at the national and local level, immediately after the enactment of this law.

SEC. 39. “Araw Ng Mga Kasambahay.” – The date upon which the President shall approve this “Domestic Workers Act” shall be designated as the “Araw ng mga Kasambahay.”

ARTICLE IX
PENAL AND MISCELLANEOUS PROVISIONS

SEC. 40. Penalty. – Any violation of the provisions of this Act declared unlawful shall be punishable with a fine of not less than Ten thousand pesos (P10,000.00) but not more than Forty thousand pesos (P40,000.00) without prejudice to the filing of appropriate civil or criminal action by the aggrieved party.
SEC. 41. Transitory Provision; Non-Diminution of Benefits. – All existing arrangements between a domestic worker and the employer shall be adjusted to conform to the minimum standards set by this Act within a period of sixty (60) days after the effectivity of this Act: Provided, That adjustments pertaining to wages shall take effect immediately after the determination and issuance of the appropriate wage order by the RTWPBs: Provided, further, That nothing in this Act shall be construed to cause the diminution or substitution of any benefits and privileges currently enjoyed by the domestic worker hired directly or through an agency.

SEC. 42. Implementing Rules and Regulations. – Within ninety (90) days from the effectivity of this Act, the Secretary of Labor and Employment, the Secretary of Social Welfare and Development, the Secretary of the Interior and Local Government, and the Director General of the Philippine National Police, in coordination with other concerned government agencies and accredited nongovernment organizations (NGOs) assisting domestic workers, shall promulgate the necessary rules and regulations for the effective implementation of this Act.

ARTICLE X
FINAL PROVISIONS

SEC. 43. Separability Clause. – If any provision or part of this Act is declared invalid or unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

SEC. 44. Repealing Clause. – All articles or provisions of Chapter III (Employment of Househelpers) of Presidential Decree No. 442, as amended and renumbered by Republic Act No. 10151 are hereby expressly repealed. All laws, decrees, executive orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 45. Effectivity Clause. – This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved,

(Sgd.) FELICIANO BELMONTE JR. (Sgd.) JUAN PONCE ENRILE
Speaker of the House of Representatives President of the Senate

This Act which is a consolidation of Senate Bill No. 78 and House Bill No. 6144 was finally passed by the Senate and the House of Representatives on November 27, 2012 and November 26, 2012, respectively.

(Sgd.) MARILYN B. BARUA-YAP (Sgd.) EMMA LIRIO-REYES
Secretary General House of Representatives Secretary of the Senate

Approved: JAN. 18, 2013

(Sgd.) BENIGNO S. AQUINO III
President of the Philippines
APPENDIX TO BOOK IV

APPENDIX IV-1: D.O. No. 53-03

DEPARTMENT ORDER NO. 53-03
(Series of 2003)

GUIDELINES FOR THE IMPLEMENTATION OF A DRUG-FREE WORKPLACE POLICIES AND PROGRAMS FOR THE PRIVATE SECTOR

In accordance with Article V of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drug Act of 2002, and its Implementing Rules and Regulations and in consultation with the Tripartite Task Force Created under DOLE Department Order No. 37-03, s. 2003 (Tripartite Task Force), the following guidelines are hereby issued to assist employers and employees in the formulation of company policies and programs to achieve a drug-free workplace.

A. Coverage
   1. The guidelines shall apply to all establishments in private sector, including their contractors and concessionaires.

B. Formulation of Drug-free Workplace
   Policies and Programs
   1. It shall be mandatory for all private establishments employing ten (10) or more workers to formulate and implement drug abuse prevention and control programs in the workplace, including the formulation and adoption of company policies against dangerous drug use. Establishments with less than ten (10) workers are also encouraged to formulate and adopt drug-free policies and programs in the workplace.
   2. The workplace policies and programs shall be prepared jointly by management and labor representatives and shall be made an integral part of the company’s occupational safety and health and related workplace programs.
   3. In organized establishments, the workplace policies and programs shall be included as part of the Collective Bargaining Agreements.
   4. Assistance in the formulation and implementation of a Drug-Free Workplace Policies and Programs may be sought from the Tripartite Task Force (see Annex 1) [not here —CAA], through the Occupational Safety and Health Center. The Regional Offices of the DOLE shall serve as focal center in their respective areas of jurisdiction in providing information on R.A. No. 9165 and on the prevention and control of drug abuse in the workplace.
C. Components of a Drug-free Workplace Policies and Programs

1. Workplace policies and programs on drug abuse prevention and control to be adopted by companies shall include, among others, the following components:

   a.) Advocacy, Education and Training

      i. Employers shall be responsible for increasing awareness and education of their officers and employees on the adverse effects of dangerous drug as well as the monitoring of employees susceptible to drug abuse. Topics which may be included in the orientation-education program shall include, among others, the following:

         — Salient Features of RA 9165 (the Act) and its implementing Rules and Regulations (IRR)
         — The Company policies and programs on drug-free workplace
         — Adverse effects of abuse and/or misuse of dangerous drugs on the person, workplace, family and community
         — Preventive measures against drug abuse
         — Steps to take when intervention is needed, as well as the services available for treatment and rehabilitation.

      ii. Employers are enjoined to display a billboard or streamer in conspicuous places in the workplace with standard message like “THIS IS A DRUG-FREE WORKPLACE; LET’S KEEP IT THIS WAY!” or such other messages of similar import.

