

Republic of the Philippines  
 Department of Labor and Employment  
 National Wages and Productivity Commission  
**REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD-XI**  
 Davao City

WAGE ORDER NO. RTWPB-XI-07

PROVIDING FOR NEW MINIMUM WAGE RATES  
 IN REGION XI

WHEREAS, pursuant to its mandate to periodically assess the prevailing wage rates in the region, the Regional Tripartite Wages and Productivity Board of Region XI (RTWPB-XI) reviewed Wage Order No. RTWPB-XI-06 and the wage structure of this region;

WHEREAS, the RTWPB-XI conducted public hearings in General Santos City on August 3, 1999, in Tagum City on August 5, 1999, and in Davao City on August 10, 1999 where it submitted for consultation to labor and management the Petition for Wage Increase in the amount of Fifty Pesos (P50.00) per day for all workers in Region XI filed by the Associated Labor Unions (ALU-TUCP) on August 10, 1998, as well as the simplification of the wage structure and productivity in Region XI;

WHEREAS, the basic purpose of the minimum wage is to provide the workers a safety net protection against unduly low wages in a labor surplus market;

WHEREAS, based on the public hearings, studies and deliberations conducted, the Regional Board has determined the need to adjust the minimum wage rates to enable the workers in the region to cope with the rising cost of living without impairing the viability and the global competitiveness of business organizations in the area;

WHEREAS, the Regional Board recognizes the need to simplify the present wage structure in the region to improve compliance with the minimum wage law.

NOW, THEREFORE, by virtue of the powers and authority vested under Republic Act No. 6727 otherwise known as the Wage Rationalization Act, the Regional Tripartite Wages and Productivity Board of Region XI (RTWPB-XI) hereby issues this Wage Order:

SECTION 1. NEW MINIMUM WAGE RATES. Effective November 1, 1999, the new minimum wage rates in Region XI shall be as follows:

SECTOR/INDUSTRY	Davao City General Santos City Island Garden City of Samal Tagum City	Provinces of: Davao del Norte Davao del Sur Davao Oriental Compostela Valley South Cotabato Sarangani
NON-AGRICULTURE	148.00	146.00
AGRICULTURE		
- Plantation (i.e. more than 24 Hectares or employing at least 20 workers)	138.00	136.00
- Non-Plantation	117.00	115.00
RETAIL/SERVICE		
- Employing more than 10 workers	148.00	146.00
- Employing not more than 10 workers	117.00	115.00

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SECTION 2. COST OF LIVING ALLOWANCE. The TEN PESOS (P10.00) Cost of Living Allowance (COLA) granted under Wage Order No. 06 shall continue to be in effect under the new wage structure until modified.

SECTION 3. COVERAGE.

a. The new minimum wage rates provided in this Wage Order shall apply to all covered workers and employees in the private sector in Region XI regardless of position, designation or status of employment and irrespective of the method by which their wages are paid. Not covered in this Order are household or domestic helpers and persons employed in the personal service of another including family drivers.

b. Establishments with duly certified and registered collective bargaining agreements with the Department of Labor and Employment, Region XI, shall be governed by the provisions on wage adjustments thereof, provided that the minimum wage rates prescribed in this Wage Order is complied with;

SECTION 4. 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 5. WORKERS PAID BY RESULTS. All workers paid by results, including those who are paid on piecework, "takay", "pakyaw" or task basis, shall be entitled to receive the new minimum wage rate prescribed in this Order per eight (8) hours work a day, or a proportion thereof for working less than eight (8) hours.

SECTION 6. WAGES OF SPECIAL GROUPS OF WORKERS. Wages of apprentices, learners and handicapped workers shall in no case be less than seventy-five percent (75%) of the applicable minimum wage rates prescribed in this Order.

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

SECTION 7. APPLICATION TO PRIVATE EDUCATIONAL INSTITUTIONS. The provisions of R.A. 6728 on wage adjustments shall govern private educational institutions, provided that the prescribed new minimum wage rates under this Order is complied with. The prescribed new minimum wage rates under this Order shall apply to all workers and employees entitled to the same in private educational institutions as soon as they have increased or are granted authority to increase their tuition fees during school year 1999-2000. Otherwise, such minimum wage rates shall be so applicable not later than the opening of the next school year beginning 2000.

