

## **WAGE ORDER No. NCR-16**

### **PROVIDING A COST OF LIVING ALLOWANCE IN THE NATIONAL CAPITAL REGION**

**WHEREAS**, the Regional Tripartite Wages and Productivity Board-National Capital Region (RTWPB-NCR) is mandated under R.A. 6727 (The Wage Rationalization Act), to periodically assess wage rates and conduct continuing studies in the determination of the minimum wage applicable in the region or industry;

**WHEREAS**, Wage Order No. NCR-15 took effect on 01 July 2010 and under Section 3, Rule IV of the Amended Rules of Procedure on Minimum Wage Fixing issued by the National Wages and Productivity Commission (NWPC), the Wage Order may not be disturbed for a period of twelve (12) months from its effectivity unless there is a supervening condition, such as extraordinary increase in prices of petroleum products and basic goods/services, as determined by RTWPB-NCR and confirmed by the NWPC;

**WHEREAS**, the Trade Union Congress of the Philippines (TUCP) filed on March 7, 2011 a petition for a Seventy Five Pesos (P75.00) per day across-the-board wage increase;

**WHEREAS**, the RTWPB-NCR issued on 12 April 2011 Resolution No. 01, series of 2011, declaring a supervening condition in the region which was confirmed by the NWPC in its Resolution No. 01, series of 2011, dated 13 April 2011;

**WHEREAS**, after due notice to all concerned sectors, the RTWPB-NCR conducted a public hearing on the 2nd of May 2011, to determine the propriety of issuing a new wage order;

**WHEREAS**, considering the result of the thorough evaluation of the existing socio-economic conditions of the region, showing the extraordinary increases in prices of crude oil and local petroleum products, the RTWPB-NCR has determined the need to provide workers with immediate relief measures to enable them to cope with the rising cost of living without impairing the viability of business and industry;

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

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**Section 1. NEW WAGE RATES.** Upon effectivity of this Wage Order, all private sector minimum wage workers and employees in the National Capital Region shall receive a **Cost of Living Allowance (COLA) in the amount of TWENTY-TWO PESOS ( P22.00 ) per day.**

a) The new daily wage rates of covered workers in the private sector in the National Capital Region shall be as follows:

Sector/Industry	Basic Wage	COLA	New Wage Rates
Non-Agriculture	P 404.00	P 22.00	P 426.00
Agriculture (Plantation and Non Plantation)	P 367.00	P 22.00	P389.00
Private Hospitals with bed capacity of 100 or less	P 367.00	P 22.00	P389.00
Retail/Service Establishments employing 15 workers or less	P 367.00	P 22.00	P389.00
Manufacturing Establishments regularly employing less than 10 workers	P367.00	P 22.00	P389.00

**Section 2. COVERAGE.** The P22.00 per day COLA prescribed in this 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. APPLICATION TO CONTRACTORS.** In the case of contracts for construction projects and for security, janitorial and similar services, the COLA 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 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 2011-2012 shall be considered as compliance with the COLA prescribed herein. However, payment of any shortfall in the wage increase set forth herein shall be covered starting School Year 2012-2013.

Private educational institutions which have not increased their tuition fees for School Year 2011-2012 may defer compliance with the COLA prescribed herein until the beginning of School Year 2012-2013.

In any case, all private educational institutions shall implement the COLA prescribed herein starting School Year 2012-2013.

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**Section 5. WORKERS PAID BY RESULT.** All workers paid by result, including those who are paid on piecework, "takay" or task basis, shall be entitled to receive not less than the prescribed COLA a day, or a proportion thereof for working less than eight (8) hours.

**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 new 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 wage rates.

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

**Section 7. 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 NWPC, the following may be exempted from the applicability of this Order:

1. Distressed Establishments;
2. Retail/Service Establishments Regularly Employing Not More Than Ten (10) workers;
3. Establishments whose Total Assets including those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, are not more than P3 Million; and
4. Establishments Adversely Affected by Natural Calamities.

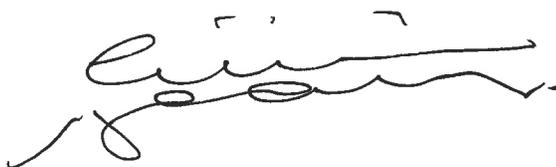
**Section 8. APPEAL TO THE COMMISSION.** Any party aggrieved by this Wage Order may file an appeal to the NWPC, through the Board, in three (3) printed copies, not later than ten (10) days from the publication of this Wage Order.

