



Republic of the Philippines  
Department of Labor and Employment  
National Wages and Productivity Commission  
**REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD**  
Region XII, Cotabato City

**WAGE ORDER NO. RB XII -11**

**PRESCRIBING THE INTEGRATION OF PERA INTO THE BASIC WAGE AND PROVIDING FOR NEW CLASSIFICATION OF INDUSTRIES/SECTORS WITH RESPECTIVE COLA AND NEW MINIMUM WAGE RATES FOR WORKERS IN THE PRIVATE SECTOR IN REGION XII**

**WHEREAS**, under R. A. 6727 (The Wage Rationalization Act), the Regional Tripartite Wages and Productivity Boards are mandated to conduct continuing studies of wage rates, productivity and other economic conditions, and to determine and fix the minimum wages applicable in each region, provinces or industries therein based on standards and criteria;

**WHEREAS**, due to increases in the prices of oil and fuel products, transportation fares and other basic commodities, the Regional Tripartite Wages and Productivity Board of Region XII, *motu-proprio*, conducted public consultations on the minimum wage issue with the labor, management, and government sectors on 06 July 2004, 07 July 2004, 08 July 2004, and 09 July 2004 in Cotabato City, Kidapawan City, Koronadal City, and General Santos City, respectively;

**WHEREAS**, the results of the studies, consultations as well as review of economic indicators reveal the need to make adjustments in minimum wages to alleviate the plight of minimum wage earners in the region especially those receiving a daily basic wage rate of Three Hundred Pesos (P300.00) and below, without impairing the viability and competitiveness of business and industry as well as the socio-economic growth in the region;

**WHEREAS**, the Board recognizes the importance of setting minimum wage rates on a daily and hourly basis to encourage workers and employers to mutually establish productivity measures and targets over specified time to improve productivity, share the gains derived there from, and increase their income;

**NOW, THEREFORE** by virtue of the power vested under Republic Act No. 6727, the Regional Tripartite Wages and Productivity Board-Region XII (Board), hereby issues this Wage Order:

**Section 1. INTEGRATION OF PROVISIONAL EMERGENCY RELIEF ALLOWANCE (PERA).** Effective September 1, 2004, the PERA of Ten Pesos (P10.00) per day under Wage Order No. SMR-10, shall be integrated into the minimum basic wage.

**Section 2. NEW CLASSIFICATION OF INDUSTRIES/SECTORS.** Effective September 1, 2004, workers and employees in the private sector in Region XII shall be classified into two industries/sectors; namely, "Non-Agriculture" and "Agriculture."

**Section 3. GRANT OF COST OF LIVING ALLOWANCE (COLA).** Effective September 1, 2004, workers and employees in the private sector in Region XII receiving a daily basic wage rate of Three Hundred Pesos (P300.00) and below shall receive the following COLA:

- a. Twenty pesos (P20.00) per day for those in the non-agriculture industry/sector, and
- b. Ten pesos (P10.00) per day for those in the agriculture industry/sector.

**Section 4. INTEGRATION OF COLA.** Effective January 1, 2005, the COLA granted to covered workers and employees under this Order shall be integrated into the minimum basic wage, hereunder shown as follows:

Industry/Sector	Minimum Basic Wage Effective September 1, 2004		COLA Effective September 1, 2004		Minimum Basic Wage plus COLA Effective January 1, 2005	
	Daily	Hourly	Daily	Hourly	Daily	Hourly
a) Non-Agriculture	P180.00	P22.50	P20.00	P2.50	P200.00	P25.00
b) Agriculture	P180.00	P22.50	P10.00	P1.25	P190.00	P23.75

**Section 5. NEW MINIMUM WAGE RATES.** As a result of integration of PERA, new classification of industries/sectors, integration of COLA, and with the intention to promote productivity improvement and gain-sharing measures, the new minimum basic wage rates payable on a daily and hourly basis in Region XII effective on January 1, 2005, shall be as follows:

Mode of Payment	New Minimum Wage Rates Effective January 1, 2005	
	Non-Agriculture	Agriculture
Daily	P200.00	P190.00

Hourly	P25.00	P23.75
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**Section 6. COVERAGE.** The prescribed wage rates in this Order apply to covered workers and employees in the private sector regardless of position, designation, or status of employment and irrespective of the methods by which their wages are paid.

Not covered in the provisions of this Order are household or domestic helpers, persons employed in the personal service of another, including family drivers; and, workers of registered or certified Barangay Micro Business Enterprises (BMBEs) pursuant to Republic Act 9178.

**Section 7. BASIS OF MINIMUM WAGE.** The wages prescribed under this Order shall be for the normal working hours, which shall not exceed eight (8) hours work a day.