SECTION 8. APPLICATION TO CONTRACTORS. In the case of contracts for construction projects, and for security, janitorial and similar services, the new minimum wage rates of the workers shall be borne by the principals or clients of the construction/service contractors and the contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the new minimum wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client.

SECTION 9. EXEMPTIONS.

a. Upon Proper Application. The following categories of establishments may be exempted from the applicability of this Order upon application with and as determined by the RTWPB-XI in accordance with the applicable rules and regulations issued by the Regional Board and the Commission:

1. Retail/Service establishments regularly employing not more than TEN (10) employees;
  2. Distressed establishments.
- b. Duration and Extent of Exemption. A full exemption of one (1) year shall be granted to all categories of establishments that meet the applicable criteria for exemption.

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 10. EFFECT OF FILING 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 new minimum wage rates under this Order plus one (1) percent simple interest per month retroactive to the effectivity of this Order.

SECTION 11. APPEAL TO THE COMMISSION. Any party aggrieved by this Wage Order may file a verified appeal with the Commission through the Regional Board within ten (10) calendar days from the publication of this Order.

SECTION 12. 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 13. EFFECTS ON EXISTING WAGE STRUCTURE. Where the application of the new minimum wage rates prescribed in this Order results in distortion of the wage structure within an establishment, the same shall be corrected in accordance with the procedure provided for under Article 124 of the Labor Code of the Philippines as amended.

SECTION 14. COMPLAINTS FOR NON-COMPLIANCE. Complaints for non-compliance with this Order shall be filed with the Regional Office of the Department of Labor and Employment (DOLE) and shall be the subject of enforcement proceedings under Article 128 of the Labor Code, as amended, without prejudice to criminal prosecution which may be undertaken against those who fail to comply.

SECTION 15. NON-DIMINUTION OF BENEFITS. Nothing in this Wage Order 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 employers.

SECTION 16. FREEDOM TO BARGAIN. This Order shall not be construed to prevent workers from bargaining for higher wages with their respective employers.

SECTION 17. REPORTING REQUIREMENT. Any person, company, corporation, partnership or entity engaged in business shall submit a verified itemized listing of their labor component to the Regional Board not later than January 31, 2000 and every year thereafter in accordance with Section 3 of R.A. 6727 in relation to Art. 124 of the Labor Code as amended, and in the form as prescribed by the Commission.

SECTION 18. PROHIBITION AGAINST INJUNCTION. No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against this Wage Order or any proceedings before the Regional Board.

SECTION 19. PENAL PROVISION. Any person, corporation, trust or firm, partnership, association or entity which refuses or fails to pay the new minimum wage rates in accordance with this Order shall be subject to the penal provisions under RA 6727, as amended by RA 8188.

SECTION 20. REPEALING CLAUSE. All laws, orders, issuances, rules and regulations, or parts thereof inconsistent with the provisions of this Wage Order are hereby repealed, amended or modified accordingly.

SECTION 21. SEPARABILITY CLAUSE. If for any reason, any section or provision of this Order is declared unconstitutional or illegal, the other provisions or parts shall remain valid.

SECTION 22. IMPLEMENTING RULES AND REGULATIONS. The Regional Board shall prepare the necessary rules to implement this Order subject to the approval of the Secretary of Labor and Employment.

SECTION 23. EFFECTIVITY. This Wage Order shall take effect FIFTEEN (15) days following its complete publication in at least ONE (1) newspaper of general circulation in Region XI.

Approved, 12 October 1999, Davao City, Philippines.

(SGD) JORGE G. ALEGARBES  
Labor Representative  
Member

(SGD) RULFO V. ASIS  
Management Representative  
Member

(SGD) VIRGINIA T. CAMUS  
Labor Representative  
Member

(SGD) BIENVENIDO D. CARIAGA  
Management Representative  
Member

(SGD) MERLY M. CRUZ  
DTI-XI, Regional Director  
Vice-Chairman

(SGD) AURORA R. PELAYO  
NEDA-XI, OIC-Regional Director  
Vice-Chairman

(SGD) MANUEL C. ROLDAN, CESO IV  
DOLE-XI, Regional Director  
Chairman

Republic of the Philippines  
Department of Labor and Employment  
National Wages and Productivity Commission  
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD-XI  
Davao City

WAGE ORDER NO. RTWPB-XI-07-A

AN ORDER AMENDING SECTION 6 OF WAGE ORDER NO. RTWPB-XI-07 EXCLUDING  
HANDICAPPED WORKERS

Section 6 of Wage Order No. RTWPB-XI-07 is hereby amended to read as follows:

“SECTION 6. 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 this Order.*

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

APPROVED, November 19, 1999 Davao City, Philippines.