**Section 9. CREDITABLE WAGE INCREASE.** Any increase granted by an employer in an organized establishment within three (3) months prior to the effectivity of this Order shall be credited as compliance with the prescribed increase set forth herein, provided that an agreement to this effect has been forged between the parties or a collective bargaining agreement provision allowing creditability exists. In the absence of such an agreement or provision in the CBA, any increase granted by the employer shall not be credited as compliance with the COLA prescribed in this Order.

In unorganized establishments, any increase granted by the employer within five (5) months prior to the effectivity of this Order shall be credited as compliance therewith.

In case the increases given are less than the prescribed COLA, the employer shall pay the difference. Such increases shall not include anniversary increases, merit wage increases and those resulting from the regularization or promotion of employees.

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**Section 10. EFFECTS ON EXISTING WAGE STRUCTURE.** Where the application of the COLA 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 11. 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 12. COMPLAINTS FOR NON-COMPLIANCE.** Complaints for non-compliance with this Order shall be filed with the National Capital Region 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 13. 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 14. 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 in accordance with Presidential Decree 442, as amended.

**Section 15. 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 16. 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, 2012 and every year thereafter in accordance with the form prescribed by the National Wages and Productivity Commission.

**Section 17. 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 by R.A. No. 8188.

**Section 18. 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 19. 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 20. IMPLEMENTING RULES.** The Regional Tripartite Wages and Productivity Board-National Capital Region shall submit to the Commission the necessary Rules and Regulations to implement this Order subject to approval of the Secretary of Labor and Employment not later than ten (10) days from the publication of the Wage Order.

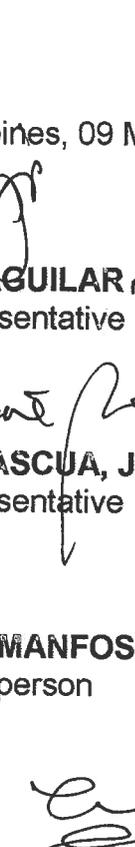
**Section 21. EFFECTIVITY.** This Wage Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

**APPROVED.**

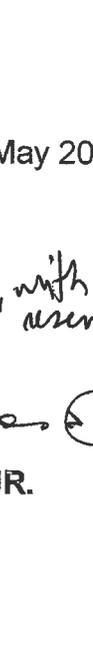
Manila, Philippines, 09 May 2011.

  
**JESSIE L. AGUILAR**, *with*  
Labor Representative *assent*

  
**VICENTE LEOGARDO, JR.**  
Employers' Representative

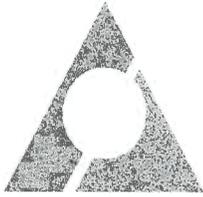
*I dissent*  
  
**GERMAN N. PASCUA, JR.**  
Labor Representative

  
**ALBERTO R. QUIMPO**  
Employers' Representative

  
**FERDINAND L. MANFOSTE**  
Vice-Chairperson

  
**MYRNA CLARA B. ASUNCION**  
Vice-Chairperson

  
**RAYMUNDO G. AGRAVANTE**  
Chairperson



**REGIONAL  
TRIPARTITE WAGES and  
PRODUCTIVITY BOARD  
NATIONAL CAPITAL REGION**

**Republic of the Philippines  
Department of Labor and Employment**  
2/F, 1650 DY International Building cor.  
San Marcelino Street and Gen. Malvar Street,  
Malate, Manila  
Telefax: 527-51-55/400-67-65  
Email: wage\_ncr@yahoo.com.ph  
Website: www.nwpc.dole.gov.ph

**RULES IMPLEMENTING WAGE ORDER NO. NCR-16**

**RULE I  
GENERAL PROVISIONS**

Pursuant to Section 6, Rule IV of the National Wages and Productivity Commission Guidelines No. 01-2007, otherwise known as the Amended Rules of Procedure on Minimum Wage Fixing and Section 20 of Wage Order No. NCR – 16, 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. NCR – 16".

