



Republic of the Philippines
Department of Labor and Employment
National Wages and Productivity Commission
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD
Region VII, Central Visayas



WAGE ORDER NO. VII - 17

**ESTABLISHING INCREASE IN MINIMUM WAGE RATES
IN CENTRAL VISAYAS**

WHEREAS, the Regional Tripartite Wages and Productivity Boards (RTWPBs) are mandated under Republic Act 6727 otherwise known as the Wage Rationalization Act of 1989 to determine and fix the minimum wages of workers in private establishments in the region;

WHEREAS, the Associated Labor Unions - Trade Union Congress of the Philippines (ALU-TUCP) filed on 21 March 2012 a Petition for a Ninety Pesos (P90.00) per day across-the-board wage increase;

WHEREAS, on 03 April 2012, the Alliance of Progressive Labor (APL), Cebu Midtown Hotel Employees Union (CMHEU), Lonbisco Employees Organization (LEO) and Public Interest Advocacy and Litigation Office (PIALO, Inc.) filed a Petition seeking for an across-the-board daily wage adjustment in the Region in the amount of One Hundred Twenty-One Pesos and eighty-four centavos (P121.84);

WHEREAS, in accordance with Section 3, Rule IV of the Amended Rules of Procedure on Minimum Wage Fixing (NWPC Guidelines No. 1 Series of 2007), the RTWPB – Central Visayas did not entertain the two petitions since these were filed within the twelve (12) month period since the latest Wage Order No. 16 took effect on 22 September 2011;

WHEREAS, the RTWPB – Central Visayas conducted a series of Provincial Review and Assessment of economic indicators in the Provinces of Negros Oriental/Siquijor, Bohol and Cebu on the 7th, 21st and 27th of June 2012, respectively, to assess regional economic condition;

WHEREAS, the RTWPB - Central Visayas issued on 09 August 2012 Resolution No. 03, series of 2012, declaring the existence of supervening condition but was not confirmed by the National Wages and Productivity Commission and any action thereon was rendered moot and academic following the lapse of the one year period from the effectivity of the latest Wage Order No. 16;

WHEREAS, after publication of petitions and giving due notice to all concerned sectors, a region-wide public hearing was held on October 15, 2012 in Cebu City;

WHEREAS, as a result of the periodic and continuous review of the socio economic condition and taking into considerations the issues ventilated by the concerned stakeholders, the RTWPB-Central Visayas finds the need to adjust the existing minimum wage rates in the region;

NOW, THEREFORE, by virtue of the power and authority vested under Republic Act No. 6727, the Regional Tripartite Wages and Productivity Board – Central Visayas, hereby issues this Wage Order:

SECTION 1. AMOUNT OF INCREASE. Upon effectivity of this Wage Order, the daily minimum wage rates of all private sector workers and employees shall be increased by TWENTY-TWO PESOS (₱ 22.00). The new daily minimum wage rate in the region for each area classification including agriculture sugar and sugar mills shall be as follows:

| Area Classification | Non Agriculture | Agriculture | | Sugar Mills |
|---|--------------------|--------------|---------|-------------|
| | | Non sugar | Sugar | |
| Class A (Cities of Carcar, Cebu, Danao, Lapu-lapu, Mandaue, Naga, Talisay and Municipalities of Compostela, Consolacion, Cordova, Liloan, Minglanilla, San Fernando or Expanded Metro Cebu) | ₱327.00 | ₱309.00 | ₱277.00 | ₱297.00 |
| Class B (Cities of Toledo, Bogo and rest of municipalities in Cebu Province except Bantayan & Camotes Islands) | ₱307.00 | ₱292.00 | | |
| Class C (Cities & Municipalities in Bohol & Negros Oriental Provinces) | ₱297.00 | ₱277.00 | | |
| Class D (Municipalities in Siquijor Province & municipalities in Bantayan & Camotes Islands) | ₱282.00 | ₱262.00 | | |

Section 2. COVERAGE. The adjustments prescribed under this Order shall apply to all minimum wage private sector workers and employees in the region, regardless of their position, designation or status of employment and irrespective of the method by which their wages are paid.