(SGD) JORGE G. ALEGARBES  
Labor Representative  
Member

(SGD) RULFO V. ASIS  
Management Representative  
Member

(SGD) VIRGINIA T. CAMUS  
Labor Representative  
Member

(SGD) BIENVENIDO D. CARIAGA  
Management Representative  
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Republic of the Philippines  
Department of Labor and Employment  
NATIONAL WAGES AND PRODUCTIVITY COMMISSION  
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD  
Region XI, Davao City

RULES AND REGULATIONS IMPLEMENTING WAGE ORDER NO. RTWPB-XI-07

Pursuant to Section 22 of Wage Order No. RTWPB-XI-07 and Section 5, Rule IV of the NWPC Revised Rules of Procedure on Minimum Wage Fixing, the following rules and regulations are hereby issued for the guidance and compliance of all concerned:

Chapter I  
DEFINITION OF TERMS

SECTION 1. DEFINITION OF TERMS. As used in this rules,

- a. "ORDER" means Wage Order No. RTWPB-XI-07, promulgated by this Regional Board pursuant to its wage-fixing authority.
- b. "COMMISSION" means the NATIONAL WAGES AND PRODUCTIVITY COMMISSION.
- c. "REGIONAL BOARD" means the Regional Tripartite Wages and Productivity Board of Region XI.
- d. "REGION XI" covers the Cities of Davao, General Santos, Tagum, Island Garden of Samal and the Provinces of Davao del Sur, Davao del Norte, Davao Oriental, Compostela Valley, South Cotabato, and Sarangani.
- e. "DEPARTMENT" refers to the Department of Labor and Employment, Region XI.
- f. "NEW MINIMUM WAGE" is the daily wage rate fixed by the Regional Board that an employer should pay his/its workers;
- g. "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 or horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activity 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 farms products.
- h. "PLANTATION AGRICULTURAL WORKERS" are those agricultural workers employed in any plantation or agricultural establishment with an area of more than twenty-four (24) hectares in a locality or which employs at least twenty (20) workers. All other agricultural workers not included in the definition of plantation agricultural workers are considered non-plantation agricultural workers.
- i. "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 an individual separate and distinct establishments.

- j. "RETAIL ESTABLISHMENT" is one open to the general consuming public, principally engaged in the sale of goods to end users for personal or household use.

A retail establishment that engages in wholesale activities loses its retail character.

- k. "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.
- l. "STOCK CORPORATION" refers to one organized for profit and issues shares of stock to its members.
- m. "NON-STOCK, NON-PROFIT CORPORATIONS" refer to one organized principally for public purposes such as charitable, educational, cultural or similar purposes and does not issue shares of stock to its members.
- n. "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.
- o. "SINGLE PROPRIETORSHIP" refers to a business unit owned and controlled by only one person.
- p. "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.
- q. "QUASI-BANKS" refers to institutions such as investment houses and financing companies performing quasi-banking functions as defined by the Bangko Sentral ng Pilipinas.
- r. "DISTRESSED ESTABLISHMENT" refers to an establishment which meets the criteria enumerated in Section 3A of NWPC Guidelines No. 1, series of 1996 and/or Chapter III, Section 2.b of this Rules.
- s. "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.
- t. "FULL ACCOUNTING PERIOD" refers to a period of twelve (12) months or one year of business operations.
- u. "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.
- v. "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 skills, length of service, or other logical bases of differentiation.

## Chapter II COVERAGE OF THE NEW MINIMUM WAGE RATES

### SECTION 1. EMPLOYEES COVERED.

- A.) All covered workers and employees in the private sector in Region XI regardless of their position, designation or status, and irrespective of the method by which their wages are paid. Not covered in the Order are household or domestic helpers and persons employed in the personal service of another including family drivers.

