

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-09**  
**GRANTING 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 Board to determine and fix minimum wage rates applicable in the region and to issue the corresponding wage orders subject to the guidelines issued by the National Wages and Productivity Commission;

**WHEREAS**, the Regional Tripartite Wages and Productivity Board, Cordillera Administrative Region (RTWPB-CAR) after evaluating the socio-economic conditions in the region, decided to motu proprio conduct public hearings/consultations throughout the region for the purpose of determining possible adjustments on the wage levels;

**WHEREAS**, after conducting public hearings/consultations in Lagawe, Ifugao Province on 18 May 2004; Tabuk, Kalinga Province on 19 May 2004; Luna, Apayao Province on 20 May 2004; and Baguio City on 25 May 2004, the Board determined the need to adjust the minimum wage levels in the region to cushion the impact of the devaluation of peso and the increase of petroleum products and transportation fares;

**NOW THEREFORE**, by virtue of the power and authority vested under Republic Act No. 6727, otherwise known as the Wage Rationalization Act, 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 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 Increase in the 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 additional cost of living allowance in the amount of fifteen pesos (Php 15.00) a day.

**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 5. 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 2004-2005 shall be considered as compliance with the additional Cost of Living Allowance prescribed herein. However, payment of any shortfall in the allowance set forth herein shall be covered starting School Year 2005-2006.

Private Educational institutions, which did not increase their tuition fees for the School Year 2004-2005, may differ compliance with the provisions of this Wage Order until School Year 2005-2006.

In any case, all private educational institutions shall implement the allowance prescribed herein starting School Year 2005-2006.

**Section 6. Application to Contractors.** In the case of contracts for construction projects and for security, janitorial and other similar services, the additional Cost of Living Allowance 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.

**Section 7. Workers Paid by Results.** All workers paid by results, including those who are paid on piecework, takay, pakyaw, or task basis, shall receive the additional 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 8. Apprentices and learners.** Persons employed under Apprenticeship or learnership agreement shall be entitled to the additional Cost of Living Allowance which shall not be less than Seventy Five Percent (75%) of the increase prescribed in this Order.

**Section 9. 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 10. 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 11. Exemptions.** Upon proper application with and as determined by the Board, the following categories of establishments maybe exempted from the applicability of this Order:

1. Distressed establishment as defined in the NWPC Guidelines No. 01, series of 1996;
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.

**Section 12. 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. 01, series of 1996.

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.

**Section 13. 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 the 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 wage increase under this Order plus one (1) percent simple interest per month retroactive to the effectivity of this Order .

**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 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 application of the additional Cost of Living Allowance results in 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.

Previous Minimum Wage  
Basic and COLA  
(Wage Order RB-CAR-08)  
----- x Prescribed wage increase = Amount of wage  
Actual Salary adjustment due to distortion

**Section 18. Complaints for Non-Compliance.** Complaints for non-compliance with the additional Cost of Living Allowance 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 wage increase in accordance with this Order shall be subject to the penal provisions of 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 of 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, 2005 and every year thereafter in accordance with the form prescribed by the Commission.

**Section 23. Repealing Clause.** All laws, 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 13th day of July 2004, Baguio City, Philippines.

I Dessent.

**(Sgd) JESSIE N. PAGARAN**  
Workers' Representative

**(Sgd) ALFONSO T. LAO**  
Employers' Representative

**(Sgd) ADRIANO M. BIALA**  
Workers' Representative

**(Sgd) MA. MIGNON D. DE LEON**  
Employers' Representative

**Sgd) ARMANDO P. GALIMBA**  
Vice-Chairman

**(Sgd) JUAN B. NGALOB**  
Vice-Chairman

**(Sgd) AIDA T. ESTABILLO**  
Chairman

**RULES AND REGULATIONS IMPLEMENTING  
WAGE ORDER RB-CAR-09**

Pursuant to Section 5, Rule IV of the NWPC Revised Rules of Procedure on Minimum Wage Fixing and Section 24 of Wage Order No. RB-CAR-09. 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-09".**

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

- a. "Act" means Republic Act No. 6727;
- b. "RA 8188" an act increasing the penalty and imposing double indemnity for violation of the prescribed wage increases in the wage rates amending for the purpose section twelve of Republic Act numbered sixty-seven hundred twenty-seven (RA 6727) otherwise known as the wages rationalization act;
- c. "Order" means Wage Order No. RB-CAR-09;
- d. "Commission or NWPC" refers to the National Wages and Productivity Commission;
- e. "Board" refers to the Regional Tripartite Wages and Productivity Board;
- f. "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;
- g. "Retail Establishment" is one principally engaged in the sale of goods to end users for personal or household use;
- h. "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;
- i. "DOLE-CAR" refers to the Department of Labor and Employment, Cordillera Administrative Region;
- j. "Minimum Wage Rates" refer to the lowest wage rates that an employer can pay his workers, as fixed by the Board;
- k. "Wage Distortion" 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 the skills, length of service, or other logical basis of differentiation;
- l. "New Business Enterprises" refer to establishments, including non-profit institutions, established within two (2) years from effectivity of the Wage Order based on the latest registration with the appropriate government agency such as SEC, DTI, CDA and Mayor's Office;
- m. "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.

