

Republic of the Philippines
Department of Labor and Employment
National Wages and Productivity Commission
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD
Cordillera Administrative Region
Baguio City

WAGE ORDER RB-CAR-13
GRANTING INCREASE IN THE COST
OF LIVING ALLOWANCE
IN THE CORDILLERA ADMINISTRATIVE REGION

WHEREAS, RA 6727, otherwise known as the Wage Rationalization Act, empowers the Regional Tripartite Wages and Productivity Boards to determine and fix minimum wage rates applicable in the regions and to issue the corresponding Wage Orders subject to the guidelines issued by the National Wages and Productivity Commission;

WHEREAS, Section 3, Rule IV of NWPC Amended Rules of Procedures on Minimum Wage Fixing provides that “Any Wage Order issued by the Board may not be disturbed within 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 increase 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.”

WHEREAS, RTWPB-CAR issued Wage Order No. RB-CAR-12 granting an additional COLA to all covered private sector workers in the region effective 07 January 2008;

WHEREAS, the Board, after monitoring and evaluating the prices of petroleum products and basic commodities, found and determined the existence of supervening condition, such as the extraordinary increase in prices of petroleum products and basic commodities and the continuing effect of the said price increase towards higher inflation that erodes the purchasing power of the peso;

WHEREAS, such determination of the supervening condition, stated in the Board Resolution No. 04, series of 2008, was confirmed by the National Wages and Productivity Commission;

WHEREAS, after due notice to all concerned sectors, the Board conducted Public Hearings on May 20, 2008 in Tabuk City (for Kalinga and Apayao Provinces); on May 21, 2008 in Lagawe, Ifugao (for Mountain Province and Ifugao Province); and on May 23, 2008 in Baguio City (for Baguio City and Provinces of Benguet and Abra);

WHEREAS, after due public hearings and deliberations, the Board finds the need to grant relief to private sector workers in Region-CAR to help them cope with the rising cost of living without impairing the productivity and viability of business and industry therein;

WHEREAS, consistent with the government’s policy of achieving higher level of productivity to preserve and generate jobs and to augment the income of workers, there is a need to build the capacity of business enterprises to be competitive through productivity improvement and gain sharing programs.

NOW THEREFORE, by virtue of the power and authority vested under Republic Act No. 6727, the RTWPB-CAR hereby issues this Wage Order.

Section 1. Coverage. All private sector workers and employees receiving the minimum wage in the Cordillera Administrative Region regardless of their position, designation or status and irrespective of the method their wages are paid are covered by this Wage Order, except for household or domestic helpers; persons employed in the personal service of another including family drivers; and workers in the registered Barangay Micro Business Enterprises with Certificates of Authority pursuant to Republic Act No. 9178, otherwise known as “Barangay Micro Business Enterprises Act of 2002”.

Section 2. Amount of Cost of Living Allowance. Upon the effectivity of this Wage Order, all covered workers in the different industrial classifications and geographical locations shall receive an increase in the daily Cost of Living Allowance in the amount as follows:

Baguio City, Municipalities of La Trinidad, Itogon, Sablan and Tuba, Benguet:

- Non-Agriculture - Fifteen pesos (P15.00)
- Agriculture - Fifteen pesos (P15.00)
- Retail & Service employing ten (10) workers and below - Fifteen pesos (P15.00)

Other areas in the Cordillera Administrative Region:

- Non-Agriculture - Ten Pesos (P10.00)
- Agriculture - Ten Pesos (P10.00)
- Retail & Service employing ten (10) workers and below - Ten Pesos (P10.00)

The daily minimum wage rates shall be:

Industry/Sector	Daily Minimum Wage Rates					
	Baguio City, La Trinidad, Tuba, Itogon and Sablan			Other Areas in the Region		
	BASIC WAGE	COLA	Daily Minimum Wage	BASIC WAGE	COLA	Daily Minimum Wage
Non-Agriculture	P235.00	P25.00	P260.00	P229.00	P14.00	243.00
Agriculture	222.00	20.00	242.00	216.00	10.00	226.00
Retail/Service						

Employing more than 10 workers	235.00	25.00	260.00	229.00	14.00	243.00
Employing 10 workers or less	215.00	25.00	240.00	209.00	10.00	219.00

Section 3. *Basis of Minimum Wage.* The minimum wage rates prescribed under this Order shall be for the normal working hours, which shall not exceed eight hours work a day.

Section 4. *Application to Private Educational Institutions .* In the case of private educational institutions the share of covered workers and employees in the tuition fees for School Year 2008-2009 shall be applied as compliance to this Wage Order. However, payment of any shortfall in compliance with this Wage Order shall be covered starting School Year 2009-2010.

Private Educational institutions which have not increased their tuition fees for the School Year 2008-2009, may defer compliance with the provisions of this Wage Order until School Year 2009-2010.

In any case, all private educational institutions shall implement this Wage Order starting School Year 2009-2010.