B.) Establishments with duly certified and registered collective bargaining agreements with the Department, shall be governed by the provisions on wage adjustments thereof, provided that the minimum wage rate prescribed in this Wage Order is complied with.

SECTION 2. NEW MINIMUM WAGE RATES. Effective November 1, 1999, the new daily minimum wage rates in Region XI shall be as follows:

SECTOR/INDUSTRY	Davao City General Santos City Island Garden City of Samal Tagum City	Provinces of: Davao del Norte Davao del Sur Davao Oriental Compostela Valley South Cotabato Sarangani
NON-AGRICULTURE	148.00	146.00
AGRICULTURE		
- Plantation (i.e. more than 24 hectares or employing at least 20 workers)	138.00	136.00
- Non-Plantation	117.00	115.00
RETAIL/SERVICE		
- Employing more than 10 workers	148.00	146.00
- Employing not more than 10 workers	117.00	115.00

SECTION 3. COST OF LIVING ALLOWANCE. The TEN PESOS (P10.00) Cost of Living Allowance (COLA) granted under Wage Order No. 06 shall continue to be in effect under the new wage structure until modified.

SECTION 4. 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 5. APPLICATION TO PRIVATE EDUCATIONAL INSTITUTIONS. Private educational institutions shall be governed by the provisions of R.A. 6728 on wage adjustments, provided that the prescribed new minimum wage rates under this Order is complied with. The prescribed new minimum wage rates under this Order shall apply to all workers and employees entitled to the same in private educational institutions as soon as they have increased or are granted authority to increase their tuition fees during school year 1999-2000. Otherwise, such minimum wage rates shall be so applicable not later than the opening of the next school year beginning 2000.

SECTION 6. APPLICATION TO CONTRACTORS. In the case of contracts for construction projects, and for security, janitorial and similar services, the new minimum wage rates of the workers shall be borne by the principals or clients of the construction/service contractors and the contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the new minimum 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 paid on piecework, takay, pakyaw, or task basis, shall be entitled to receive the new minimum wage rate prescribed in the Order per eight ( 8 ) hours work a day, or a proportion thereof for working less than eight ( 8 ) hours.

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

- a. Amount of increase in AMW ( which is the applicable minimum wage rate ) ?  
previous AMW x 100 = % increase.
- b. Existing rate/piece x % increase = increase in rate/piece.
- c. Existing rate/piece + increase in rate/piece = adjusted rate/piece.

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 GROUP 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 automatically modified insofar as their wage clauses are concerned to reflect the new prescribed minimum wage rates.

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:

$$\begin{array}{l} \text{Equivalent} \\ \text{Monthly } \} \\ \text{Rate } \} \end{array} \quad \frac{\text{Applicable Daily Wage Rate (ADR) x 391.5 days}}{12}$$

where 391.5 days

$$\begin{array}{l} 302 \text{ days} = \text{Ordinary Working Days} \\ 18 \text{ days} = 9 \text{ Regular Holidays} \times 200\% \\ 2.60 \text{ days} = 1 \text{ Regular Holiday falling on last Sunday of August} \\ \quad \quad \quad \times 200\% + (30\% \text{ of } 200\%) \\ 66.3 \text{ days} = 51 \text{ Rest Days} \times 130\% \\ 2.6 \text{ days} = 2 \text{ Special Days} \times 130\% \end{array}$$

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391.5 days = Total Equivalent Number of Days

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

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

where 365 days

$$\begin{array}{l} 302 \text{ days} = \text{Ordinary Working Days} \\ 51 \text{ days} = \text{Rest Days} \\ 10 \text{ days} = \text{Regular Holidays} \\ 2 \text{ days} = \text{Special Days} \end{array}$$

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365 days = Total Equivalent Number of Days

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

$$\text{EMR} = \frac{\text{ADR} \times 314.6 \text{ days}}{12}$$

where 314.6 days

302 days = Ordinary Working Days  
10 days = Regular Holidays  
2.6 days = 2 Special Days ( if worked is equivalent to 2.6 days)) x 130%  
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314.6 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:

$$\text{EMR} = \frac{\text{ADR} \times 262.60 \text{ days}}{12}$$

where 262.6 days

250 days = Ordinary Working Days  
10 days = Regular Holidays  
2.6 days = 2 Special Days ( if worked is equivalent to 2.6 days ))x 130%  
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262.6 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 ten 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 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 a verified 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 such Order is affirmed.