**Section 8. CREDITABLE WAGE INCREASES/ALLOWANCES.** Wage increases/allowances granted by an employer to each worker or employee within three (3) months prior to the effectivity of this Order shall be credited as compliance herewith, provided where such wage increases/allowances are less than the prescribed adjustment, the employer shall pay the difference.

Such creditable increases/allowances shall not include anniversary wage increases, merit wage increases, and those resulting from regularization or promotion of employees, unless there is an agreement expressly allowing such crediting.

**Section 9. APPLICATION TO WORKERS AND EMPLOYEES IN 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 wages set forth herein; provided that if such increase is less than the prescribed adjustment, the employer shall pay the difference in the next school year.

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

In any case, all private educational institutions shall implement the wage rates prescribed herein starting school year 2005-2006.

**Section 10. APPLICATION TO WORKERS IN CONTRACTED WORKS OR SERVICES.** In the case of workers covered by contracts for works and services, the

prescribed wages set forth herein shall be borne by the principal or client and the contract previously forged between the principal and the contractor is deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed wages, the contractor shall be jointly and severally liable with the principal or client.

**Section 11. APPLICATION TO WORKERS PAID BY RESULTS.** All workers paid by results, including those who are paid on piecework, “takay”, “pakyaw” or task basis, shall receive not less than the prescribed wage rates under this Order for the normal working hours that shall not exceed eight hours work a day, or a proportion thereof for work of less than eight (8) hours.

**Section 12. WAGES OF SPECIAL GROUPS OF WORKERS.** Wages of apprentices and learners shall in no case be less than seventy-five percent (75%) of the wage rates prescribed in this Order.

All recognized learnership and apprenticeship agreements entered into before this Order becomes effective should be considered automatically modified insofar as their wage clauses are concerned to reflect the applicable wage rates prescribed in this Order.

All handicapped workers and employees shall receive the applicable wage rates prescribed in this Order.

**Section 13. EFFECTS ON EXISTING WAGE STRUCTURE OR WAGE DISTORTION.** Where the application of the adjustment in the wage rates prescribed under 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. FREEDOM TO BARGAIN.** This Order shall not be construed to prevent workers from bargaining for higher wages with their respective employers.

**Section 15. 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 of the Philippines, as amended, without prejudice to criminal prosecution, which may be undertaken against those who fail to comply.

**Section 16. NON-DIMINUTION OF BENEFITS.** Nothing in this Order shall be construed to reduce any existing wage rate, allowance and benefit of any form under

existing laws, decrees, issuances, and executive orders or under any contract or agreement between workers and employers.

**Section 17. APPEAL TO THE COMMISSION.** Any party aggrieved by this Order may file a verified appeal with the National Wages and Productivity Commission (Commission) through the Board within ten (10) calendar days from the publication of this Order.

**Section 18. EFFECT OF FILING OF APPEAL.** The filing of the appeal does not operate to stay this Order unless the party appealing this Order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for payment of the corresponding wage adjustment to employees affected by this Order in the event that this Order is affirmed.

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

**Section 20. 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 Board.

**Section 21. 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 Section 3 of RA 6727 in relation to Article 124 of the Labor Code of the Philippines, as amended, and in the form as prescribed by the Commission.

**Section 22. REPEALING CLAUSE.** All orders, issuances, rules and regulations, or parts thereof inconsistent with the provisions of this Order are hereby repealed, amended or modified accordingly.

**Section 23. SEPARABILITY CLAUSE.** If, for any reason, any section or provision of this Order is declared unconstitutional or illegal, the other provisions or parts hereof shall remain valid.

**Section 24. IMPLEMENTING RULES AND REGULATIONS.** The Board shall prepare the necessary rules and regulations to implement this Order subject to the approval of the Secretary of Labor and Employment.

**Section 25. EFFECTIVITY.** This Order shall take effect fifteen (15) days after its publication in a local newspaper of general circulation in the region.

**APPROVED,** August 11, 2004, Cotabato City, Philippines.

**(SGD.) SIMPLICIO H. VILLARTA, JR.**

Member  
Workers' Representative

**(SGD.) ANTONIO R. SANTOS, SR.**

Member  
Employers' Representative

**(SGD.) JOEMARIE P. ANGELES**

Member  
Workers' Representative

**ESTRELLITA J. TAMANO**

Member (Resigned)  
Employers' Representative

**(SGD.) MA LOURDES D. LIM**

NEDA Director  
Vice-Chairperson

**(SGD.) IBRAHIM K. GUIAMADEL**

DTI Director  
Vice-Chairperson

**(SGD.) CYRIL L. TICAO**

OIC - DOLE Director  
Chairperson

Note: This Order was published in The Mindanao Cross on August 14, 2004.