Section 5. *Application to Contractors.* In the case of contracts for construction projects and for security, janitorial and other similar services, the prescribed increase in the Cost of Living Allowance 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 principals or clients fail to pay the prescribed increase in the Cost of Living Allowance, the construction/service contractors shall be jointly and severally liable with their principals or clients.

Section 6. *Workers Paid by Results.* All workers paid by results, including those who are paid on piecework, takay, pakyaw, or task basis, shall receive not less than the Cost of Living Allowance for the normal working hours which shall not exceed eight (8) hours per day or a proportion thereof for working less than eight (8) hours.

Section 7. *Apprentices and learners.* Persons employed under Apprenticeship or learnership agreement shall be entitled to not less than Seventy Five Percent (75%) of the new minimum wage rate under this Order.

All learnership and apprenticeship agreements entered into before the effectivity of this Order shall be automatically modified insofar as their wage clauses are concerned to reflect the new prescribed wage rates.

Section 8. *Mobile and Branch Workers.* The minimum wage rates of workers, who by the nature of their work have to travel, shall be those applicable in the domicile or head office of the employer.

The minimum wage rates of workers working in branches or agencies of establishments in or outside the Region shall be those applicable in the place where they are stationed.

Section 9. *Transfer of Personnel.* The transfer of personnel from one province or region to another shall not be a valid reason for the reduction of the wage rate being enjoyed by the worker prior to the transfer.

Section 10. *Exemptions.* Upon proper application with and as determined by the Board, the following categories of establishments maybe exempted from the applicability of this Order in accordance with NWPC Guidelines No. 02, series of 2007, providing Amended Rules on exemption from compliance with the prescribed Wage Increases/Cost of Living Allowances granted by the Regional Tripartite Wages and Productivity Boards :

1. Distressed establishment;
2. New Business Enterprises duly registered and established outside Export Processing Zone within two (2) years from effectivity of this Order classified under any of the following:
 - a. Agricultural establishments whether plantation or non-plantation; and
 - b. Establishments with total assets after financing of five million (P5,000,000.00) pesos and below.
3. Retail/Service Establishments regularly employing not more than ten (10) workers;
4. Establishments adversely affected by natural calamities.

Section 11. *Extent and Duration of Exemption.* A full exemption of one (1) year shall be granted to all categories of establishments that meet the applicable criteria for exemption under section 3 of NWPC Guidelines No. 02, series of 2007.

However, a partial exemption of 50% with respect to the amount or period of exemption shall be granted only in the case of distressed establishments in accordance with the NWPC Guidelines on Exemption.

Section 12. *Effect of Application for Exemption.* An application for exemption duly filed shall have the effect of deferring any action on any complaint for non-compliance with this Order until resolution of the application by the Regional Board. In case the application for exemption is not approved, covered employees/workers of the applicant-establishment shall be paid the mandated increase in the Cost of Living Allowance under this Order plus one (1) percent simple interest per month retroactive to the effectivity of this Order.

Section 13. *Productivity-Based Wages.* To attain higher levels of productivity for competitiveness, to preserve and generate gainful employment and to augment the wages of workers, business enterprises are encouraged to adopt productivity improvement and gain-sharing programs.

Section 14. *Appeal to the Commission.* Any party aggrieved by this Wage Order may file a verified appeal with the Commission through the Board within ten (10) calendar days from the publication of this Order.

Section 15. *Effect of Filing of Appeal.* The filing of the appeal does not operate to stay the Order unless the party appealing such Order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for payment of the corresponding increase in the Cost of Living Allowance to employees affected by the Order in the event such Order is affirmed.

Section 16. *Non-Diminution of Benefits.* Nothing in this Order shall be construed to reduce any existing wage rates, allowances and benefits of any form under existing laws, decrees, executive orders and/or under any contract or agreement between the workers and employers.

Section 17. *Effects on Existing Wage Structure.* Where the grant of the increase in the Cost of Living Allowance result in the distortion of the wage structure within an establishment, the same shall be corrected in accordance with the procedure provided for under Art. 124 of the Labor Code as amended. The following formula may be used to correct the same.

$$\begin{array}{r} \text{Previous Minimum Wage} \\ \text{(Wage Order RB-CAR-12)} \\ \text{-----} \\ \text{Actual Salary} \end{array} \times \begin{array}{l} \text{Prescribed} \\ \text{COLA} \end{array} = \begin{array}{l} \text{Amount of wage} \\ \text{adjustment due to} \\ \text{distortion} \end{array}$$

Section 18. *Complaints for Non-Compliance.* Complaints for non-compliance with this wage order may be filed with the Regional Office of the Department of Labor and Employment (DOLE-CAR) and shall be the subject of enforcement proceedings under Article 128 of the Labor Code, as amended, without prejudice to criminal prosecution which maybe undertaken against those who fail to comply.

Section 19. *Penal Provisions.* Any person, corporation, trust or firm, partnership, association or entity who refuses or fails to pay the prescribed increase in the Cost of Living Allowance in accordance with this Order shall be subject to the penal provisions under R.A. 6727, as amended by RA 8188.

