

Republic of the Philippines
Department of Labor and Employment
National Wages and Productivity Commission
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD VI
ILOILO CITY

WAGE ORDER NO. RBVI-17

**PROVIDING FOR NEW MINIMUM WAGE RATES
FOR WESTERN VISAYAS**

WHEREAS, the Regional Tripartite Wages and Productivity Board - Regional Board VI, Western Visayas (RTWPB VI) is mandated under R.A. 6727 (The Wage Rationalization Act), to periodically assess the wage rates and conduct continuing studies in the determination of the minimum wage rates applicable in the Region;

WHEREAS, RTWPB VI issued on May 22, 2008 Wage Order No. RBVI-16 which took effect on July 6, 2008 providing for a P15.00 per day Emergency Relief Allowance (ERA) upon effectivity thereof up to October 15, 2008 only, making the same, therefore, temporary subject to review and discussion by the Board on the updates that created the ERA;

WHEREAS, on October 30, 2008, a petition for wage increase was filed by the Philippine Agricultural, Commercial and Industrial Workers Union (PACIWU) – TUCP, seeking for a P40-P50 daily wage increase;

WHEREAS, after publication of the above petition and due notice to all concerned sectors, the RTWPBVI conducted a public hearing on in Bacolod City November 28, 2008;

WHEREAS, the Board recognizes the contribution of the workers in the regional economy and therefore seeks to provide incentives for them to continue participating in the productive economic activities in Region VI;

WHEREAS, in the course of attracting the best workers in the Region, the Board determined to keep the level of minimum wages at par with the other regions;

WHEREAS, after the conduct of the public hearing and thorough evaluation of the socio-economic conditions, the Board deemed it best to grant a wage increase to the workers considering that certain cost-components have gone down; thus providing management enough leeway to grant an increase without impairing the viability of the employers;

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

Section 1. AMOUNT OF MINIMUM WAGE INCREASE. Upon effectivity of this Wage Order, a **basic** wage increase of P15.00 per day shall be granted to all minimum wage earners in the private sector in the Region.

The new daily minimum wage upon the effectivity of this Order shall be:

Sector/Industry	Current Daily Minimum Wage rate	Daily Basic Wage Increase per Wage Order RBVI-17	New Daily Wage Rate Effective December 25, 2008
I. Non-Agriculture/ Industrial/Commercial Employing more than 10 workers Employing 10 or less workers	P235.00	P15.00	P250.00
	193.00	15.00	208.00
II. Agriculture Plantation Non-Plantation	P203.00	P15.00	P218.00
	193.00	15.00	208.00

Section 2. COVERAGE. The wage increase prescribed in this Wage Order shall apply to all minimum wage earners in the private sector in the Region, regardless of their position, designation or status of employment and irrespective of the method by which they are paid.

This Wage Order shall not cover household or domestic helpers; persons in the personal service of another, including family drivers, and workers of duly registered Barangay Micro Business Enterprises (BMBEs) with Certificates of Authority pursuant to Republic Act 9178.

Section 3. BASIS OF MINIMUM WAGE RATES. The minimum wage rates prescribed under this Order shall be for the normal working hours which shall not exceed eight (8) hours of work a day.

Section 4. APPLICATION TO CONTRACTORS. In the case of contracts for construction projects and for security, janitorial and similar services, the wage increase prescribed in this Order shall be borne by the principals or clients of the construction/service contractors and the contract shall be deemed amended accordingly.

In the event, however, that the principals or clients fail to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client.

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 2008-2009 shall be considered as compliance with

the increase prescribed herein. However, payment of any shortfall in the wage increase set forth herein shall be covered starting School Year 2009-2010.

Private educational institutions which have not increased their tuition fees for the School Year 2008-2009 may defer compliance with the increase prescribed herein until the beginning of School Year 2009-2010.

In any case, all private educational institutions shall implement the increase prescribed herein starting School Year 2009-2010.

Section 6. WORKERS PAID BY RESULT. All workers paid by result, including those who are paid on piecework, “takay”, “pakyaw” or task basis, shall be entitled to receive the prescribed increase per eight (8) hours work a day, or a proportion thereof for working less than eight (8) hours.

