



## **RULES IMPLEMENTING WAGE ORDER NO. RB05-09**

### **Rule I - General Provisions**

**Pursuant to Section 5, Rule IV of the NWPC Revised Rules of Procedure on Minimum Wage Fixing and Section 22 of Wage Order No. RB05-09, the following rules are hereby issued for the guidance and compliance by all concerned.**

**Section 1. Title.** This Rules shall be known as the “Rules Implementing Wage Order No. RB05-09”.

#### **Section 2. Definition of Terms.**

- a. “Order” means Wage Order No. RB05-09;
- b. “Commission” refers to the National Wages and Productivity Commission;
- c. “Board” refers to the Regional Tripartite Wages and Productivity Board in Region V;
- d. “Department” refers to the Department of Labor and Employment;
- e. “Region V” covers the Provinces of Albay, Camarines Norte, Camarines Sur, Catanduanes, Masbate, Sorsogon and the Cities of Iriga, Legazpi, Ligao, Masbate, Naga, Sorsogon and Tabaco;
- f. “Agriculture” refers to farming in all its branches and among others, includes cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural commodity, 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, tobacco, pineapple, aquatic or other farm products;
- g. “Plantation Agricultural Enterprise” is one engaged in agriculture with an area of more than 24 hectares in a locality or which employs at least twenty (20) workers. Any other agricultural enterprise shall be considered as “Non-Plantation Agricultural Enterprise”;
- h. “Establishment” refers to an economic unit that 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 but are separately registered with the LGU, SEC, DTI or CDA as the case may be irrespective of their location shall be treated as individual and distinct establishment;
- i. “Barangay Micro Business Enterprises” refers to any business entity registered and issued a Certificate of Authority in accordance with R.A. 9178;
- j. “Distressed Establishment” refers to an establishment which meets the criteria enumerated in the NWPC Guidelines No. 01, Series of 1996;

- k. "New Business Enterprise" refers to establishments, including non-profit institutions, established within two (2) years from the effectivity of the Order based on the latest registration with the appropriate government agency such as LGU, SEC, DTI, or CDA.;
- l. "Establishment adversely affected by calamities" refers to establishments which meet the criteria enumerated in Section 3D of the NWPC Guidelines No. 01, Series of 1996;
- m. "Cottage/Handicraft Establishment" is one engaged in an economic endeavor in which the products are primarily done in the home or such other places for profit which requires manual dexterity and craftsmanship whose capitalization does not exceed P1,500,000.00, pursuant to SMED Council Resolution No. 3, Series of 1995;
- n. "Basic Wage" means all remuneration 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 allowances, profit-sharing payments, overtime and premium payments, 13<sup>th</sup> month pay or other monetary benefits which are not considered as part of nor integrated into the regular salary of the employees on the date this Order became effective;
- o. "Minimum Wage Rate" refers to the lowest wage rate that an employer can pay his worker, as fixed by the Board;
- p. "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 skills, length of service, or other logical bases of differentiation;
- q. "Capital" means paid-up capital at the end of the last full accounting period in the case of corporations and in the case of partnerships and single proprietorships, total invested capital at the beginning of the accounting period under review.

**Rule II - New Minimum Wage Rates**

**Section 1. AMOUNT OF MINIMUM WAGE RATES.** Upon the effectivity of this Order, the new minimum wage rates of workers in the region shall be as follows:

| SECTOR                             | Cities of Legazpi & Naga | Pili, Daraga & Cities of Iriga & Tabaco | All Other Areas |
|------------------------------------|--------------------------|---|-----------------|
| <b>A. NON-AGRICULTURE</b>          |                          |   |                 |
| <b>A.1 Establishments</b>          |                          |   |                 |
| Employing more than 15 workers     | 194.00                   | 187.00                                  | 182.00          |
| Employing 11-15 workers            | 179.00                   | 172.00                                  | 167.00          |
| Employing not more than 10 workers | 159.00                   | 154.00                                  | 147.00          |
| <b>A.2 Cottage/Handicraft</b>      |                          |   |                 |
| Employing 20 or more workers       | 169.00                   | 162.00                                  | 157.00          |
| Employing less than 20 workers     | 159.00                   | 152.00                                  | 147.00          |
| <b>B. AGRICULTURE</b>              |                          |   |                 |
| Plantation                         | 172.00                   | 167.00                                  | 162.00          |
| Non-Plantation                     | 152.00                   | 147.00                                  | 142.00          |

**Section 2. Coverage** - The minimum wage rates prescribed in this Order shall apply to all minimum wage earners in the private sector except household or domestic helpers, family drivers and persons employed in the personal service of another and workers in registered Barangay Micro Business Enterprises with Certificate of Authority.

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**Section 3. Basis of Minimum Wage Rates** - The minimum wage rates prescribed herein shall be for the normal working hours, which shall not exceed eight (8) hours work a day.