Section 20. *Prohibition Against Injunction.* No preliminary or permanent injunction or temporary restraining order maybe issued by any

court, tribunal or other entity against any proceedings before the Board.

Section 21. *Freedom to Bargain.* This Order shall not be construed to prevent workers in particular firms or enterprises or industries from bargaining for higher wages with their respective employers.

Section 22. *Reporting Requirement.* Any person, company, corporation, partnership or any entity engaged in business shall submit a verified itemized listing of their labor component to the Board not later than January 31, 2009 and every year thereafter in accordance with the form prescribed by the Commission.

Section 23. *Repealing Clause.* All orders, issuances, rules and regulations, or parts thereof inconsistent with the provision of this Wage Order are hereby repealed, amended or modified accordingly.

Section 24. *Rules Implementing this Order.* The Board shall prepare the necessary rules to implement this Order subject to approval of the Secretary of Labor and Employment.

Section 25. *Separability Clause.* If, for any reason, a section or provision of this Order is declared unconstitutional or illegal, the other provisions or parts shall remain valid.

Section 26. *Effectivity.* This Order shall take effect fifteen (15) days after its publication in at least one (1) local newspaper of general circulation in the Region.

APPROVED: This 27th day of May 2008, Baguio City, Philippines.

(Sgd.)
MILTON L. BALAGTEY
Workers' Representative

(Sgd.)
ALFONSO T. LAO
Employers' Representative

(Sgd.)
RENERIO C. LARDIZABAL JR.
Workers' Representative

(Sgd.)
JUAN JOHNNY R. DE LA CRUZ
Employers' Representative

(Sgd.)
CARMELITA C. USMAN
Vice-Chairperson

(Sgd.)
JUAN B. NGALOB
Vice-Chairperson

(Sgd.)
ANA C. DIONE
Chairperson

**RULES AND REGULATIONS IMPLEMENTING
WAGE ORDER NO. RB-CAR-13**

Pursuant to Section 6, Rule IV of the NWPC Revised Rules of Procedure on Minimum Wage Fixing, series of 2007, and Section 24 of Wage Order No. RB-CAR-13, the following Rules is hereby issued for guidance and compliance by all concerned in the Cordillera Administrative Region.

R U L E I

GENERAL PROVISIONS

Section 1. Title. This Rules shall be known as the “The Rules Implementing Wage Order RB-CAR-13”.

Section 2. Definition of Terms as used in this Rules.

- a. **Order** - refers to Wage Order No. RB-CAR-13;
- b. **Commission or NWPC** - refers to the National Wages and Productivity Commission;
- c. **Board** - refers to the Regional Tripartite Wages and Productivity Board of the Cordillera Administrative Region;
- d. **Establishment** - refers to an economic unit which engages in one or predominantly one kind of economic activity at a single fixed location.

For purposes of determining eligibility for exemption, establishments under the same owner/s but separately registered with the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) or Cooperative Development Authority (CDA) as the case may be, irrespective of their location, shall be treated as individual and distinct establishments.

- e. **Agriculture** - refers to farming in all its branches and among others, includes the cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural and horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds and any activities performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing and/or processing of sugar, coconut, abaca, pineapple, aquatic or other farm products;
- f. **Retail Establishment** - is one principally engaged in the sale of goods to end users for personal or household use. A retail establishment that regularly engages in wholesale activities loses its retail character;
- g. **Service Establishment** - is one principally engaged in the sale of services to individuals for their own or household use and is generally recognized as such;

- h. **Distressed Establishment** - refers to an establishment which meets the criteria enumerated in Section 1 A, Rule IV of this Rules.
- i. **Capital** - refers to paid-up capital at the end of the last full accounting period, in the case of corporations or total invested capital at the beginning of the period under review, in the case of partnerships and single proprietorships;
- j. **Full Accounting Period** - refers to a period of twelve (12) months or one year of business operations;
- k. **Interim Period** - refers to a financial reporting period shorter than a full financial year (most typically a quarter or half-year).
- l. **Deficit** - refers to the negative balance of the retained earnings account of a corporation. Retained earnings represent the cumulative balance of periodic earnings, dividend distributions, prior period adjustments and other capital adjustments;
- m. **Wage Distortion** - refers to 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 the skills, length of service, or other logical basis of differentiation;
- n. **New Business Enterprises** - refer to establishments, including non-profit institutions, established within two (2) years from effectivity of this Wage Order based on the latest registration with the appropriate government agency such as SEC, DTI, CDA and Mayor's Office;
- o. **Stock Corporation** - refers to one organized for profit and issues shares of stock to its members;
- p. **Non-stock Non-profit Organization** - refers to one organized principally for public purposes such as charitable, educational, cultural or similar purposes and does not issue share of stock to its members;
- q. **Partnership** - refers to an association of two or more persons who bind themselves to contribute money, property or industry to a common fund with the intention of dividing the profits among themselves or for the exercise of a profession;
- r. **Single Proprietorship** - refers to a business unit owned and controlled by only one person;
- s. **Cooperative** - refers to a duly registered association of persons who voluntarily join together to form a business establishment which they themselves own, control and patronize and which may fall under any of the following types: credit, consumers, producers, marketing, service or multi-purpose;