Section 7. 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 minimum wage rates.

All qualified handicapped workers shall receive the full amount of the minimum wage rate prescribed herein pursuant to Republic Act No. 7277, otherwise known as the Magna Carta for Disabled Persons.

Section 8. EXEMPTIONS. Upon application with and as determined by the Board, based on documentation and other requirements in accordance with applicable rules and regulations issued by the Commission, the following may be exempted from the applicability of this Order:

- a. Distressed establishments; and
- b. New business enterprises.

Section 9. APPLICATIONS FOR EXEMPTION. Pursuant to the rules and regulations of the National Wages and Productivity Commission, all applications for exemption from compliance with this Order shall be filed within seventy-five (75) days from the date of publication of the Rules Implementing this Order, with complete supporting documents as specified in the Rules and as may be further required by the Board. Failure to submit the required supporting documents within the prescribed period will be sufficient basis for the dismissal of the application for exemption.

The Board may grant a maximum period of exemption of one (1) year in accordance with the NWPC Rules on Exemption, but in no case shall any exemption exceed one (1) year from the effectivity of this Order.

Section 10. EFFECT OF APPLICATION FOR EXEMPTION. Whenever an application for exemption has been duly filed with the Board, action on any complaint for alleged non-compliance with this Wage Order shall be deferred pending its resolution.

In the event that the application for exemption is not granted in accordance with the Rules, the employees of the applicant firm shall receive the mandated wage increase under this Order, plus one percent (1%) 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 an appeal to the Commission, through the Board, in three (3) printed copies, not later than ten (10) days from the publication of this Wage Order.

Section 12. EFFECTS ON EXISTING WAGE STRUCTURE. Where the application of the increase prescribed in this Order results in distortions in the wage structure within the establishment, it shall be corrected in accordance with the procedure provided for under Article 124 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines.

Section 13. 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 and shall be the subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended.

Section 14. PRODUCTIVITY AND OTHER PERFORMANCE INCENTIVE PROGRAMS. In order to sustain rising levels of wages and enhance competitiveness, labor and management as partners are encouraged to adopt productivity improvement schemes that will improve the quality of life of workers and in turn enable them to produce more and earn more, such as time and motion studies, good housekeeping, quality circles, labor and management cooperation as well as implement gain-sharing and other performance incentive programs.

Section 15. NON-DIMINUTION OF BENEFITS. Nothing in this Order shall be construed to reduce any existing wage rates, allowances and benefits of any form under existing laws, decrees, issuances, executive orders and/or under any contract or agreement between the workers and employers.

Section 16. 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 17. FREEDOM TO BARGAIN. This Order shall not be construed to prevent workers in particular firms or enterprises or industries from bargaining for higher wages with their respective employers.

Section 18. REPORTING REQUIREMENT. Any person, company, corporation, partnership or any entity engaged in business shall submit a verified report on their wage structure to the Board not later than January 31, 2009 and every year thereafter in accordance with the form prescribed by the National Wages and Productivity Commission.

Section 19. PENAL PROVISION. Any employer who refuses or fails to comply with this Order shall be subject to the penalties specified under RA 6727, as amended under R.A. No. 8188.

Section 20. REPEALING CLAUSE. All 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 any provision or part of this Wage Order is declared unconstitutional, or in conflict with existing law, the other provisions or parts thereof shall remain valid.

Section 22. IMPLEMENTING RULES. The Regional Tripartite Wages and Productivity Board-VI shall submit to the Commission the necessary Rules and Regulations to implement this Order for the approval of the Secretary of Labor and Employment not later than ten (10) days from the publication of the Wage Order.

Section 23. EFFECTIVITY. This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the Region.

APPROVED. Iloilo City, Philippines, December 8, 2008.