## **RULES IMPLEMENTING WAGE ORDER NO. RB XII - 11**

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 XII -11, the following rules are hereby issued for guidance and compliance by all concerned:

### **RULE I GENERAL PROVISIONS**

**SECTION 1. TITLE.** This Rules shall be known as the “Rules Implementing Wage Order No. RB XII -11.”

**SECTION 2. CONSTRUCTION.** This Rules shall be liberally construed to carry out the objectives of RA 6727 and those existing laws and their rules and regulations on wages and other labor standards relating to hours of work, productivity, and other welfare benefits, including collective bargaining and negotiations.

**SECTION 3. SCOPE.** This Rules shall govern the implementation of Wage Order No. RB XII -11 issued by the Regional Tripartite Wages and Productivity Board in Region XII.

**SECTION 4. DEFINITION OF TERMS.** As used in this Rules:

- a) **"Order"** refers to Wage Order No. RTWPB-XII-11 promulgated by the Board pursuant to its wage fixing authority;
- b) **"Board"** refers to the Regional Tripartite Wages and Productivity Board in Region XII;
- c) **"Department"** refers to the Department of Labor and Employment;
- d) **"Commission"** refers to the National Wages and Productivity Commission;
- e) **"Secretary"** refers to the Secretary of the Department of Labor and Employment;
- f) **"Regional Office"** refers to office of the Department of Labor and Employment in the region;
- g) **"Region XII"** covers the Cities of Cotabato, General Santos, Kidapawan, Koronadal and Tacurong; and, the Provinces of North

Cotabato, Sarangani, South Cotabato, and Sultan Kudarat as provided for in Executive Order No. 36, Series of 2001;

- h) "**RA 6727**" means Republic Act No. 6727;
- i) "**Wage**" paid to any employee shall mean the remuneration of earnings, however, designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee. "Fair and reasonable value" shall not include any profit to the employer or to any person affiliated with the employer;
- j) "**Basic Wage**" means all the remuneration or earnings paid by an employer to worker for services rendered on normal working days and hours, but does not include cost of living allowances, profit, sharing investments, premium payments, 13<sup>th</sup> month pay and other monetary benefits, which are not considered as part of or integrated into the regular salary;
- k) "**COLA**" means the remuneration or earnings paid by an employer to an employee for services rendered which in nature and intended to meet an increase in cost of living and is not considered part of the basic wage;
- l) "**PERA**" refers to the Provisional Emergency Relief Allowance granted by the Board under Wage Order No. SMR-10;
- m) "**Minimum Wage**" refers to the lowest wage that an employer can pay his/her workers as prescribed by law or a Wage Order, which may consist of the basic wage only or the sum of the basic wage and COLA/PERA;
- n) "**Minimum Basic Wage**" means the lowest basic wage fixed by the Board that an employer should pay his/her workers or employees for services rendered on normal working days and hours;
- o) "**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;

- p) **“Worker ” or "Employee"** means any individual employed by an employer;
- q) **“Employer”** refers to any person, corporation, trust, firm, partnership association or entity acting directly or indirectly in the interest of the employer in relation to an employee or worker;
- r) **“Agriculture”** refers to farming in all its branches and among others, includes 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 other 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;
- s) **“Non-Agriculture Enterprises”** refers to establishments or industries other than agricultural enterprises;
- t) **“Establishment”** refers to one principally engaged in one or predominantly one kind of economic activity at a single fixed location.

## **RULE II NEW MINIMUM WAGE RATES**

**SECTION 1. INTEGRATION OF PROVISIONAL EMERGENCY RELIEF ALLOWANCE (PERA).** Effective September 1, 2004, the PERA of Ten Pesos (P10.00) per day under Wage Order No. SMR-10, shall be integrated into the minimum basic wage.

**SECTION 2. NEW CLASSIFICATION OF INDUSTRIES/SECTORS.** Effective September 1, 2004, workers and employees in the private sector in Region XII shall be classified into two industries/sectors; namely, “Non-Agriculture” and “Agriculture.”

**SECTION 3. GRANT OF COST OF LIVING ALLOWANCE (COLA).** Effective September 1, 2004, workers and employees in the private sector in Region XII receiving a daily basic wage rate of Three Hundred Pesos (P300.00) and below shall receive the following COLA:

- c. Twenty pesos (P20.00) per day for those in the non-agriculture industry/sector, and
- d. Ten pesos (P10.00) per day for those in the agriculture industry/sector.