**Section 4. Creditable Wage Increase** - All wage increases, allowances and/or similar benefits granted by an employer either unilaterally or as a result of collective bargaining agreements three (3) months before the effectivity of this Order shall be credited as compliance with this Order. Where the wage increases/allowances/similar benefits granted is less than that prescribed under this Order, the employer shall pay the difference.

Anniversary wage increases provided in collective bargaining agreements, merit wage increases and those resulting from the regularization or promotion of employees shall not be credited as compliance thereto.

Benefits derived from productivity gainsharing schemes shall not be credited as compliance.

**Section 5. 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 minimum wage rates prescribed in this Order. However, payment of any shortfall in the minimum wage rates set forth in the Order 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 the Order until School Year 2005-2006.

In any case, all private educational institutions shall implement the minimum wage rates prescribed in the Order starting School Year 2005-2006.

**Section 6. Application to Contractors** - In the case of contracts for construction projects and for security and janitorial services, the prescribed wage rates shall be borne by the principals or clients of the constructions/service contractors and the contract shall be deemed amended accordingly. In the event, however, that the principal or clients fails to pay the prescribed wages 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 on piecework, takay, pakyaw, or task basis, shall receive not less than the applicable minimum wage rates prescribed under the Order for the normal working hours which shall not exceed eight (8) hours work a day, or a proportion thereof for work of less than the normal working hours.

The adjusted minimum wage rates for workers paid by results shall be computed in accordance with the following steps:

- a. 
$$\frac{\text{Amount of increase in AMW}^*}{\text{Previous AMW}} \times 100 = \% \text{ increase};$$
- b. Existing rate/piece x % increase = Increase in rate/piece;
- c. Existing rate/piece + Increase in rate/piece = Adjusted rate/piece.

\*Where AMW is the applicable minimum wage rate

The wage rates of workers who are paid by results shall continue to be established in accordance with Article 101 of the Labor Code, as amended and its implementing regulations.

**Section 8. Wages of Special Groups of Workers** - Wages of apprentices and learners shall in no case be less than seventy five percent (75%) of the applicable minimum wage rates prescribed in the Order.

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

**Section 9. Suggested Formula in Determining the Equivalent Monthly Regional Minimum Wage Rates** - Without prejudice to existing company practices, agreements or policies, the following formula may be used as guides in determining the equivalent monthly minimum wage rates:

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

$$\text{Equivalent Monthly Rate (EMR)} = \frac{\text{Applicable Daily Wage Rate (ADR)} \times 392.80 \text{ days}}{12}$$

Where 392.80 days:

|               |      |   |
|---------------|------|---|
| 300           | days | - Ordinary working days   |
| 20            | days | - 10 regular holidays x 200%  |
| 2.6           | days | - 1 regular holiday falling on last Sunday of August x 200% + (30% of 200%) |
| 66.30         | days | - 51 rest days x 130%   |
| 3.90          | days | - 3 special days x 130%   |
| <u>392.80</u> | days | - Total equivalent number of days   |

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

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

Where 365 days:

|            |      |                                   |
|------------|------|-----------------------------------|
| 300        | days | - Ordinary working days           |
| 51         | days | - Rest days                       |
| 11         | days | - Regular Holidays                |
| 3          | days | - Special days                    |
| <u>365</u> | days | - Total equivalent number of days |

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

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

Where 314 days:

|            |      |                                     |
|------------|------|-------------------------------------|
| 300        | days | - Ordinary working days             |
| 11         | days | - Regular Holidays                  |
| 3          | days | - 3 Special days (if worked) x 130% |
| <u>314</u> | 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:

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

Where 262 days:

|            |      |                                     |
|------------|------|-------------------------------------|
| 248        | days | - Ordinary working days             |
| 11         | days | - Regular Holidays                  |
| 3          | days | - 3 Special days (if worked) x 130% |
| <u>262</u> | days | - Total equivalent number of days   |

Note: For workers whose rest days fall on Sundays, the number of rest days in a year is reduced from 52 to 51 days, the last Sunday of August being a regular holiday under Executive Order No. 203. For purposes of computation, said holiday, although still a rest day for them, is included in the eleven (11) regular holidays.

For workers whose rest days does not fall on Sundays, the number of rest days is 52 days, as there are 52 weeks in a year.

**Section 10. Mobile and Branch Workers** - The statutory minimum wage rates of workers, who by 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 within the Region shall be those applicable in the place where they are stationed.

**Section 11. Transfer of Personnel** - The transfer of personnel to areas outside the Region shall not be a valid ground for the reduction of the wage rates being enjoyed by the workers prior to such transfer. The workers transferred to the 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 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 such Order is affirmed.

### **Rule III - Exemption**

**Section 1. Exemption** - The following establishments may be exempted from the applicability of the Order upon application with the Board, in accordance with the NWPC Guidelines No. 01, Series of 1996.