- t. **Quasi-banks** – refers to institutions such as investment houses and financing companies performing quasi-banking functions as defined by the Bangko Sentral ng Pilipinas.
- u. **Conservatorship** – refers to a remedy resorted to by the monetary board in case a bank or quasi-bank is in a state of continuing inability or unwillingness to maintain condition of liquidity deemed adequate to protect the interests of the depositors and creditors. A conservator is appointed to manage the establishment in order to restore its viability.
- v. **Receivership/liquidation** – refers to a remedy resorted by the Monetary Board in case a bank or quasi-bank is (a) unable to pay its liabilities as they become due in the ordinary course of business; (b) has insufficient realizable assets as determined by the Bangko Sentral ng Pilipinas to meet its liabilities; (c) cannot continue in business without involving probable losses to its depositors or creditors, or (d) has wilfully violated a cease and desist order under Sec. 37 that has become final involving acts or transactions which amount to fraud or dissipation of the assets of the institution.
- w. **Under Corporate Rehabilitation** – refers to establishments that are placed under a rehabilitation receiver by a court of competent jurisdiction.
- x. **Basic Wage** - refers to all remunerations or earnings paid by an employer to a worker for services rendered on normal working days and hours but does not include cost of living allowance, profit sharing payments, premium payments, 13th month pay and other monetary benefits which are not considered as part of or integrated into the regular salary of the worker on the date the wage became effective;
- y. **Productivity – Based Wages** - Additional income given to workers as incentives derived from successful implementation of productivity programs through any gain-sharing scheme designed by the employer or by virtue of an agreement with the workers;
- z. **CAR-Cordillera Administrative Region** - covers the Provinces of Mt. Province, Abra, Benguet, Ifugao, Kalinga and Apayao and the City of Baguio.

R U L E I I

WAGE INCREASE

Section 1. *Amount and Effectivity of Increase.*

Effective 16th June 2008, workers and employees covered under Section 3 hereof, shall receive additional daily Cost of Living Allowance, as follows:

Baguio City and Municipalities of La Trinidad, Itogon, Sablan and Tuba,
Benguet:

- Non-Agriculture - Fifteen Pesos (P15.00)
- Agriculture - Fifteen Pesos (P15.00)
- Retail & Service employing ten (10) workers and below - Fifteen Pesos (P15.00)

Other areas in the Cordillera Administrative Region:

- Non-Agriculture - Ten Pesos (P10.00)
- Agriculture - Ten Pesos (P10.00)
- Retail & Service employing ten (10) workers and below - Ten Pesos (P10.00)

Section 2. Daily Minimum Wage Rates.

Effective 16th June 2008, the Daily Minimum Wage Rates in CAR shall be as follows:

INDUSTRY/ SECTOR	MINIMUM WAGE RATES					
	Baguio City, Municipalities of La Trinidad, Tuba, Itogon and Sablan, Benguet			Mt. Province, Abra and other Municipalities of Benguet, Ifugao, Kalinga and Apayao		
	Basic Wage	COLA	TOTAL	Basic Wage	COLA	TOTAL
Non-Agriculture	235.00	25.00	260.00	229.00	14.00	243.00
Agriculture	222.00	20.00	242.00	216.00	10.00	226.00
Retail/ Service Employing more than 10 workers	235.00	25.00	260.00	229.00	14.00	243.00
Employing 10 workers and below	215.00	25.00	240.00	209.00	10.00	219.00

Section 3. Coverage

All private sector workers and employees receiving the minimum wage in the Cordillera Administrative Region regardless of their position, designation or status and irrespective of the method by which their wages are paid are covered by Wage Order No. RB-CAR-13, except for household or domestic helpers; persons employed in the personal service of another including family drivers; and workers in registered Barangay Micro Business Enterprises with Certificates of Authority pursuant to Republic Act No. 9178, otherwise known as the "Barangay Micro Business Enterprises Act of 2002".

Section 4. Basis of Minimum Wage Rates.

The minimum wage rates prescribed herein shall be for the normal hours, which shall not exceed eight (8) hours work a day.

Section 5. Suggested Formulae in Determining the Equivalent Monthly Regional Minimum Wage Rates.

Without prejudice to existing company practices, agreements or policies, the following suggested formula maybe used as guides in determining the Equivalent Monthly Basic Wages:

- a. For those who are required to work everyday including Sundays or rest days, special days and holidays

$$EMR = \frac{ADR \times 392.5}{12}$$

Where 392.5 days/year	=	299.0 - ordinary working days
		22.0 - regular holidays
		67.6 - 52 rest days x 130%
		3.9 - 3 special days x 130%
		392.5 Total no. of days/year

- b. For those who do not work and are considered paid on rest days, special days and regular holidays:

$$EMR = \frac{ADR \times 365}{12}$$

Where 365 days/year	=	299 - ordinary working days
		52- Sundays/rest days
		11- regular holidays
		3- special days
		365 Total no. of days/year