Signed
JOHN PETER Z. MILLAN
EMPLOYERS' REPRESENTATIVE

Signed
WENNIE G. SANCHO
WORKERS' REPRESENTATIVE

Signed
LUIS R. ESTRELLA
EMPLOYERS' REPRESENTATIVE

Signed
HERNANE P. BRAZA
WORKERS' REPRESENTATIVE

Signed
DOMINIC P. ABAD
REGIONAL DIRECTOR, DTI
VICE CHAIRPERSON

Signed
RO-ANN A. BACAL
REGIONAL DIRECTOR, NEDA
VICE CHAIRPERSON

Signed
AIDA M. ESTABILLO
REGIONAL DIRECTOR, DOLE
CHAIRPERSON

Republic of the Philippines
Department of Labor and Employment
National Wages and Productivity Commission
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD VI
ILOILO CITY

January 28, 2009 – Date published

RULES IMPLEMENTING WAGE ORDER NO. RBVI-17

RULE I
GENERAL PROVISIONS

Pursuant to Section 6, Rule IV of the National Wages and Productivity Commission Guidelines No. 001-2007, otherwise known as the Amended Rules of Procedure on Minimum Wage Fixing and Section 22 of Wage Order No. RBVI-17, the following Rules are hereby issued for the guidance and compliance by all concerned:

Section 1. TITLE. This shall be known as “The Rules Implementing Wage Order No. RBVI-17”.

Section 2. DEFINITION OF TERMS. As used in these Rules:

- a) **Order** means Wage Order No. RBVI-17.
- b) **Department** means the Department of Labor and Employment.
- c) **Commission** means the National Wages and Productivity Commission.
- d) **Board** means the Regional Tripartite Wages and Productivity Board VI
- e) **Regional Office** refers to the regional office of the Department of Labor and Employment in Western Visayas
- f) **Region VI** covers the Provinces of Aklan, Antique, Capiz, Guimaras, Iloilo and Negros Occidental including their respective component cities and the highly urbanized Cities of Bacolod and Iloilo
- 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 farm products.
- h) **Establishment** refers to an economic unit, which engages in one or predominantly one kind of economic activity at a single fixed location. For purposes of determining eligibility for exemption, establishments under the same owner/s but separately registered with the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) or

Cooperative Development Authority (CDA) as the case may be, irrespective of their location, shall be treated as individual and distinct establishments.

- i) ***Distressed Establishments*** refer to establishments which meet the criteria enumerated in Section 3A of the National Wages and Productivity Commission (NWPC) Guidelines No. 02 Series of 2007, otherwise known as the “Amended Rules on Exemption from Compliance with the Prescribed Wage Increases/Cost of Living Allowances Granted By the Regional Tripartite Wages and Productivity Boards”.
- j) ***Barangay Micro Business Enterprise (BMBE)*** refers to any business entity or enterprise granted a Certificate of Authority under Republic Act No. 9178, otherwise known as the Barangay Micro Business Enterprises Act of 2002.
- k) ***Capital*** refers to the 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.
- l) ***Capital Impairment*** refers to the diminution of capital due to accumulated losses.
- m) ***Stockholders’ Equity*** refers to the residual interest in the assets of an entity that remains after deducting its liabilities. It is total assets minus total liabilities. It is the same as equity and net worth.
- n) ***Full Accounting Period*** refers to a period of twelve (12) months of business operations.
- o) ***Interim Period*** refers to a financial reporting period shorter than a full financial year (most typically a quarter or half-year).
- p) ***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.

- q) ***Total Assets*** refers to things of value owned by the business such as cash, machines, building and land which can be measured or expressed in money terms.
- r) ***Net Loss*** refers to actual loss suffered by a company after deducting expenditures including overhead and interest charges from revenues.
- s) ***Financial Statement*** refers to a written report which quantitatively describes the financial health of a company. This includes the following: balance sheet, income statement, statement of changes in equity, cash flow statement and notes to financial statement.
- t) ***Stock Corporation*** refers to a corporation, duly registered with Securities and Exchange Commission (SEC), organized for profit and issues shares of stock to its members.
- u) ***Non-stock, Non-profit Organization*** refers to an organization, duly registered with Securities and Exchange Commission, organized principally for public purposes such as charitable, educational, cultural or similar purposes, and does not issue shares of stock to its members.
- v) ***Partnership*** refers to an association, duly registered with Securities and Exchange Commission (SEC), 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.

- w) **Single Proprietorship** refers to a business unit, duly registered with Department of Trade and Industries (DTI), owned and controlled by only one person.
- x) **Cooperative** refers to a duly registered association pursuant to R. A. 6938 (Cooperative Code of the Philippines) and other laws.
- y) **Wage Distortion** refers to a situation where an increase in the 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.