### Chapter III EXEMPTIONS

SECTION 1. UPON PROPER APPLICATION. The following categories of establishments may be exempted from the applicability of the Order upon application with and as determined by the RTWPB-XI, in accordance with the applicable rules and regulations issued by the Regional Board and the Commission:

- a. Retail or service establishments regularly employing not more than TEN (10) employees.
- b. Distressed establishments.

SECTION 2. CRITERIA FOR EXEMPTION. The following criteria shall be used to determine whether the applicant /establishment is qualified for exemption :

a.) For Retail/Service Establishments Regularly Employing Not More Than Ten (10) Employees :

- (1) It is principally engaged in the retail sale of goods and/or services to end users for personal or household use: and
- (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.

b.) For 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 Wage 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 Wage 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 Wage 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 and interim period, if any, immediately preceding the effectivity of the Wage Order.
- (b) Single proprietorships/partnerships operating for less than two (2) years may be granted exemption with the net accumulated losses for the period immediately preceding the effectivity of the Wage Order amounts to 20% or more of the total invested capital at the beginning of the period under 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 Wage 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 Wage 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 Wage Order amounts to 20% or more of the fund balance/members' contribution at the beginning of the period under review.
- (4) For Banks and Quasi-Banks
- (a) Under receivership/liquidation. When there is a certification from Bangko Sentral ng Pilipinas that it is under receivership or liquidation as provided in Section 30 or R.A. 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 3.A.1 of NWPC Guidelines No. 01, Series of 1996 or Chapter III, Section 2.b(1) of this Rules.

### SECTION 3. PROCEDURES ON EXEMPTION.

a. Application for Exemption. Within seventy-five (75) days from publication of this Rules, an application for exemption shall be filed in three (3) legible copies with the Regional 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 the date of filing.

All applications for exemption which shall be under oath and accompanied by complete supporting documents as enumerated under Section 3.b of Chapter III of this Rules must be filed within the 75-day period of filing. No further extension for filing and submission of the required documents shall be allowed.

b. Documents Required. The following supporting documents shall be submitted together with the application:

- (1) 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.
- (2) For Distressed Establishments
  - (2.a) For corporations, cooperatives, single proprietorships, partnerships, non-stock, non-profit organizations
    - (2.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 Wage Order filed with and stamped "received" by the appropriate government agency.
    - (2.a.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 Wage Order.

(2.b) For Banks and Quasi-Banks

(2.b.1) Certification from Bangko Sentral ng Pilipinas that it is under receivership/liquidation.

(3) For Retail/Service Establishments Employing not more than Ten (10) Workers.

(3.a) Affidavit from employer stating that it is a retail/service establishment and it is regularly employing not more than ten (10) workers for at least six (6) months in any calendar year;

(3.b) Business permit for the current year from the appropriate government agency.

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

c. Opposition. Any worker or, if unionized, the union in the applicant establishments, may file with the Regional 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.

d. Motion for Reconsideration. The aggrieved party may file with the Regional 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 Department.

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

e. Appeal to the Commission.

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

- (2) An appeal may be filed on the following grounds:
- (2.a) Non-conformity with the prescribed guidelines and/or procedures on exemption;
  - (2.b) Prima facie evidence of grave abuse of discretion on the part of the Regional Board; or
  - (2.c) Questions of law.
- (3) The appellee may file with the Regional 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) 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 Regional Board to the Commission.

SECTION 4. APPLICATIONS FOR BRANCHES/DIVISIONS. Where the subject applicant, be it a corporation, partnership or single proprietorship requests for exemption for a particular branch/division not separately registered and licensed, the consolidated audited financial statements of the establishment shall be used as the basis for determining the distressed condition.

SECTION 5. ACTION ON APPLICATION FOR EXEMPTION. Upon receipt of an application with complete documents, the Regional Board shall take the following steps :

- a. Notify the Department having jurisdiction over the workplace of the pendency of the application requesting that action on any complaint for non-compliance with the Order be deferred pending resolution of the application by the Regional Board.

- b. Request the Department to conduct ocular inspection, if necessary, of establishments applying for exemption to verify number of workers, nature of business and other relevant information.