Not covered from the provisions of this order are household or domestic helpers; persons in the personal service of another, including family drivers; and workers of registered Barangay Micro Business Enterprises with valid Certificates of Authority.

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

Section 4. WORKERS PAID BY RESULTS. All workers paid by results, including those who are paid on piecework, "takay" or task basis, shall be entitled to receive not less than the prescribed minimum wage increase per eight (8) hours work a day, or a proportion thereof for working less than eight (8) hours.

Section 5. WAGES OF SPECIAL GROUPS OF WORKERS. Wages of apprentices and learners shall in no case be less than seventy-five percent (75%) of the applicable minimum wage rates prescribed in this Order.

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

All qualified handicapped workers shall receive the full amount of increase in this Order pursuant to R.A. 7277.

Section 6. APPLICATION TO TRANSFER, BRANCH AND MOBILE WORKERS. The applicable minimum wage of workers in establishment which have branches in different parts of the region or where headquarters is outside the region, shall be the rate applicable to the area where the worker is based.

In case of mobile workers, the minimum wage shall be the rate applicable to the head office. In case of transfer from a high class city/municipality to a lower class city/municipality, the higher rate shall continue to be applied;

Section 7. 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 2012-2013 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 2013-2014.

Private educational institutions which have not increased their tuition fees for the School Year 2012-2013 may defer compliance with the increase prescribed herein until the beginning of School Year 2013-2014. In any case, private educational institutions shall implement the increase herein starting School Year 2013-2014.

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

Section 9. 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
- b. New business enterprises (NBEs)
- c. Retail/Service establishments employing not more than ten (10) workers

d. Establishments adversely affected by natural calamities

Section 10. PRODUCTIVITY-BASED WAGES. In order to sustain rising level of wages and enhance competitiveness, businesses are strongly encouraged to adopt productivity improvement schemes, such as time and motion studies, good housekeeping, quality circles, labor-management cooperation, as well as implement gain sharing programs.

Section 11. TWO-TIERED WAGE SYSTEM. In preparation for the implementation of the new wage policy, the Board shall conduct orientation and advocacy to stakeholders on the new wage system;

Section 12. APPEAL TO THE COMMISSION. Any party aggrieved by this Wage Order may file a verified appeal with the Commission through the Board within ten (10) calendar days from the publication of this Order.

Section 13. EFFECT OF FILING AN APPEAL. The filing of the appeal does not operate to stay the Order unless the party appealing such Order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for payment of the corresponding increase to employees affected by the Order in the event such Order is affirmed.

Section 14. EFFECTS ON EXISTING WAGE STRUCTURE. Where the application of the increases in the wage rates under this Order results in distortion of the wage structure within an establishment, the same shall be corrected in accordance with the procedure provided for under Art. 124 of the Labor Code as amended.

Section 15. COMPLAINTS FOR NON-COMPLIANCE. Complaints for non-compliance with this Order shall be filed with the Regional Office of the Department of Labor and Employment (DOLE) and shall be the subject of enforcement proceedings under Article 128 of the Labor Code, as amended, without prejudice to criminal prosecution, which may be undertaken against those who fail to comply.

Section 16. NON-DIMINUTION OF BENEFITS. Nothing in this Order shall be construed to reduce any existing wage 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 17. PENAL PROVISION. Any person, corporation, trust or firm, partnership, association or entity which refuses or fails to pay the prescribed wage increase in accordance with this Order shall be subject to the penal provisions under RA 6727, as amended by RA 8188.

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

Section 19. FREEDOM TO BARGAIN. This Order shall not be construed to prevent workers in particular firms or enterprises of industries from bargaining for higher wages with their respective employers.

Section 20. 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, 2013 and every year thereafter in accordance with the form prescribed by the Commission.

Section 21. REPEALING CLAUSE. All orders, issuances, rules and regulations, or parts thereof inconsistent with the provision of this Wage Order are hereby repealed, amended or modified accordingly.

Section 22. SEPARABILITY CLAUSE. If, for any reason, any section or provision of this Order is declared unconstitutional or illegal, the other provisions or parts shall remain valid.

Section 23. IMPLEMENTING RULES. The Board shall prepare the necessary rules to implement this Order subject to approval of the Secretary of Labor and Employment.