RULE II

NEW MINIMUM WAGE RATES

Section 1. NEW MINIMUM WAGE RATES. Upon effectivity of this Wage Order, the new minimum wage rates in the region are as follows:

Sector/Industry	Current Daily Minimum Wage Rates	Daily Basic Wage Increase per Wage Order No. RBVI-17	New Daily Wage Rates Effective December 25, 2008
I. Non-Agriculture/ Industrial/Commercial Employing more than 10 workers Employing 10 or less workers	P235.00	P15.00	P250.00
	193.00	15.00	208.00
II. Agriculture Plantation Non-Plantation	P203.00	P15.00	P218.00
	193.00	15.00	208.00

Section 2. COVERAGE. The wage increase prescribed in this Wage Order shall apply to all minimum wage earners in the private sector in the Region, regardless of their position, designation or status of employment and irrespective of the method by which they are paid.

This Wage Order shall not cover household or domestic helpers; persons in the personal service of another, including family drivers, and workers of duly registered Barangay Micro Business Enterprises (BMBEs) with Certificates of Authority pursuant to Republic Act 9178.

Section 3. BASIS OF MINIMUM WAGE RATES. The minimum wage rates prescribed under this Order shall be for the normal working hours which shall not exceed eight (8) hours of work a day.

Section 4. APPLICATION TO PRIVATE EDUCATIONAL INSTITUTIONS. In the case of private educational institutions, the share of covered workers and employees in the increase in tuition fees for School Year 2008-2009 shall be considered as compliance with the increase prescribed herein. However, payment of any shortfall in the wage increase set forth herein shall be covered starting School Year 2009-2010.

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

In any case, all private educational institutions shall implement the increase prescribed herein starting School Year 2009-2010.

Section 5. APPLICATION TO CONTRACTORS. In case of contracts for construction projects, security, janitorial and other similar services, the increase in the minimum wage prescribed herein shall be borne by the principal or client of the contractor and the contract shall be deemed amended accordingly as mandated by the Labor Code.

In the event, however, that the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client.

Section 6. WORKERS PAID BY RESULT. All workers paid by result, including those who are paid 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 working less than the normal working hours.

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

- a. Amount of Increase in AMW*
----- = % Increase
Previous AMW
- b. Existing rate per piece x % of 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 rate of workers who are paid by result shall continue to be established in accordance with Article 101 of the Labor Code of the Philippines, as amended, and its implementing rules and regulations.

Section 7. WAGES OF SPECIAL GROUPS OF WORKERS. Wages of apprentices and learners shall in no case be less than seventy-five (75%) percent of the applicable minimum wage rates prescribed in this Order.

All recognized learnership and apprenticeship agreements entered into before the effectivity of the Order shall be considered automatically modified in so far as their wage clauses are concerned to reflect

the adjustments prescribed under the same Order.

All qualified handicapped workers shall receive the full amount of the minimum wage rate prescribed herein pursuant to Republic Act No. 7277, otherwise known as the Magna Carta for Disabled Persons.

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 rates:

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

$$\text{Equivalent Monthly Rate (EMR)} = \frac{\text{Applicable Daily Wage Rate (ADR) x 392.50 days}}{12}$$

Where 392.50 days are:

- 299 days - Ordinary working days
- 22 days - Regular holidays x 200
- 67.6 days - 52 rest days x 130%
- 3.90 days - 3 special days x 130%
-
- 392.50 days - Total equivalent number of days/year**

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

$$\text{(EMR)} = \frac{\text{(ADR x 365 days)}}{12}$$

Where 365 days are:

- 299 days - Ordinary working days
- 52 days - Rest days
- 11 days - Regular holidays
- 3 days - Special days
-
- 365 days - Total equivalent number of days/year**

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

$$\text{(EMR)} = \frac{\text{(ADR x 313 days)}}{12}$$

Where 313 days are:

299 days	-	Ordinary working days
11 days	-	Regular holidays
3 days	-	3 Special days

313 days	-	Total equivalent number of days/year

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

$$\text{EMR} = (\text{ADR} \times 261 \text{ days}) / 12$$

Where 261 days are:

247 days	-	Ordinary working days
11 days	-	Regular holidays
3 days	-	3 Special days (if considered paid; if actually worked x 130%)

261 days	-	Total equivalent number of days/year

Section 9. MOBILE AND BRANCH WORKERS. The minimum wage rates of workers, who, by the nature of their work have to travel, shall be those applicable in the domicile or head office of the employer.