- c. Act and decide on the application for exemption with complete documents, as much as practicable, within forty-five (45) days from the date of filing. In case of contested application, the Regional Board may conduct conciliation or call hearings thereon.

- d. Transmit the decision of the Regional Board to the applicant establishment, the workers or president of the union, if any, and the Commission, for their information; and the Department, for their implementation/enforcement.

The Regional Board may create a Special Committee with one representative from each sector to expedite processing of applications for exemption.

#### SECTION 6. EXTENT AND DURATION OF EXEMPTION.

- a. A full exemption of one (1) year shall be granted to establishments that meet the applicable criteria for exemption under Chapter III of this Rules.

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:

- (1) For corporations/cooperatives. When deficit as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Wage Order amounts to less than 20% of the paid-up capital of the same period.
- (2) 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.
- (3) Non-stock Non-profit organizations. When the net accumulated losses for the period under review preceding the effectivity of the Wage Order amounts to at least 15% but less than 20% of the fund balance/members' contribution at the beginning of the period under review.

- b. Any exemption granted under this Rules shall not extend beyond one (1) year from the effectivity of the Wage Order.

- c. 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 7. 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 8. 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 as provided for under the Wage Order retroactive to the date of effectivity of the Wage Order plus simple interest of one percent (1%) per month.

#### Chapter 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 distortion through the grievance procedure under their Collective Bargaining Agreement, and if 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 by 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 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 said dispute is submitted for compulsory arbitration.

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any wage adjustment prescribed by the Wage Order.

SECTION 2. COMPLAINTS FOR NON-COMPLIANCE. Complaints for non-compliance with the Order shall be filed with the Regional Office of the Department of Labor and Employment (DOLE) having jurisdiction over the workplace and shall be the subject of enforcement proceedings under Article 128 and 129 of the Labor Code, as amended.

SECTION 3. CONDUCT OF INSPECTION BY THE DEPARTMENT. The Department shall conduct inspection of establishments, as often as necessary, to determine whether workers are paid the new minimum wage rates prescribed in the Wage Order and other benefits granted by law or any Wage Order. In the conduct of inspection in unionized companies, the 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 representative chosen by the workers in the said company shall accompany the Department Inspector.

The workers' representative shall have the right to submit his own findings to the Department to testify on the same if he does not concur with the findings of the Department Inspector.

SECTION 4. NON-DIMINUTION OF BENEFITS. Nothing in the Wage 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 employers.

SECTION 5. 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 6. REPORTING REQUIREMENT. Any person, company, corporation, partnership or entity engaged in business shall submit a verified itemized listing of their labor component to the Regional Board not later than January 31, 2000 and every year thereafter in accordance with Section 3 of R.A. 6727 in relation to Art. 124 of the Labor Code as amended, and the form as prescribed by the Commission.

SECTION 7. PROHIBITION AGAINST INJUNCTION. No preliminary injunction or temporary restraining order may be issued by any court, tribunal or other entity against the Wage Order or any proceedings before the Regional Board.

SECTION 8. 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 new minimum wage rates prescribed 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 firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including but not limited to the president, vice-president, chief executive officer, general manager, managing director or partner.

SECTION 9. REPEALING CLAUSE. All laws, orders, issuances, rules and regulations on wages, or parts thereof inconsistent with the provision 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 circumstances shall not be affected thereby.

SECTION 11. EFFECTIVITY. This Rules shall take effect November 1, 1999.

APPROVED, 13 October 1999, Davao City, Philippines.

(SGD) JORGE G. ALEGARBES  
Labor Representative  
Member

(SGD) RULFO V. ASIS  
Management Representative  
Member

(SGD) VIRGINIA T. CAMUS  
Labor Representative  
Member

(SGD) BIENVENIDO D. CARIAGA  
Management Representative  
Member

(SGD) MERLY M. CRUZ  
DTI-XI, Regional Director  
Vice-Chairman

(SGD) AURORA R. PELAYO  
NEDA-XI, OIC-Regional Director  
Vice-Chairman

(SGD) MANUEL C. ROLDAN, CESO IV  
DOLE-XI, Regional Director  
Chairman

Approved this 10<sup>th</sup> day of November 1999.

(SGD.) BIENVENIDO E. LAGUESMA  
Secretary