n. "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;

o. "Distressed Establishment" refers to an establishment which meets the criteria enumerated in Section 1 A, Rule III of this Guidelines.

p. "Full Accounting Period" refers to a period of twelve (12) months or one year of business operations;

q. "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;

r. "Stock Corporation" refers to one organized for profit and issues shares of stock to its members;

s. "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;

t. "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;

u. "Single Proprietorship" refers to a business unit owned and controlled by only one person;

v. "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 of multi-purpose;

w. "Basic Wage" means 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 of the wage became effective.

## **R U L E II** **WAGE INCREASE**

### **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 by which their wages are paid are covered by this Rules, 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 2. Amount and Effectivity of Increase.**

Workers and employees covered in the preceeding section shall receive an increase in their cost of living allowance in the amount of fifteen pesos (P 15.00) per day effective 01 August 2004.

### **Section 3. 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 4. Daily Minimum Wage Rates.**

Effective 01 August 2004, the Minimum Wage Rates in CAR shall be as follows:

| Industrial Classification                               | Baquio City, LA Trinidad, Tuba, Itogon and Sablan Municipalities |        | Mt. Province, Abra and other Municipalities of Benquet, Ifugao, Kalinga, and Apayao |        |
|---|--|--------|---|--------|
|   | Basic Wage   | COLA   | Basic Wage  | COLA   |
| <b>Non- Agriculture</b>                                 | P174.00  | P31.00 | P168.00   | P31.00 |
| <b>Agriculture</b>                                      | 161.00   | 31.00  | 155.00  | 31.00  |
| <b>Retail Service</b><br>Employing 10 workers and below | 154.00   | 31.00  | 148.00  | 31.00  |

**Section 5. Suggested Formula 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

$$EMR = \frac{ADR \times 392.8}{12}$$

- = 300.0 - ordinary working days
  - 20.0 - 10 regular holidays x 200%
  - 2.6 - 1 regular holiday falling on last Sunday of August x 200% + (30% of 200%)
  - 66.3 - 51 rest days x 130%
  - 3.9 - 3 special days x 130%
- = 392.80 days Total Equivalent number of days

b. For those who do not work but are considered paid on rest days and holidays

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

- = 300 - ordinary working days
  - 3 - special day
  - 51 - rest days
  - 11 - regular holidays
- = 365 days Total Equivalent number of days

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

$$EMR = \frac{ADR \times 314}{12}$$

- = 300.0 - ordinary working days
  - 3.0 - special days (if worked) x 130%
  - 11.0 - regular holidays
- = 314 days Total equivalent number of days

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

$$EMR = \frac{ADR \times 262}{12}$$

- = 248.0 - ordinary days
  - 11.0 - regular holidays
  - 3.0 - special days (if worked) x 130%
  
- = 262 days Total Equivalent number of days

\*where:  $\frac{EMR \text{ is Equivalent Monthly Rate}}{ADR \text{ is Applicable Daily Wage Rate}}$

**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 2004 - 2005 shall be considered as compliance with the additional Cost of Living Allowance prescribed herein. However, payment of any shortfall in the allowance set forth herein shall be covered starting School Year 2005-2006.

Private educational institutions, which did not increase their tuition fees for the School Year 2004-2005, may defer compliance with the provisions of this Wage Order until School Year 2005-2006.

In any case, all private educational institutions shall implement the allowance prescribed herein starting School Year 2005-2006.

**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 of 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 additional cost of living allowance, the construction/service contractor or agency shall be jointly and severally liable with his principal or client.

**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 the additional cost of living allowance prescribed under the Order for 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.

$$\frac{\text{Amount of Increase in 1. AMW}}{\text{previous applicable min. wage}} \times 100 \% = \% \text{ increase}$$

- 2. Existing rate/piece x % increase = increase in rate/piece;
- 3. Existing rate/piece + increase in rate/piece = adjusted rate per piece.

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;

\*where: AMW is Applicable Minimum Wage Rate

**Section 9. Workers under apprenticeship or learnership program**

Persons employed under apprenticeship or learnership program shall be entitled to the additional cost of living allowance which shall not be less than Seventy Five Percent (75%) of the increase prescribed in the Order and this Rules.