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

Section 10. 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 other Regions with higher wage rates shall be entitled to the minimum wage rates applicable therein.

Section 11. APPEAL TO THE COMMISSION. Any party aggrieved by this Wage Order may file an appeal to the Commission within ten (10) calendar days from the publication of the Order pursuant to R. A. 6727. 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 12. EFFECT OF APPEAL. The filing of the appeal does not operate to stay the Order unless the party appealing such Order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for payment to employees affected by the Order of the corresponding increase, in the event that such Order is affirmed.

RULE III EXEMPTIONS

Section 1. WHO MAY BE EXEMPTED. Upon application with and as determined by the Board, based on compliance with the requirements under the applicable rules and regulations, the following may be exempted from the applicability of this Order:

- a) Distressed establishments in accordance with the criteria enumerated in the National Wages and Productivity Commission (NWPC) Guidelines No. 02, series of 2007.
- b) New business enterprises.
- c) Export-oriented enterprises

Section 2. APPLICATION FOR EXEMPTION AND GENERAL DOCUMENTARY REQUIREMENTS. Within seventy-five (75) days from the date of publication of these Rules, pursuant to NWPC Guidelines 02, series of 2007, an application for exemption with complete supporting documents as specified in the Rules, and as may be further required by the Board, shall be filed with the Board in three (3) legible copies by the owner/manager or duly authorized representative of an establishment, in person or by registered mail. The date of mailing shall be deemed as the date of filing.

Failure to submit the required supporting documents within the said prescribed period will serve as sufficient basis for the dismissal of the application for exemption.

All applications for exemption shall be:

- a) under oath;
- b) supported by a proof of notice to the Union/s or if there is no Union, a copy of the circular giving general notice to all workers that an application for exemption from compliance with the Order has been filed with the Board. 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; and,
- c) accompanied by an affidavit under oath:
 - i) stating the principal economic activity of the applicant;
 - ii) declaring the true and correct number of all its employees and workers;
 - iii) indicating its wage structure, i.e., the total and complete list of all the employed personnel with their corresponding wages and other remunerations; and,
 - iv) subscribed and sworn to either by the Chairman of the Board of Directors, President, Chief Executive Officer, General Manager, Owner or Proprietor of the business enterprise or establishment seeking an exemption from compliance with the Wage Order.
- d) supported by a certificate of registration from the appropriate government agency/ies) (e.g. Securities and Exchange Commission [SEC] in the case of a corporation, partnership or association; Cooperative Development Authority [CDA] in the case of a cooperative; or Department of Trade and Industry [DTI] in the case of sole proprietorship); and,
- e) Valid and updated Local Business Permit issued by the appropriate local government unit and/or

government agency/ies.

- f) Supporting documents under Section 4, Rule III of this Rules.

Section 3. DURATION AND EXTENT OF EXEMPTION.

A. Full exemption of one (1) year from effectivity of this Order shall be granted to all categories of establishments that meet the applicable criteria for exemption under Section 3A of the Amended Rules on Exemption.

B. Partial exemption of 50% from effectivity of this Order with respect to the amount or period of exemption shall be granted only in the case of distressed establishments under Section 3A of the Amended Rules on Exemption.

C. Conditional exemption of one (1) year from effectivity of this Order shall be granted only in the case of distressed establishments under Section 3A of the Amended Rules on Exemption. The conditional exemption shall be confirmed, as follows:

c.1. For Corporations

When deficit as defined in Section 1 (N) of the Amended Rules on Exemption, as of the last full accounting period amounts to 20% or more of the paid-up capital for the same period;

c.2 For Single Proprietorships And Partnerships

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

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

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

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

Section 4. CRITERIA AND ADDITIONAL SUPPORTING DOCUMENTS FOR EXEMPTION.