**SECTION 4. INTEGRATION OF COLA.** Effective January 1, 2005, the COLA granted to covered workers and employees under the Order shall be integrated into the minimum basic wage, hereunder shown as follows:

Industry/Sector	Minimum Basic Wage Effective September 1, 2004		COLA Effective September 1, 2004		Minimum Basic Wage plus COLA Effective January 1, 2005	
	Daily	Hourly	Daily	Hourly	Daily	Hourly
a) Non-Agriculture	P180.00	P22.50	P20.00	P2.50	P200.00	P25.00
b) Agriculture	P180.00	P22.50	P10.00	P1.25	P190.00	P23.75

With the integration of COLA to the minimum basic wage starting January 1, 2005, covered workers and employees receiving more than the Two Hundred Pesos (P200.00) daily minimum basic wage up to Three Hundred Pesos (P300.00) daily basic wage shall continue to receive the COLA as provided for under the Order.

**SECTION 5. NEW MINIMUM WAGE RATES.** As a result of integration of PERA, new classification of industries/sectors, integration of COLA, and with the intention to promote productivity improvement and gain-sharing measures, the new minimum basic wage rates payable on a daily and hourly basis in Region XII effective on January 1, 2005, shall be as follows:

Mode of Payment	New Minimum Wage Rates Effective January 1, 2005	
	Non-Agriculture	Agriculture
Daily	P200.00	P190.00
Hourly	P25.00	P23.75

**SECTION 6. COVERAGE.** The provisions of this Rule shall apply to all workers and employees in the private sector in Region XII, regardless of their position, designation, or status of employment and irrespective of the method by which they are paid.

Not covered in the provisions of this Rules are household or domestic helpers, persons employed in the personal service of another, including family drivers; and, workers of registered or certified Barangay Micro Business Enterprises (BMBEs) pursuant to Republic Act 9178.

**SECTION 7. BASIS OF MINIMUM WAGE.** The minimum wage prescribed under the Order shall be for the normal working hours, which shall not exceed eight hours work a day.

The hours worked considered during or within the “normal working hours” include all time during which an employee is required to be on duty or to be at a prescribed workplace, and all time during which an employee is suffered or permitted to work. Rest period of short duration during normal working hours shall be counted as hours worked.

**SECTION 8. 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:

A. For the Cities of General Santos and Koronadal and the Provinces of Sarangani and South Cotabato:

- 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%
2.60	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		3 special days x 130%
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392.80	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:

300	days -	Ordinary working days
51	days -	Rest days
11	days -	Regular holidays
3	days -	Special days
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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:

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

Where 314 days:

300	days -	Ordinary working days
11	days -	Regular holidays
3	days -	3 special days (if worked) x 130%
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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:

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

Where 262 days:

248	days -	Ordinary working days
11	days -	Regular holidays
3	days -	3 special days (if worked) x 130%
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262	days -	Total equivalent number of days

B. For the Cities of Cotabato, Kidapawan and Tacurong and the Provinces of North Cotabato and Sultan Kudarat:

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

$$\text{Equivalent Monthly Rate (EMR)} = \frac{\text{Applicable Daily Wage Rate (ADR)} \times 396.80 \text{ days}}{12}$$

Where 396.80 days :

296	days -	Ordinary working days
20	days -	10 regular holidays x 200%
2.60	days -	1 regular holiday falling on last Sunday of August x 200% + (30% of 200%)
8	days	4 Muslim Legal Holidays x 200%
66.30	days -	51 rest days x 130%
3.90		3 special days x 130%

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 396.80 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:

296	days -	Ordinary working days
51	days -	Rest days
11	days -	Regular holidays
4	days	Muslim Legal Holidays
3	days -	Special days
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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:

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

Where 314 days:

296	days -	Ordinary working days
11	days -	Regular holidays
4	days	Muslim Legal Holidays
3	days -	3 special days (if considered paid; if actually worked this is equivalent to 3.90 days)
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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:

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

Where 262 days:

244	days -	Ordinary working days
11	days -	Regular holidays
4	days	Muslim Legal Holidays
3	days -	3 special days (if considered paid; if actually worked this is equivalent to 3.90 days)
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262 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 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 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 9. CREDITABLE WAGE INCREASES/ALLOWANCES.** Wage increases/allowances granted by an employer to each worker or employee within three (3) months prior to the effectivity of the Order shall be credited as compliance herewith, provided where such wage increases/allowances are less than the prescribed adjustment, the employer shall pay the difference.

Such creditable increases/allowances shall not include anniversary wage increases, merit wage increases, and those resulting from regularization or promotion of employees, unless there is an agreement expressly allowing such crediting.