- a. Distressed establishments as defined under Section 3A of the Rules on Exemption provided the following requirements are submitted together with the application, to wit:
  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,
  2. 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.
- b. New business enterprises established outside export processing zones within two (2) years from effectivity of the Order classified either as establishments with total assets of five million pesos (P5,000,000.00) and below or agricultural establishments whether plantation or non-plantation, provided, that the following requirements shall be submitted together with the application, to wit:
  1. Affidavit from employer regarding the following:
    - 1.1 Principal economic activity;
    - 1.2 Date of registration with the appropriate government agency;
    - 1.3 Amount of total assets.
  2. Certificate of registration from the appropriate government agency.
- c. Establishments adversely affected by natural calamities provided the following requirements are submitted together with the application, to wit;

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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. Police and barangay captain's report,
4. Audited financial statements for the last full accounting period preceding the effectivity of the Order stamped "received" by the appropriate government agency.

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 the circular giving general notice of the filing of the application to all the workers in the establishment is required. The proof of notice, which may be 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.

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

An application in three (3) legible copies may be filed with the appropriate Board by the owner/manager or duly authorized representative of an establishment in person or by registered mail. The date of mailing shall be the date of filing. Applications for all categories shall be filed not later than seventy five (75) days from publication of the approved Implementing Rules. In the case of new business enterprises, applications shall be filed not later than sixty (60) days from the date of registration.

All applications for exemption, which shall be under oath and accompanied by complete supporting documents 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.

Whenever an application for exemption has been duly filed with the Board, action on any complaint for alleged non-compliance with the Order shall be deferred pending resolution of the petition for exemption.

**Section 2. Duration and Extent of Exemption** - A full of exemption of one (1) year shall be granted to all categories of establishments that meet the applicable criteria for exemption under Section of NWPC Guidelines No. 01, Series of 1996.

However, a partial exemption of 50% with respect to the amount or period of exemption may be granted only in the case of distressed establishments.

**Section 3. Effect of Filing of Application for Exemption** - Whenever an application for exemption has been filed with the Board, the Regional Office of the Department shall be duly notified. Pending resolution of the said application, action on any complaint for alleged non-compliance with the Order shall be deferred by the Regional Office of the Department.

**Section 4. Effect of Disapproved Application for Exemption** - In the event that the application for exemption is not approved, covered workers shall be paid the mandated wage increase/allowance as provided for under the Order retroactive to the date of effectivity of the Order plus simple interest of one percent (1%) per month.

**Section 5. Motion for Reconsideration** - An aggrieved party may file with the Board a motion for reconsideration of the decision on the application for exemption within ten (10) days

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from receipt of the decision, stating the particular grounds upon which the motion is based, copy furnished the other party and the Regional Office of the Department.

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.

#### **Rule IV - Special Provisions**

**Section 1. Effect on Existing Wage Structure** - 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, and if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such disputes 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 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 (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 Relation Commission (NLRC). The NLRC shall 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 rising from wage distortion shall not in any way delay the applicability of any increase prescribed in the Order.

**Section 2. Complaints for Non-Compliance** - Complaints for non-compliance with the Order shall be filed with the Regional Office of the Department having jurisdiction over the workplace and shall be subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended.

**Section 3. 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 rates 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 and to testify on the same if he does not concur with the findings of the labor inspector.

**Section 4. Non-diminution of Benefits** - Nothing in the Order and this Rules shall be construed to reduce 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 the employers.

**Section 5. Penal Provision** - Pursuant to the provisions of Section 12 of RA 6727, as amended by RA 8188, any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay the prescribed increase in the Order shall be punished by a fine of not less than Twenty-five thousand pesos (P25,000.00) nor more than One hundred thousand pesos (P100,000.00) 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 the Order shall not be entitled to the benefits provided for under the Probation Law.

If the violation is committed by a corporation, trust or firms, partnership, association or any entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers,

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including but not limited to the president, vice-president, chief executive officer, general manager, managing director or partner.

The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees: Provided, that payment of indemnity shall not absolved the employer from the criminal liability imposed under RA 8188.

**Section 6. 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 Boards.

**Section 7. 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 8. 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 9. Repealing Clause** - All orders, issuances, rules and regulations on wage, or parts thereof inconsistent with the provisions of the Wage Order and this Rules are hereby repealed, amended or modified accordingly.

**Section 10. 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 11. Effectivity of Rules** - This rules shall take effect on August 23, 2004.

**APPROVED: 28 July 2004.**

**ANTONIO Y. CONCEPCION**  
Employer Representative

**LUDOVICO S. RAVIZ**  
Labor Representative

**MARCELO S. TAN**  
Employer Representative

**JOSE P. DIZON**  
Labor Representative

**MARLENE CA P. RODRIGUEZ**  
Vice Chairman

**JOCELYN L.B. BLANCO**  
Vice Chairman

**MA. GLENDA A. MANALO**  
Chairman

**APPROVED this 21<sup>st</sup> day of September 2004.**

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