The following criteria shall be used to determine whether the applicant-establishment is qualified for exemption:

I. CRITERIA

A. Distressed Establishment

1. For Corporations/Cooperatives

a. Full Exemption

- a.1. When the deficit, as defined in Section 1(N) of the Amended Rules on Exemption, as of the last full accounting period immediately preceding the effectivity of the Order amounts to 20% or more of the paid-up capital for the same period; or
- a.2. When an establishment registers capital deficiency i.e., negative stockholders' equity, as of the last full accounting period immediately preceding the effectivity of the Order.

b. Partial Exemption

- b.1. When the deficit, as defined in Section 1 (N) of the Amended Rules on Exemption, as of the last full accounting period immediately preceding the effectivity of the Order amounts to at least 10% but less than 20% of the paid-up capital for the same period.

c. Conditional Exemption

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

2. For Single Proprietorships/Partnerships

a. Full Exemption

- a.1. When the accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order 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 immediately preceding the effectivity of the Order.

b. Partial Exemption

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

c. Conditional Exemption

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

3. For Non-stock, Non-profit Organizations

a. Full Exemption

- a.1. When the accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/members' contribution at the beginning of the period; or
- a.2. When an establishment registers capital deficiency i.e., negative fund balance/members' contribution as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order.

b. Partial Exemption

- b.1. When the accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amounts to at least 10% but not more than 20% of the fund balance/members' contribution at the beginning of the period.

c. Conditional Exemption

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

4. For Banks and Quasi-banks

a. Under receivership/liquidation

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

b. Under controllership/conservatorship

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

5. Establishments Under Corporate Rehabilitation

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

B. New Business Enterprises

Exemption may be granted to New Business Enterprises established within two (2) years from effectivity of the Order, classified under any of the following:

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

C. Export-oriented Enterprises

Exemption may be granted to export-oriented enterprises located outside export-processing zones.

II. ADDITIONAL SUPPORTING DOCUMENTS

A. For Distressed Establishments

1. For corporations, cooperatives, single proprietorships, partnerships, non-stock, non-profit organizations.

a. Full or Partial Exemption

- a.1. Audited financial statements (together with the Auditor's opinion and the notes thereto) for the last two (2) full accounting periods preceding the effectivity of the Order filed with and stamped "received" by the appropriate government agency.

b. Conditional Exemption

- b.1. Audited financial statement (together with the Auditor's opinion and the notes thereto) for the last full accounting period and interim quarterly financial statement/s for the period immediately preceding the effectivity of the Order.
- b.2. To confirm the grant of conditional exemption, audited financial statements for the last full accounting period, stamped "received" by the appropriate government agency, to be submitted within 30 days from the lapse of the one-year exemption period.

2. For Banks and Quasi-banks

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

3. For Establishments Under Corporate Rehabilitation

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

rehabilitation.

B. New Business Enterprises/Export-Oriented Enterprises

1. Affidavit from employer regarding the following:
 - a. Principal economic activity
 - b. Date of registration with appropriate government agency
 - c. Amount of total assets
2. Certificate of registration from the appropriate government agency.

C. Export-Oriented Enterprises

1. Business permit for the current year from appropriate government agencies
2. Certified true copies of previous, current or forward contracts
3. Irrevocable letters of credit/Proof of payment
4. Purchase Orders
5. Bills of lading/delivery receipts

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

Section 5. EFFECT OF FILING OF AN 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 6. APPLICATION FOR PROJECTS/BRANCHES/DIVISIONS. Where the exemption being sought for is for a particular project/branch/division not separately registered and licensed, the consolidated audited financial statements of the establishment shall be used as basis for determining its distressed condition.

Section 7. DISTRESSED PRINCIPAL. Exemption granted to a distressed principal shall not extend to its contractor in case of contract(s) for construction, security, janitorial, and/or similar services, with respect to the employees of the latter assigned to the former.

Section 8. EFFECT OF DISAPPROVED APPLICATION FOR EXEMPTION. In the event that the application for exemption, as regards any of the categories, is not approved, all covered workers and employees shall be paid the mandated increase due them as provided for under this Order retroactive to the date of its effectivity, plus a simple interest of one (1%) percent per month.