### **RULE III PROVISIONS TO SPECIFIC GROUP OF WORKERS**

**SECTION 1. APPLICATION TO WORKERS AND EMPLOYEES IN 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 wages set forth herein; provided that if such increase is less than the prescribed adjustment, the employer shall pay the difference in the next school year.

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 wage rates prescribed herein starting school year 2005-2006.

**SECTION 2. APPLICATION TO WORKERS IN CONTRACTED WORKS OR SERVICES.** In the case of workers covered by contracts for works and services, the prescribed wages set forth in the Order shall be borne by the principal or client and the contract previously forged between the principal and the contractor is deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed wages, the contractor shall be jointly and severally liable with the principal or client.

**SECTION 3. APPLICATION TO WORKERS PAID BY RESULTS.** All workers paid by results, including those who are paid on piecework, “takay”, “pakyaw” or task basis, shall receive not less than the prescribed minimum wage rate and COLA under the Order for the normal working hours which shall not exceed eight hours work a day, or a proportion thereof for work of less than the normal working hours.

The adjusted minimum wage 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.

The wage rate 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 4. 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 wage rates prescribed in the Order.

All recognized agreements under learners and apprentices programs entered into before September 1, 2004 shall be considered automatically amended insofar as their wage clauses are concerned to reflect the applicable wage rates prescribed in the Order.

All handicapped workers and employees shall receive the applicable wage rates prescribed in this Order

**SECTION 5. MOBILE AND BRANCH WORKERS.** The minimum wage rates and/or COLA 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 and/or COLA of workers working in branches or agencies of establishments within the Region shall be those applicable in the place where they are stationed.

**SECTION 6. 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 and/or allowances applicable therein.

#### **RULE IV**

#### **WAGE DISTORTION, WAGE AGREEMENTS, AND WAGE ADMINISTRATION**

**SECTION 1. EFFECT ON EXISTING WAGE STRUCTURE.** Where the application of the adjustment in the wage rates prescribed under the 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.

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 it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, the voluntary arbitrator shall decide the dispute, 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 endeavour to correct such distortions. Any dispute arising there from 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 said dispute is submitted for compulsory arbitration.

**SECTION 2. EFFECT OF DISPUTE.** The pendency of a dispute arising from wage distortion shall not in any way delay the applicability of any increase prescribed in the Order.

**SECTION 3. FREEDOM TO BARGAIN.** The Order and this Rules 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 4. 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 the subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended, without

prejudice to criminal prosecution, which may be undertaken against those who fail to comply.

**SECTION 5. NON-DIMINUTION OF BENEFITS.** Nothing in the Order and in 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.

## **RULE V SPECIAL PROVISIONS**

**SECTION 1. APPEAL TO THE COMMISSION.** Any party aggrieved by the 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. A memorandum of appeal, which shall state the grounds, relied upon, and the arguments in support of the appeal shall accompany the appeal.

**SECTION 2. 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.

**SECTION 3. PENAL PROVISION.** Pursuant to the provisions of Section 12 of RA 6727, as amended by Republic Act No.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) 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.

The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees: Provided, that any payment of indemnity shall not absolve the employer from the criminal liability imposable under the Act.

If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including but not limited to the president, vice-president, chief executive officer, general manager, managing director or partner.

**SECTION 4. 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 unionised 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 inspectors.

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 Department's Inspector.

**SECTION 5. 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 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 Regional Board.

**SECTION 7. REPEALING CLAUSE.** All 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 8. SEPARABILITY CLAUSE.** If any provision or part or provision of the Order and this Rules, or application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of the Wage Order and this Rules or the application of such provision or parts thereof to other persons or circumstances shall remain valid.

**SECTION 9. EFFECTIVITY.** This Rules shall take effect on September 1, 2004.

**APPROVED** this 11<sup>th</sup> day of August 2004, Cotabato City, Philippines.

**SIMPLICIO H. VILLARTA, JR.**  
Member  
Workers' Representative

**ESTRELLITA J. TAMANO**  
Member (Resigned)  
Employers' Representative

**JOEMARIE P. ANGELES**  
Member  
Workers' Representative

**ANTONIO R. SANTOS, SR.**  
Member  
Employers' Representative

**MA. LOURDES D. LIM**  
NEDA Director  
Vice-Chairperson

**IBRAHIM K. GUIAMADEL**  
DTI Director  
Vice-Chairperson

**CYRIL L. TICAO**  
OIC-DOLE Director  
Chairperson

APPROVED **this 21st day of September, 2004.**

**PATRICIA A. STO TOMAS**  
DOLE Secretary and NWPC Chairperson