- c. For those who do not work and are not considered paid on Sundays or rest days:

$$EMR = \frac{ADR \times 313}{12}$$

Where 313 days / year	=	299 - ordinary working days
		11 – regular holidays
		3 - special days
		313 Total no. of days/year

- d. For those who do not work and are not considered paid on Saturdays and Sundays or rest days:

$$EMR = \frac{ADR \times 261}{12}$$

Where 261 days/year	=	247- ordinary working days
		11- regular holidays
		3- special days
		261 Total no. of days/year

*where: **EMR** is Equivalent Monthly Rate
ADR is Applicable Daily Wage Rate

Section 6. *Application to Private Educational Institutions*

In the case of private educational institutions, the share of covered workers and employees in the increase in tuition fees for School year 2008 – 2009 shall be considered as compliance with the additional Cost of Living Allowance prescribed herein. However, payment of any shortfall in the increase in the additional Cost of Living Allowance set forth herein shall be covered starting school year 2009-2010.

Private educational institutions, which have not increased their tuition fees for the School Year 2008-2009, may defer compliance with the provisions of the Wage Order until School Year 2009-2010.

In any case, all private educational institutions shall implement Wage Order No. RB-CAR-13 starting School Year 2009-2010.

Section 7. *Application to Contractor*

In the case of contracts for construction projects and for security, janitorial and other similar services, the additional Cost of Living Allowance set forth in the Order, shall be borne by the principals or clients of the construction/service contractors and the contracts shall be deemed amended accordingly. In the event, however, that the principals or clients fail to comply with the Order, the construction/service contractors shall be jointly and severally liable with their principals or clients.

Section 8. *Workers Paid by Results*

- a. All workers paid by results, including those who are paid on piecework, takay, pakyaw, or task basis, shall receive not less than the additional Cost of Living Allowance prescribed under the Order for normal working hours which shall not exceed eight (8) hours per day, or a proportion thereof, for working less than eight (8) hours.

The additional Cost of Living Allowance for the workers paid by results shall be computed in accordance with the formula provided hereunder.

- 1.
$$\frac{\text{Amount of Increase in AMW}}{\text{previous applicable min. wage}} \times 100 \% = \% \text{ increase}$$
- 2. Existing rate/piece x % increase = increase in rate/piece;
- 3. Existing rate/piece + increase in rate/piece = adjusted rate per piece.

*where: **AMW** is Applicable Minimum Wage Rate

- b. Wage rates of workers paid by results. In order to ensure payment of fair and reasonable wage rates, the same shall be determined through time and motion studies or in consultation with representatives of workers and employer’s organizations;

Section 9. *Wages of Special Groups of Workers*

Apprentices or learners shall receive not less than Seventy Five Percent (75%) of the new minimum wage prescribed in the Order.

All recognized learnership and apprenticeship agreements entered into before the effectivity of the Order shall be amended automatically insofar as their wage clauses are concerned to reflect the adjustment prescribed.

All qualified handicapped workers shall receive the full amount of increase pursuant to RA 7277.

Section 10. *Mobile and Branch Workers*

The minimum wage rates of workers, who by the nature of their work have to travel, shall be those applicable in the domicile or head office of the employer.

The minimum wage rates of workers working in branches or agencies of establishments in or outside the Region shall be those applicable in the place where they are stationed.

Section 11. *Transfer of Personnel*

The transfer of personnel from one province or region to another shall not be a valid ground for the reduction of the wage rate being enjoyed by the worker prior to the transfer. Workers transferred to other Regions with higher wage rates shall be entitled to the minimum wage rate applicable therein.

Section 12. *Appeal to the Commission*

Any party aggrieved by the Wage Order may file an appeal with the Commission through the Board within ten (10) calendar days from the publication of the Order. The Commission shall decide the appeal within sixty (60) calendar days from the date of filing. The appeal shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support of the appeal.

Section 13. *Effect of Appeal*

The filing of the appeal does not operate to stay the Order unless the party appealing such Order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for payment to employees affected by the Order of the corresponding increase, in the event that such Order is affirmed.

R U L E III

PRODUCTIVITY-BASED WAGES

Section 1. *Productivity Incentives*

In order to sustain rising levels of wages and enhance competitiveness, businesses are strongly encouraged to adopt productivity improvement schemes, such as, time and motion studies, good housekeeping, quality circles, labor-management cooperation, as well as implement gain sharing programs. Accordingly, the Regional Board shall provide the necessary

studies and technical assistance pursuant to RA 6971, the Productivity Incentives Act of 1990.

R U L E I V

EXEMPTIONS

Section 1. *Exemptible Establishments*

Upon application with and as determined by the Board and in accordance with the applicable rules and regulations issued by the Commission, the following may be exempted from applicability of the Order:

A. Distressed Establishments (Only Full and Partial)

1. For Corporations/Cooperatives

a. Full Exemption

a.1 When the deficit as of the last full accounting period immediately preceding the effectivity of the Order amounts to 20% or more of the paid-up capital for the same period; or

a.2 When an establishment registers capital deficiency, i.e., negative stockholders equity as of the last full accounting period immediately preceding the effectivity of the Order.

b. Partial Exemption

b.1 When the deficit as of the last full accounting period immediately preceding the effectivity of the Order amounts to at least 10% but less than 20% of the paid-up capital for the same period.

c. Conditional Exemption

c.1. When the actual net loss as of the interim period immediately preceding the effectivity of the Order amounts to at least 25% of total assets.