Section 9. 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 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 timely and appropriately appealed to the Commission.

SECTION 10. APPEAL. Any party aggrieved by the decision of the Board may file an appeal to the Commission, through the Board, in three (3) legible copies, not later than ten (10) days from receipt of the decision. The appeal must be filed in the manner prescribed by the Commission and must be based on any of the following grounds:

- a.) non-conformity with the prescribed guidelines/procedures on exemption;
- b.) prima facie evidence of grave abuse of discretion on the part of the Board; or,
- c.) questions of law.

RULE IV SPECIAL PROVISIONS

Section 1. EFFECT ON EXISTING WAGE STRUCTURE. In accordance with Article 124 of the Labor Code, 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 dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute shall have been 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. Pursuant to existing rules, any dispute arising there from shall be settled through the National Conciliation and Mediation Board; 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.

The pendency of any dispute arising from a wage distortion shall not in any way delay the applicability of the 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 and shall be the subject of enforcement proceedings under Articles 128 and 129 of the Labor Code, as amended.

Section 3. PRODUCTIVITY AND OTHER PERFORMANCE INCENTIVE PROGRAMS. In order to sustain rising levels of wages and enhance competitiveness, labor and management as partners are encouraged to adopt productivity improvement schemes that will improve the quality of life of workers and in turn enable them to produce more and earn more, such as time and motion studies, good housekeeping, quality circles, labor and management cooperation as well as implement gain-sharing and other performance incentive programs.

Section 4. CONDUCT OF INSPECTION BY THE DEPARTMENT. In accordance with existing rules, 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/organized establishments, Department inspectors shall always be accompanied by the president or other responsible officer of the recognized collective bargaining unit or of any interested union. In the case of non-unionized/non-organized establishments, a worker representing his fellow employees in the establishment 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 5. NON-DIMINUTION OF BENEFITS. Nothing in this Order shall be construed to eliminate or in any way diminish, or as authorizing the reduction of any existing wage rates, allowances, benefits and supplements of any form under existing laws, decrees, issuances, executive orders, and/or under any contract or agreement between the workers and employers, or employer practices or policies, being enjoyed at the time of the promulgation of this Order.

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 proceeding before the Board as provided for under Article 126 of the Labor Code, as amended.

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. PENAL PROVISION. Pursuant to the provisions of Section 12 of Republic Act No. 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 not less than Twenty-Five Thousand (PhP25,000.00) Pesos nor more than One Hundred Thousand (PhP100,000.00) Pesos 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 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 payment of indemnity shall not absolve the employer from the criminal liability imposable under the aforementioned 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 9. REPORTING REQUIREMENT. Any person, company, corporation, partnership or any entity engaged in business shall submit a verified itemized listing of their labor component to the Board not later than January 31, 2009 and every year thereafter in accordance with the form prescribed by the Commission.

Section 10. REPEALING CLAUSE. All orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of this Rules are hereby repealed, amended or modified accordingly.

Section 11. SEPARABILITY CLAUSE. If any provision or part of these Implementing Rules is declared unconstitutional, or in contrast with existing laws, the other provisions or parts thereof shall remain valid.

Section 12. EFFECTIVITY. These Rules shall take effect on December 25, 2008.

Done in Cebu City for Iloilo City, Philippines, December 9, 2008.

Signed
JOHN PETER Z. MILLAN
EMPLOYERS' REPRESENTATIVE

Signed
WENNIE G. SANCHO
WORKERS' REPRESENTATIVE

Signed
LUIS R. ESTRELLA
EMPLOYERS' REPRESENTATIVE

Signed
HERNANE P. BRAZA
WORKERS' REPRESENTATIVE

Signed
DOMINIC P. ABAD
REGIONAL DIRECTOR, DTI
VICE CHAIRPERSON

Signed
RO-ANN A. BACAL
REGIONAL DIRECTOR, NEDA
VICE CHAIRPERSON

Signed
AIDA M. ESTABILLO
REGIONAL DIRECTOR, DOLE
CHAIRPERSON

APPROVED this day of January 2009.

Signed
MARIANITO D. ROQUE
DOLE Secretary