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

- a) **Order** - means Wage Order No. NCR - 16.
- 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 - National Capital Region.
- e) **Regional Office** - refers to the regional office of the Department of Labor and Employment in the National Capital Region.
- f) **National Capital Region** - covers the Cities of Caloocan, Las Piñas, Makati, Mandaluyong, Manila, Marikina, Malabon, Muntinlupa, Parañaque, Pasay, Pasig, Quezon, San Juan, Taguig and Valenzuela, and the Municipalities of Navotas and Pateros.
- 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

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be, irrespective of their location, shall be treated as individual and distinct establishments.

- l) **Retail Establishment** - refers to an entity principally engaged in the sale of goods to end users for personal or household use. A retail establishment that regularly engages in wholesale activities loses its retail character.
- j) **Service Establishment** - refers to an entity principally engaged in the sale of services to individuals for his own or household use and is generally recognized as such.
- k) **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."
- l) **Paid-up capital** - refers to the total amount of shareholder capital that has been paid by shareholders.
- m) **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.
- n) **Capital Impairment** - refers to the diminution of capital due to accumulated losses.
- o) **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.
- p) **Full Accounting Period** - refers to a period of twelve (12) months of business operations.
- q) **Interim Period** - refers to a financial reporting period shorter than a full financial year (most typically a quarter or half-year).
- r) **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.
- s) **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.
- t) **Net Loss** - refers to actual loss suffered by a company after deducting expenditures including overhead and interest charges from revenues.
- u) **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.

- v) **Stock Corporation-** refers to one organized for profit and issues shares of stock to its members
- w) **Non-stock, Non-profit Organization-** refers to one organized principally for public purposes such as charitable, educational, cultural or similar purposes and does not issue shares of stock to its members.
- x) **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.
- y) **Single Proprietorship-** refers to a business unit owned and controlled by only one person.
- z) **Cooperative** – refers to a duly registered association pursuant to R.A. 6938 (Cooperative Code of the Philippines), as amended.
- aa) **Cost of Living Allowance (COLA )** - refers to the cost of living allowance prescribed by the Board for covered private sector workers and employees in the National Capital Region.
- bb) **New Wage Rate** – refers to the basic wage of P404 plus the cost of living allowance of P22.
- cc) **Wage Distortion** – as defined under Article 124 of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, as amended, 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.
- dd) **Quasi-banks** – refer to institutions such as investment houses and financing companies performing quasi-banking functions as defined by the Bangko Sentral ng Pilipinas.
- ee) **Conservatorship** - refers to a remedy resorted to by the monetary board in case a bank or quasi-bank is in a state of continuing inability or unwillingness to maintain condition of liquidity deemed adequate to protect the interests of the depositors and creditors. A conservator is appointed to manage the establishment in order to restore its viability.
- ff) **Receivership/liquidation** – refers to a remedy resorted by the Monetary Board in case a bank or quasi-bank is (a) unable to pay its liabilities as they become due in the ordinary course of business; (b) has insufficient realizable assets as determined by the Bangko Sentral ng Pilipinas to meet its liabilities; (c) cannot continue in business without involving probable losses to its depositors or creditors; or (d) has willfully violated a cease and desist order under Sec. 37, RA 7653, that has become final involving acts or transactions which amount to fraud or dissipation of the assets of the institution.

gg) **Under Corporate Rehabilitation** – refers to establishments that are placed under a rehabilitation receiver by a court of competent jurisdiction.

**RULE II  
NEW WAGE RATES**

**Section 1. AMOUNT OF INCREASE.** Effective May 26, 2011, all minimum wage workers in the private sector in the National Capital Region shall receive a Cost of Living Allowance (COLA) of **TWENTY-TWO PESOS (P 22.00) per day.**

**Section 2. THE NEW WAGE RATES.** The new daily wage rates in the National Capital Region shall be as follows:

INDUSTRY/SECTOR	Basic Wage Under Wage Order NCR-15	COLA Under Wage Order NCR-16	New Wage Rates
Non-Agriculture	P 404	P 22	P 426
Agriculture (Plantation and Non-Plantation)	P 367	P 22	P 389
Private Hospitals with bed capacity of 100 or less	P 367	P 22	P 389
Retail/Service Establishments employing 15 workers or less	P 367	P 22	P 389
Manufacturing Establishments regularly employing less than 10 workers	P 367	P 22	P 389

**Section 3. COVERAGE.** The wage increase prescribed herein shall apply to all minimum wage earners in the private sector within the Region, regardless of their position, designation or status and irrespective of the method by which their wages 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 registered Barangay Micro Business Enterprises (BMBEs) with Certificates of Authority.