2. For Single Proprietorships/Partnerships

a. Full exemption

a.1 When the accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amount to 20% or more of the total invested capital at the beginning of the period under review; or

a.2. When an establishment registers capital deficiency i.e., negative net worth as of the last full accounting period immediately preceding the effectivity of the Order.

b. Partial Exemption

b.1 When the accumulated net losses for the last (2) full accounting periods immediately preceding the effectivity of the Order amount to at least 10% but less than 20% of the total invested capital at the beginning of the period under review.

c. Conditional Exemption

c.1. When the actual net loss as of the interim period immediately preceding the effectivity of the Order amounts to at least 25% of total assets.

3. For Non-Stock Non-Profit Organizations

a. Full exemption

a.1. When the accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amount to 20% or more of the fund balance/members' contribution at the beginning of the period; or

a.2 When an establishment registers capital deficiency i.e., negative fund balance/members' contribution as of the full accounting period or interim period, if any, immediately preceding the effectivity of the Order.

b. Partial Exemption

b.1 When the accumulated net losses for the last (2) full accounting periods immediately preceding the effectivity of the Order amount to at least 10% but less than 20% of the fund balance/members' contribution at the beginning of the period.

c. Conditional Exemption

c.1. When the actual net loss as of the interim period immediately preceding the effectivity of the Order amounts to at least 25% of total assets.

4. For Banks and Quasi – banks

a. Under receivership/liquidation

Exemption may be granted to a bank or quasi – bank under receivership or liquidation when there is a certification from the Bangko Sentral ng Pilipinas (BSP) that it is under receivership or liquidation as provided in Section 30 of RA 7653, otherwise known as the New Central Bank Act.

b. Under controllership/conservatorship

A bank or quasi-bank under controllership/conservatorship may apply for exemption as a distressed establishment under Section 3A of the Amended Rules on Exemption.

5. Establishments Under Corporate Rehabilitation

Exemption may be granted to corporations, partnerships and associations under corporate rehabilitation when there is an order from a court of competent jurisdiction that it is under rehabilitation as provided in Section 6 Rule IV of the Interim Rules of Procedure on Corporate Rehabilitation (2000).

B. New Business Enterprises

Exemption may be granted to New Business Enterprises duly registered and established outside the Export Processing Zone within two (2) years from the effectivity of the Order, classified under any of the following:

1. Agricultural establishments whether plantation or non-plantation.
2. Establishments with total assets after financing of five million pesos (P5,000,000.00) and below.

C. Retail/Service Establishments Regularly Employing Not More Than Ten (10) Workers.

Exemption may be granted to a retail/service establishment when:

1. It is engaged in the retail sale of goods and/or services to end users for personal or household use.
2. It is regularly employing not more than ten (10) workers regardless of status, except the owner/s, for at least six (6) months in any calendar year.

D. Establishments Adversely Affected by Natural Calamities

1. The establishment must be located in an area declared by a competent authority as under a state of calamity.
2. The natural calamities, such as earthquakes, lahar flow, typhoons, volcanic eruptions, fire, floods and similar occurrences, must have occurred within 6 months prior to the effectivity of the Order.
3. Losses suffered by the establishment as a result of the calamity that exceed the insurance coverage should amount to 20% or more of the stockholders' equity as of the full accounting period in the case of corporations and cooperatives, total invested capital in the case of partnerships and single proprietorships fund balance/members' contribution in the case of non-stock non-profit organizations.

Only losses or damage to properties directly resulting from the calamity and not incurred as a result of normal business operations shall be considered.

4. Where necessary, the Board or its duly-authorized representative shall conduct an ocular inspection of the establishment or engage the services of experts to validate the extent of damages suffered.

Section 2. *Duration and Extent of Exemption*

- A. Full exemption of one (1) year from effectivity of the Order shall be granted to all categories of establishments that meet the applicable criteria for exemption under Rule IV Sec.1.A of this Rules.
- B. Partial exemption of 50% from effectivity of the Order with respect to the amount or period of exemption shall be granted only in the case of distressed under Rule IV Sec.1.A of this Rules.
- C. Conditional exemption of one (1) year from effectivity of the Order shall be granted only in the case of distressed establishments under Rule IV Sec.1.A of this Rules. The conditional exemption shall be confirmed, as follows:

c.1. For Corporations

When deficit as defined in Section I (l) of this Rules, as of the last full accounting period amounts to 20% or more of the paid-up capital for the same period;

c.2. For Single Proprietorships and Partnerships

When net loss for the last two (2) full accounting periods immediately preceding the effectivity of the Order amounts to 20% or more of the total invested capital at the beginning of the period under review;

c.3. For Non-Stock, Non-Profit Organizations

When net loss for the last two (2) full accounting periods immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/members' contribution at the beginning of the period.