      iii. Curricula developed by the Task Force shall be used as widely as possible for awareness raising and training. May be accessed through the OSHC website (www.oshc.dole.gov.ph)

      iv. Training on prevention, clinical assessment, and counseling of workers and other related activities shall be given to occupational safety and health personnel, the human resources manager and the employer and workers representatives. These trained personnel shall form part of an Assessment Team which shall address of drug abuse prevention, treatment and rehabilitation.

      v. In absence of such capability, particularly in small establishments, DOLE shall, to extent possible, provide relevant information on experts and services in their localities.

      vi. In the context of their Corporate Social Responsibility Programs, employers are encouraged to extend drug abuse prevention advocacy and training to their workers’ families and their respective communities.
b.) Drug Testing Program for Officers and Employees

i. Employers shall require their officials and employees to undergo a random drug test (as defined in Annex 2) [not reproduced here —CAA] in accordance with the company's work rules and regulations for purposes of reducing the risk in the workplace. Strict confidentiality shall be observed with regard to screening and the screening results.

ii. Drug testing for teaching and non-teaching staff in private schools shall be in accordance with the guidelines provided by the DepED, CHED and TESDA.

iii. Drug testing shall conform with the procedures as prescribed by the Department of Health (DOH) (www.oshc.dole.gov.ph). Only drug testing centers accredited by the DOH shall be utilized. A list of the accredited centers may be accessed through the OSHC website (www.oshc.dole.gov.ph).

iv. Drug testing shall consist of both the screening test and the confirmatory test; the latter to be carried out should the screening test run positive. The employee concerned must be informed of the test results whether positive or negative.

v. Where the confirmatory test turns positive, the company's Assessment Team shall evaluate the results and determine the level of care and administrative interventions that can be extended to the concerned employee.

vi. A drug test is valid for one year, however, additional drug testing may be required for just cause as in any of the following cases:
   — After workplace-related accidents, including near miss
   — Following treatment and rehabilitation to establish fitness for returning to work/resumption of job
   In the light of clinical findings and/or upon recommendation of the assessment team.

vii. All cost of drug testing shall be borne by the employer.

c.) Treatment, Rehabilitation and Referral

i. The drug prevention and control program shall include treatment, rehabilitation and referral procedure to be provided by the company staff or by an external provider. It shall also include a provision for employee assistance and counseling programs for emotionally-stressed employees.

ii. The Assessment Team shall determine whether or not an officer or employee found positive for drugs would need referral for treatment and/or rehabilitation in a DOH accredited center.
iii. This portion is given only to officers and employees who are diagnosed with drug dependence for the first time, or who turn to the Assessment Team for assistance, or who would benefit from the treatment and rehabilitation.

iv. Following rehabilitation, the Assessment Team, in consultation with the head of the rehabilitation center, shall evaluate the status of the drug dependent employee and recommend to the employer the resumption of the employee’s job if he/she poses no serious danger to his/her co-employees and/or the workplace.

v. Repeated drug use even after ample opportunity for treatment and rehabilitation shall be dealt with the corresponding penalties under the Act and its IRR.

vi. An updated list of drug treatment and rehabilitation centers accredited by the DOH shall be disseminated through the OSHC website (www.oshc.dole.gov.ph).

d.) Monitoring and Evaluation

i. The implementation of drug-free workplace policies and programs shall be monitored and evaluated periodically by the employer to ensure that the goal of a drug-free workplace is met. The Health and Safety Committee or other similar Committee may be tasked for this purpose.

D. Roles, Rights and Responsibilities of Employers and Employees

1. The employer shall ensure that the workplace policies and programs on the prevention and control of dangerous drugs, including drug testing shall be disseminated to all officers and employees. The employer shall obtain a written acknowledgement from the employees that the policy has been read and understood by them.

2. The employer shall maintain the confidentiality of all information relating to drug test or to the identification of drug users in the workplace; exceptions may be made only where required by law, in case of overriding public health and safety concerns; or where such exceptions have been authorized in writing by the person concerned.

3. Labor unions, federations, workers organizations and associations are enjoined to take an active role in educating and training their members on drug abuse prevention and control. They shall, in cooperation with their respective private sector partners, develop and implement joint continuing programs and information campaigns, including the conduct of capability-building programs, peer counseling and values education with the end in view of promoting a positive lifestyle and a drug-free workplace.

4. All officers and employees shall enjoy the right to due process, absence of which will render the referral procedure ineffective.
E. Enforcement
1. The Labor Inspectorate of the DOLE Regional Officers shall be responsible for monitoring compliance of establishments with the provisions of Article V of the Act and its IRR and this Department Order.
2. The dissemination of information on pertinent provisions of RA 9165 and the IRR shall be included in the advisory visits of the Labor Inspectorate.
3. The DOLE may, where deemed necessary and appropriate, delegate the monitoring of compliance of establishments with the provisions of Article V of the Act to Local Government Units thru a Memorandum of Agreement.

F. Consequences of Policy Violations
1. Any officer or employee who uses, possesses, distributes, sells or attempts to sell, tolerates, or transfer dangerous drugs or otherwise commits other unlawful acts as defined under Article II of RA 9165 and its Implementing Rules and Regulations shall be subject to the pertinent provisions of the said Act.
2. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively in accordance with the provisions of Article 282 of Book VI of the Labor Code under RA 9165.

G. Effectivity
1. All concerned shall comply with all the provisions of this Department Order within six months from its publication in a newspaper of general circulation.

(SGD.) PATRICIA A. STO. TOMAS
Secretary
14 August 2003