**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 2011-2012 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 2012-2013.

Private educational institutions, which have not increased their tuition fees for School Year 2011-2012, may defer compliance with the provisions of this Wage Order until the beginning of School Year 2012-2013.

In any case, all private educational institutions shall implement the increase prescribed herein starting School Year 2012-2013.

**Section 5. APPLICATION TO CONTRACTORS.** In case of contracts for construction projects, security, janitorial and other similar services, the increase in the wage rates prescribed herein shall be borne by the principal or client of the contractor and the contract shall be deemed amended accordingly as mandated under Section 6, R.A. 6727.

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" or task basis, shall receive not less than the applicable 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 new wage rates for workers paid by result shall be computed in accordance with the following steps:

a. 
$$\frac{\text{Amount of Increase in AW}^*}{\text{Previous AMW}} = \% \text{ Increase}$$

$$\frac{\text{P } 22}{404} \times 100 = 5.45\% \text{ Increase}$$

b. Existing rate/piece x % increase = Increase in rate/piece

Existing rate/piece + Increase in rate/piece = Adjusted rate/piece

\*Where AMW is the Applicable 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 percent (75%) of the applicable 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 wage rates 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:

Equivalent Monthly Rate (EMR) = 
$$\frac{\text{Applicable Daily Wage Rate (ADR)} \times 393.50 \text{ days}}{12 \text{ months}}$$

Where 393.50 days:

298	-ordinary working days
24	- 12 regular holidays x 200%
67.6	- 52 rest days x 130%
3.9	-3 special days x 130%
<u>393.5</u>	- <b>Total no. of days/year</b>

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

$$\text{EMR} = (\text{ADR} \times 365 \text{ days}) / 12 \text{ months}$$

Where 365 days:

298	-Ordinary working days
12	-Regular holidays
52	-Sundays/rest days
3	-Special days
<u>365</u>	- <b>Total no. of days/year</b>

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

$$\text{EMR} = (\text{ADR} \times 310 \text{ days}) / 12 \text{ months}$$

Where 310 days:

298	-Ordinary working days
<u>12</u>	-Regular holidays
<u>310</u>	- <b>Total no. of days/year</b>

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

$$\text{EMR} = (\text{ADR} \times 258 \text{ days}) / 12 \text{ months}$$

Where 258 days are:

246	-Ordinary working days
<u>12</u>	-Regular holidays
<u>258</u>	- <b>Total no. of days/year</b>

**Section 9. MOBILE AND BRANCH WORKERS.** The 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 wage rates of workers working in branches or agencies of establishments in or outside the National Capital Region 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 Section 5, Chapter III of the Rules Implementing 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 criteria and requirements in the applicable rules and regulations, the following may be exempted from the applicability of this Order:

1. Distressed establishments;
2. Establishments whose total assets, including those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, are not more than P3 million;
3. Retail/Service establishments employing not more than ten (10) workers; and
4. Establishments adversely affected by natural calamities

**Section 2. CRITERIA FOR EXEMPTION.** In order to determine whether an applicant establishment is qualified for exemption, the following are the criteria:

#### **A. Distressed Establishments**

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

###### *a. Full Exemption*

- a.1. When the deficit, as defined in Section I (N) of NWPC Guidelines No. 02, Series of 2007, 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 I (N) of NWPC Guidelines No. 2, series of 2007, 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.

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#### 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 2 A of this Rule.

#### 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), as amended by Section 7, Rule 3 of the 2008 Rules of Procedure on Corporate Rehabilitation.

##### **B. Establishments whose Total Assets, including those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, are not more than P3 Million.**

Exemption may be granted to an establishment whose total assets are not more than P3 Million when:

1. Its total assets during the current year of effectivity of the Order amount to not more than Three Million Pesos (P3,000,000.00).
2. Total Assets refer to all kinds of properties, real or personal used for the conduct of business, including proceeds of loans, but excluding the land on which the particular business entity's office, plant and equipment are situated.
3. Establishment is not registered as a Barangay Micro Business Enterprise (BMBE).