In the absence of such actual losses, the company shall pay its workers the wage increase due them under the Order, retroactive to the effectivity of the Order.

Section 3. *Procedures on Exemption*

- A. Filing of Application

1. An application, in three (3) legible copies may be filed with the Board by the owner/manager or duly authorized representative of an establishment, in person or by registered mail. The date of mailing shall be deemed as the date of filing.
2. All applications for exemption shall be under oath, accompanied by complete supporting documents and must be filed within seventy five (75) days from publication of the Rules implementing the Wage Order. No further extension for filing and submission of the required documents shall be allowed.
In the case of NBEs, applications shall be filed not later than sixty (60) days from the date of registration.

B. Filing of Opposition

Any worker or, if unionized, the union in the applicant establishment, may file with the appropriate Board within fifteen (15) days from receipt of the notice of the filing of the application, an opposition to the application for exemption stating the reasons why the same should not be approved, furnishing the applicant a copy thereof. The opposition shall be in three (3) legible copies, under oath and accompanied by pertinent documents, if any.

C. Filing of Motion for Reconsideration

The aggrieved party may file with the Board a motion for reconsideration of the decision on the application for exemption within ten (10) days from its receipt and shall state the particular grounds upon which the motion is based, copy furnished the other party and the DOLE - CAR.

No second motion for reconsideration shall be entertained in any case. The decision of the Board shall be final and executory unless appealed to the Commission.

D. Filing of Appeal to the Commission

1. Appeal - Any party aggrieved by the decision of the Board may file an appeal to the Commission, through the Board, in two (2) legible copies, not later than ten (10) days from the date of receipt of the decision.

The appeal, with proof of service to the other party, shall be accompanied with a memorandum of appeal which shall state the date appellant received the decision, the grounds relied upon and the arguments in support thereof.

2. Grounds for Appeal - An appeal may be filed on the following grounds:
 - a. Non-conformity with the prescribed guidelines and/or procedures on exemption;
 - b. Prima facie evidence of grave abuse of discretion on the part of the Board; or
 - c. Questions of law.

3. Opposition - The appellee may file with the Board his reply or opposition to the appeal within ten (10) days from receipt of the appeal. Failure of the appellee to file his reply or opposition shall be construed as waiver on his part to file the same.
4. Transmittal or records - Within five (5) days upon receipt of the reply or opposition of the appellee or after the expiration of the period to file the same, the entire records of the case which shall be consecutively numbered, shall be transmitted by the Board to the Commission.

Section 4. Documents Required

The following supporting documents shall be submitted together with the application:

For All Categories of Exemption

Proof of notice of filing of the application to the President of the union/contracting party if one is organized in the establishment, or if there is no union, a copy of a circular giving general notice of the filing of the application to all the workers in the establishment. The proof of notice, which may be translated in the vernacular, shall state that the workers' representative was furnished a copy of the application with all the supporting documents. The notice shall be posted in a conspicuous place in the establishment.

A. For Distressed Establishments

1. For corporations, cooperatives, single proprietorships, partnerships, non-stock non profit organizations:
 - a. Full or Partial Exemption
 - a.1 Audited financial statements (together with the Auditor's opinion and the notes thereto) for the last two (2) full accounting periods preceding the effectivity of the Order filed with and stamped "received" by the appropriate government agency.
 - b. Conditional Exemption
 - b.1. Audited financial statement (together with the Auditor's opinion and the notes thereto) for the last full accounting period and the interim quarterly financial statement/s for the period immediately preceding the effectivity of the Order.
 - b.2. To confirm the grant of conditional exemption, audited financial statements for the last full accounting period, stamped received by the appropriate government agency, to be submitted within 30 days from the lapse of the one-year exemption period.

2. For Banks and Quasi-banks,

Certification from Bangko Sentral ng Pilipinas that it is under receivership/liquidation.

3. For Establishments Under Corporate Rehabilitation

Order from a court of competent jurisdiction that the establishment is under rehabilitation.

B. For New Business Enterprises

1. Affidavit from employer regarding the following:

- a. Principal economic activity
- b. Date of registration with appropriate government agency
- c. Amount of total assets

2. Certificate of registration from the appropriate government agency.

C. For Retail/Service Establishments Employing Not More Than Ten (10) workers:

1. Affidavit from employer stating the following:

- a. it is a retail/service establishment.
- b. It is regularly employing not more than ten (10) workers for at least six month in any calendar year.

2. Business Permit for the current year from the appropriate government agency.

D. For Establishments Adversely Affected by Natural Calamities

1. Affidavit from the General Manager or Chief Executive Officer of the establishment regarding the following:

- a. Date and type of calamity
- b. Amount of losses/damages suffered as a direct result of the calamity
- c. List of properties damaged/lost together with estimated valuation
- d. For properties that are not insured, a statement that the same are not covered by insurance.