Section 24. EFFECTIVITY. This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the region.

CEBU CITY, PHILIPPINES, November 9, 2012



APPROVED:



ATTY. HIDELITO S. PASCUAL
Member, Employer's Representative



ATTY. ERNESTO F. CARREON
Member, Labor Representative



CHARLES M. STREEGAN
Member, Employer's Representative



JOSE P. TOMONGHA
Member, Labor Representative



ATTY. BUENAVENTURA C. GO-SOCO JR
Vice Chairperson



ASTERIA C. CABERTE
Vice Chairperson



ATTY. MA. GLORIA A. TANGO
Chairperson



**IMPLEMENTING RULES AND REGULATIONS OF
WAGE ORDER NO. VII-17**

Pursuant to Section 6, Rule IV of the Amended Rules of Procedure on Minimum Wage Fixing and Section 23 of Wage Order No. VII-17, the following Rules are hereby issued for guidance and compliance by all concerned.

Rule I – General Provisions

Section 1. Title. This Rules shall be known as the “Implementing Rules and Regulations of Wage Order No. VII-17”.

Section 2. Definition of Terms. As used in this rules:

- a) **“Order”** means Wage Order No. ROVII-17.
- b) **“Commission”** refers to the National Wages and Productivity Commission.
- c) **“Board”** means the Regional Tripartite Wages and Productivity Board, Region VII.
- d) **“Department”** means the Department of Labor and Employment.
- e) **“Region VII”** is the geographic area in Central Visayas covering the Provinces of Cebu, Bohol, Negros Oriental and Siquijor and its component cities.
- f) **“Agriculture”** refers to farming in all its branches and among others, include the cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural and horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activities performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products.
- g) **“Class A”** refers to the Cities of Carcar, Cebu, Danao, Lapu-Lapu, Mandaue, Naga and Talisay and the Municipalities of Compostela, Consolacion, Cordova, Liloan, Minglanilla, and San Fernando or (expanded Metro Cebu).
- h) **“Class B”** refers to the Cities of Toledo and Bogo and the rest of the municipalities in the Province of Cebu except the municipalities in the Islands of Bantayan and Camotes.
- i) **“Class C”** refers to the cities and municipalities in the Provinces of Bohol and Negros Oriental.
- j) **“Class D”** refers to the municipalities in the Province of Siquijor and municipalities in the Islands of Bantayan and Camotes.
- k) **“Establishments”** refer to economic units which engage in one or predominantly one kind of economic activity at a single fixed location. For purposes of determining eligibility, 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.
- l) **“Distressed Establishments”** refer to establishments which meet the criteria enumerated in Section 3A of the Amended Rules on Exemption (NWPC Guidelines No 02, Series of 2007).
- m) **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.
- n) **Service Establishment** refers to an entity principally engaged in the sale of services to individuals for his/her own or household use and is generally recognized as such.
- o) **New Business Enterprise** refers to establishments, including non-profit institutions, established within two (2) years from effectivity of the Wage Order based on the latest registration with the appropriate government agency such as SEC, DTI, CDA and Mayor’s Office.

- p) **“Barangay Micro-Business Enterprise (BMBE)”** refers to any registered business entity or enterprise granted a Certificate of Authority pursuant to Republic Act 9178.
- q) **“Paid-up Capital”** refers to the total amount of shareholder capital that has been paid by shareholders.
- r) **“Capital”** refers to paid-up capital at the end of the last full accounting period, in the case of corporations or total invested capital at the beginning of the period under review, in the case of partnerships and single proprietorships.
- s) **“Capital Impairment”** refers to the diminution of capital due to accumulated losses.
- t) **“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.
- u) **“Full Accounting Period”** refers to a period of twelve (12) months or one year of business operations.
- v) **“Interim Period”** refers to a financial reporting period shorter than a full financial year (most typically a quarter or half year).
- w) **“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.
- x) **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.
- y) **“Net Loss”** refers to actual loss suffered by a company after deducting expenditures including overhead and interest charges from revenues.
- z) **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
- aa) **Stock Corporation** refers to one organized for profit and issues shares of stock to its members
- bb) **“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 stocks to its members.
- cc) **“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
- dd) **“Single Proprietorship”** refers to a business unit owned and controlled by only one person.
- ee) **“Cooperative”** refers to a duly registered association pursuant to RA 6938 (Cooperative Code of the Philippines) and other laws.
- ff) **“Quasi-Banks”** refer to institutions such as investment houses and financing companies performing quasi-banking functions as defined by the Bangko Sentral ng Pilipinas.
- gg) **“Conservatorship”** refers to 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.
- hh) **“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 that has become final involving acts or transactions which amount to fraud or dissipation of the assets of the institution.
- ii) **“Under Corporate Rehabilitation”** refers to establishments that are placed under a rehabilitation receiver by a court of competent jurisdiction.
- jj) **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 distinction embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