##### **C. Retail/Service Establishments Regularly Employing Not More Than Ten (10) Workers**

Exemption may be granted to a retail/service establishment when:

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

#### D. Establishments Adversely Affected by Natural Calamities

1. The establishment must be located in an area declared by a competent authority as under a state of calamity.
2. The natural calamities, such as earthquakes, lahar flow, typhoons, volcanic eruptions, fire, floods and similar occurrences, must have occurred within 6 months prior to the effectivity of the Order.
3. Losses suffered by the establishment as a result of the calamity that exceed the insurance coverage should amount to 20% or more of the stockholders' equity as of the last full accounting period in the case of corporations and cooperatives, total invested capital in the case of partnerships and single proprietorships and fund balance/members' contribution in the case of non-stock non-profit organizations.

Only losses or damage to properties directly resulting from the calamity and not incurred as a result of normal business operations shall be considered.

4. Where necessary, the Board or its duly authorized representative shall conduct an ocular inspection of the establishment or engage the services of experts to validate the extent of damages suffered.

#### Section 3. DOCUMENTS REQUIRED

The following supporting documents shall be submitted together with the application:

##### ***For All Categories of Exemption***

Proof of notice of filing of the application to the President of the union/contracting party if one is organized in the establishment, or if there is no union, a copy of a circular giving general notice of the filing of the application to all the workers in the establishment. The proof of notice, which may be translated in the vernacular, shall state that the workers' representative was furnished a copy of the application with all the supporting documents. The notice shall be posted in a conspicuous place in the establishment.

##### **A. For Distressed Establishments**

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

##### ***a. 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. For Retail/Service Establishments Employing Not More Than Ten (10) Workers:**

1. Affidavit executed by employer stating the following:

- a. It is a retail/service establishment; and
- b. It is regularly employing not more than ten (10) workers for at least six (6) months in any calendar year.

2. Business Permit for the current year from the appropriate government agency.

**C. For Establishments Adversely Affected by Natural Calamities**

1. Affidavit executed by the General Manager or Chief Executive Officer of the establishment regarding the following:

- a. Date and type of calamity;
- b. Amount of losses/damages suffered as a direct result of the calamity;
- c. List of properties damaged/lost together with estimated valuation; and
- d. For properties that are not insured, a statement that the same are not covered by insurance.

2. Copies of insurance policy contracts covering the properties damaged, if any.

3. Adjuster's report for insured properties.

4. Audited financial statements for the last full accounting period preceding the effectivity of the Order stamped "received" by the appropriate government agency.

**D. For Establishments which Total Assets, including those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, are not more than P3 Million.**

1. Business permit from the appropriate government agency/ies.

2. Sworn Statement that its total assets are not more than P3 Million and enumerating the properties being used in the conduct of the business, with its corresponding values and reflecting the following information:

- i) Date of acquisition;
  - ii) Acquisition cost; and
  - iii) Depreciated value.
3. Copy of Loan Contract and duly notarized Certification of Amortization Payments on the loan, if any.
4. Duly notarized copy of Contract of Lease for assets used in the conduct of business covered by lease agreement, if any.

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

#### **Section 4. EXTENT AND DURATION OF EXEMPTION.**

- A. Full Exemption of one (1) year from effectivity of the Order shall be granted to all categories of establishments that meet the applicable criteria for exemption under Section 3A of NWPC Guidelines No. 02, series of 2007.
- B. Partial exemption of 50% from effectivity of the Order with respect to the amount or period of exemption shall be granted only in the case of distressed establishments under Section 3A of NWPC Guidelines No. 02, series of 2007, when the deficit amounts to at least 10% but less than 20% of the paid-up capital for the same period.
- C. Conditional exemption of one (1) year from effectivity of the Order shall be granted only in the case of distressed establishments under Section 3A of NWPC Guidelines 02, series of 2007. The conditional exemption shall be confirmed, as follows:

c.1. For Corporations

When deficit, as defined in Section I (N) of the abovementioned Guidelines, 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 the 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 the 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 the Order, retroactive to the effectivity of the Order.

#### **SECTION 5. ACTION ON APPLICATION FOR EXEMPTION**

Upon receipt of an application with complete documents, the Board shall take the following steps:

- a. Notify the DOLE Regional Office 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 Board.
- b. Request the DOLE Regional Office 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 45 days from the date of filing. In case of contested application, the Board may conduct conciliation or call hearings thereon.
- d. Transmit the decision of the Board to the applicant establishment, the workers or president of the union, if any, and the Commission, for their information; and the DOLE Regional Office concerned, for their implementation/enforcement.