**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.

#### **Section 12. Appeal to the Commission**

Any party aggrieved by the Wage Order may file an appeal with the Commission 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 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**

###### **1. For Stock Corporations/Cooperatives**

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

b. When an establishment registers capital deficiency i.e., negative stockholders' equity as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order.

###### **2. For Single Proprietorships/Partnerships**

a. Single proprietorships/partnerships operating for at least two (2) years may be granted exemption;

a.1 When the net accumulated losses for the last two (2) full accounting periods and interim period, if any, preceding the effectivity of the Order amounts 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 or interim period, if any, immediately preceding the effectivity of the Order.

b. Single proprietorships/partnerships operating for less than two (2) years may be granted exemption when the net accumulated losses for the period immediately preceding the effectivity of the Order amounts to 20% or more of the total invested capital at the beginning of the period under the review.

###### **3. For Non-stock Non-profit Organizations**

a. Non-stock non-profit organizations operating for at least two (2) years may be granted exemption:

a.1 When the net accumulated losses for the last two (2) full accounting periods and interim period, if any, immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/members' contribution at the beginning of the period under review, or

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

b. Non-stock non-profit organizations operating for less than two (2) years may be granted exemption when the net accumulated losses for the period immediately preceding the effectivity of the Order amounts to 20% or more of the full balance/members' contribution at the beginning of the period under review.

#### 4. For Banks and Quasi-banks

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

### **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.

### **Section 2. Duration and Extent of Exemption**

A full exemption of one (1) year from the date of effectivity of the Order shall be granted to all categories of establishments that meet the applicable criteria for exemption under Section 3 of NWPC Guidelines No, 01, series of 1996.

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 as follows:

a. For corporations/cooperatives

When deficit as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order amounts to less than 20% of the paid-up capital of the same period.

b. For single proprietorships/partnerships

When the net accumulated losses for the period under review amounts to at least 15% but less than 20% of the total invested capital at the beginning of the period under review.

c. Non-stock non-profit organizations

When the net accumulated losses for the period under review preceding the effectivity of the Order amounts to at least 15% but less than 20% of the fund balance/members' contribution at the beginning of the period under review.

### **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 fifteen (15) day period shall run only upon receipt of complete supporting documents. 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 the 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.

The appeal shall not be deemed perfected if it is filed with any office or entity other than the Board.

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. Supporting Documents**

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. 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. Audited interim quarterly financial statements (together with the Auditor's opinion and the notes thereto) for the period immediately preceding the effectivity of the Order.

c. For Banks and Quasi-banks, a certification from Bangko Sentral ng Pilipinas that it is under receivership/liquidation.

Submission of audited interim financial statements shall be in accordance with the following schedule:

| EFFECTIVITY DATE/<br>OF WAGE ORDER | INTERIM STATEMENTS<br>REQUIRED   |
|------------------------------------|--|
| First quarter of year              | No interim statements required;<br>only the audited statement for<br>the last two full accounting<br>periods |
| Second quarter of year             |  |
| Month 1                            | None; same as first quarter  |
| Month 2                            | None; same as first quarter  |
| Month 3                            | First quarter audited statement  |
| Third quarter of year              |  |
| Month 1                            | First quarter audited statement  |
| Month 2                            | First quarter audited statement  |
| Month 3                            | First & second quarters<br>audited statements  |
| Fourth quarter of year             |  |
| Month 1                            | 2nd quarter audited statement  |
| Month 2                            | 2nd quarter audited statement  |
| Month 3                            | First, second and third quarters<br>audited statements   |

#### 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.

#### **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 I 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 within three months from the effectivity of this Rules. 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.

$$\frac{\text{Previous Minimum Wage (Basic and COLA)}}{\text{Actual Salary wage increase due to distortion}} \times \text{Prescribed} = \text{Amount of wage adjustment}$$

The Board shall create a Special Committee with one representative from each sector to expedite compliance on correction of wage distortions.

**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 V**  
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 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 additional cost of living allowance 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.

**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 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, 2005, and every year thereafter in accordance with the form prescribed by the Commission.

### **Section 8. Repealing Clause**

All laws, 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 01 August 2004.

Done this 20th day of July 2004 at Baguio City, Philippines.

**JESSIE N. PAGARAN**  
Workers' Representative

**ALFONSO T. LAO**  
Employers' Representative

**ADRIANO M. BIALA**  
Workers' Representative

**MA. MIGNON D. DE LEON**  
Employers' Representative

**ARMANDO P. GALIMBA**  
Vice-Chairman

**JUAN B. NGALOB**  
Vice-Chairman

**AIDA T. ESTABILLO**  
Chairman