2. Copies of insurance policy contracts covering the properties damaged, if any.

3. Adjuster's report for insured properties.

4. Audited financial statements for the last full accounting period preceding the effectivity of the Order stamped received by the appropriate government agency.

The Board may require the submission of other pertinent documents to support the application for exemption.

Section 5. *Effect of Filing of Application for Exemption* .

Pending resolution of an application for exemption, action on any complaint for alleged non-compliance with the Order shall be deferred by the Regional Office of the Department.

Section 6. *Application for Projects/Branches/Divisions*

Where the exemption being sought is for a particular project/branch/division not separately registered and licensed, the consolidated audited financial statements of the establishment shall be used as basis for determining its distressed condition.

Section 7. *Distressed Principal*

Exemption granted to a distressed principal shall not extend to its contractor in case of contract(s) for construction, security, janitorial and/or similar services with respect to the employees of the latter assigned to the former.

Section 8. *Effect of Disapproved Application .*

In the event that the application for exemption which has been filed is not granted, covered workers shall be paid the additional Cost of Living Allowance as provided for under the Order plus an interest of one (1%) percent per month retroactive to the date of effectivity of the Order.

R U L E V

WAGE DISTORTION

Section 1. *Wage Distortion*

Should any dispute arise as a result of wage distortion, the employer and the union shall negotiate to correct the distortions through the grievance procedure under their Collective Bargaining Agreement (CBA) within in three months from the effectivity of this Rules, and if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective bargaining agreements or recognized labor union, the employers and workers shall endeavour to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board (NCMB) and if it remains unresolved after ten (10) calendar days of conciliation, the same shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). The NLRC shall conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time the said dispute is submitted for compulsory arbitration.

The following formula may be used to correct the same.

$$\text{Previous Minimum Wage} \\ \text{Wage Order No. 12} \quad \times \quad \text{Prescribed} \quad = \quad \text{Amount of wage}$$

Actual Salary

Additional COLA

adjustment due to
distortion

Section 2. *Effect of Dispute*

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of the additional Cost of Living Allowance prescribed in the Order.

R U L E VI SPECIAL PROVISIONS

Section 1. *Complaints for Non-Compliance*

Complaints for non-compliance with the additional Cost of Living Allowance set forth in the Order shall be filed with the Regional Office of the Department of Labor and Employment having jurisdiction over the workplace and shall be the subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended.

Section 2. *Conduct of Inspection by the Department*

The Department shall conduct inspections of establishments, as often as necessary, to determine whether the workers are paid the prescribed wage increase and other benefits granted by law or any Wage Order. In the conduct of inspection in unionized companies, Department inspectors shall always be accompanied by the president or other responsible officer of the recognized bargaining unit or of any interested union. In the case of non-unionized establishments, a worker representing the workers in the said company will accompany the inspector.

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 can not concur with the findings of the labor inspector.

Section 3. *Non-Diminution of Benefits*

Nothing in the Order and this Rules shall be construed as authorizing the reduction of any existing wage rates, allowances and benefits of any form under existing laws, decrees, issuances, executive orders, and/or under any contract or agreement between the workers and employers and employer practices or policies.

Section 4. *Penal Provision*

Any person, corporation, trust or firm, partnership, association or entity who refuses or fails to pay the prescribed additional Cost of Living Allowance in accordance with the Order shall be subject to the penal provisions of Section 12 of R.A. 6727 as amended by RA 8188.

Section 5. *Prohibition Against Injunction*

No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against any proceeding before the Commission or Board.

Section 6. Freedom to Bargain

The order shall not be construed to prevent workers in particular firms or enterprises of industries from bargaining for higher wages and flexible working arrangements with their respective employers.

Section 7. Reporting Requirements

Any person, company, corporation, partnership or any entity engaged in business shall submit a verified itemized listing of their labor component to the Board not later than January 31, 2009, and every year thereafter in accordance with the form prescribed by the Commission.

Section 8. Repealing Clause

All orders, issuances, rules and regulations on wages, or parts thereof inconsistent with the provisions of the Wage Order and this Rules are hereby repealed, amended or modified accordingly.

Section 9. Separability Clause

If any provision or part of the Order and this Rules, or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of the Order and this Rules or the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

Section 10. Effectivity of Rules

These Rules shall take effect on 16th June 2008.

Done this 10th day of June 2008 at Baguio City, Philippines.

(Sgd.)
MILTON L. BALAGTEY
Workers' Representative

(Sgd.)
ALFONSO T. LAO
Employers' Representative

(Sgd.)
RENERIO C. LARDIZABAL JR.
Workers' Representative

(Sgd.)
JUAN JOHNNY R. DE LA CRUZ
Employers' Representative

(Sgd.)
CARMELITA C. USMAN
Vice-Chairperson

(Sgd.)
JUAN B. NGALOB
Vice-Chairperson

(Sgd.)
ANA C. DIONE
Chairperson

APPROVED, this 20th day of June, 2008.

(Sgd.)
MARIANITO D. ROQUE
Secretary
Department of Labor and Employment