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

## SECTION 6. APPLICATION FOR PROJECTS/BRANCHES/DIVISIONS

Where the exemption being sought is for a particular project/branch/division not separately registered and licensed, the consolidated audited financial statements of the establishment shall be used as basis for determining its distressed condition.

## SECTION 7. DISTRESSED PRINCIPAL

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

## SECTION 8. EFFECT OF DISAPPROVED APPLICATION FOR EXEMPTION

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

## SECTION 9. PROCEDURES ON EXEMPTION

### A. For Filing of Application

1. An application, in three (3) legible copies, may be filed with the appropriate Board by the owner/manager or duly authorized representative of an establishment, in person or by registered mail.

The date of mailing shall be deemed as the date of filing.

Applications for exemption filed with the DOLE regional, district or provincial offices are considered filed with the appropriate Board in the region.

2. Applications for all categories shall be filed not later than 75 days from publication of the approved implementing rules of the Order, provided that all the required documents in support of the application must be filed within the said 75-day filing period and that no further extension of filing and submission of required documents shall be allowed.
3. The application shall be under oath and accompanied by complete supporting documents as enumerated under Section 4 of NWPC Guidelines 02, series of 2007.

B. For Filing of Opposition

Any worker or, if unionized, the union in the applicant establishment, may file with the appropriate Board within fifteen (15) days from receipt of the notice of the filing of the application, an opposition to the application for exemption stating the reasons why the same should not be approved, furnishing the applicant a copy thereof. The opposition shall be in three (3) legible copies, under oath and accompanied by pertinent documents, if any.

C. For Filing of Motion for Reconsideration

The aggrieved party may file with the Board a motion for reconsideration of the decision on the application for exemption within ten (10) days from its receipt and shall state the particular grounds upon which the motion is based, copy furnished the other party and the DOLE Regional Office concerned.

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

D. For Filing of Appeal to the Commission

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

The appeal, with proof of service to the other party, shall be accompanied with a memorandum of appeal, which shall state the date appellant received the decision, the grounds relied upon and the arguments in support thereof.

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

2. *Grounds for Appeal* - An appeal may be filed on the following grounds:

- a. Non-conformity with the prescribed guidelines and/or procedures on exemption;
- b. Prima facie evidence of grave abuse of discretion on the part of the Board; or
- c. Questions of law.

3. *Opposition* - The appellee may file with the Board his reply or opposition to the appeal within ten (10) days from receipt of the appeal. Failure of the appellee to file his reply or opposition shall be construed as waiver on his part to file the same.



**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. 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 4. 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 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 Pesos (₱ 25,000.00) nor more than One Hundred Thousand Pesos (₱ 100,000.00) 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 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 imposed 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, 2012 and every year thereafter in accordance with the form prescribed by the Commission.

**Section 10. 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 11. REPEALING CLAUSE.** All orders, issuances, rules and regulations or parts thereof inconsistent with the provisions of the Wage Order and this Implementing Rules are hereby repealed, amended or modified accordingly.

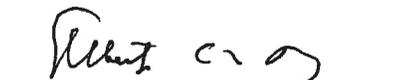
**Section 12. EFFECTIVITY.** These Rules shall take effect on May 26 2011.

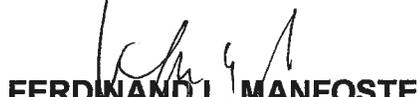
Done in the City of Manila, Philippines, 10 May 2011.

  
**JESSIE L. AGUILAR**  
Labor Representative

  
**VICENTE LEOGARDO, JR.**  
Employers' Representative

  
**GERMAN N. PASCUA, JR.**  
Labor Representative

  
**ALBERTO R. QUIMPO**  
Employers' Representative

  
**FERDINAND L. MANFOSTE**  
Vice-Chairperson

  
**MYRNA CLARA B. ASUNCION**  
Vice-Chairperson

  
**RAYMUNDO G. AGRAVANTE**  
Chairperson

Approved this May 19, 2011.

  
**ROSALINDA DIMAPILIS-BALDOZ**  
Secretary  
Department of Labor and Employment