Rule II– Wage Increase

Section 1. Amount of Increase. Upon effectivity of this Wage Order, the daily minimum wage rates of all minimum wage private sector workers and employees shall be increased by Twenty Two Pesos (P=22.00). The new daily minimum wage rate in the region for each area classification including agriculture sugar and sugar mills shall be as follows:

| Area Classification | Non Agriculture | Agriculture | | Sugar Mills |
|---|-----------------|-------------|----------|-------------|
| | | Non sugar | Sugar | |
| Class A (Cities of Carcar, Cebu, Danao, Lapu-lapu, Mandaue, Naga, Talisay and Municipalities of Compostela, Consolacion, cordova, Liloan, Minglanilla, San Fernando or Expanded Metro Cebu | P=327.00 | P=309.00 | | |
| Class B (Cities of Toledo, Bogo and rest of municipalities in Cebu Province except Bantayan & Camotes Islands | P=307.00 | P=292.00 | P=277.00 | P=297.00 |
| Class C (Cities & Municipalities in Bohol & Negros Oriental Provinces | P=297.00 | P=277.00 | | |
| Class D (Municipalities in Siquijor Province & municipalities in Bantayan & Camotes Islands | P=282.00 | P=262.00 | | |

Section 2. Coverage. a). The wage increase prescribed in the Order shall apply to all private sector minimum wage workers and employees in the Region whether agricultural or non-agricultural, regardless of their position, designation, or status and irrespective of the method by which their wages are paid.

b). Not covered from the provisions of the Order are household or domestic helpers, workers employed in the personal service of another, including family drivers and workers of duly registered Barangay Micro-Business Enterprises with Certificates of Authority.

c). Wages of all workers and employees whose rates are less than the prescribed minimum wage rates pursuant to Sections 1 and 2 of the Order shall be adjusted accordingly.

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

Section 4. Application to Private Educational Institutions. a) In the case of private educational institutions, the share of covered workers and employees in the increase in tuition fees for School Year 2012-2013 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 2013-2014.

b) Private educational institutions which have not increased their tuition fees for the School Year 2012-2013 may defer compliance with the increase prescribed herein until the beginning of School Year 2013-2014.

c) In any case, private educational institutions shall implement the increase prescribed herein starting School Year 2013-2014.

Section 5. Application to Contractors. In the case of contracts for construction projects and for security, janitorial services, the prescribed wage increases shall be borne by the principals or clients of the construction/service contractors and the contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client.

Section 6. Workers Paid by Results. a) All workers paid by results, 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 work of less than the normal working hours.

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

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

1.
$$\frac{\text{Amount of increase in AMW}^*}{\text{Previous AMW}} \times 100 = \text{Percent increase};$$

$$\frac{P 22}{305} \times 100 = 7.21\% \text{ Increase}$$

2. Existing rate/piece X Percent increase = Increase in rate/piece;

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

* **Where AMW is the applicable minimum wage rate.**

Section 7. Mobile Workers. The wage increase 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.

Section 8. Branch Workers. The wage increase of workers working in branches or agencies of establishments within the Region shall be those applicable in the place where they are stationed.

Section 9. Transfer / Assignment of Workers. The transfer/assignment of workers to areas with lower wage rates shall in no case result to reduction of higher wages being enjoyed by the worker prior to such transfer. However, where the worker is transferred/assigned to an area with higher wage, he shall be entitled to the higher wage therein.

Section 10. Suggested Formulae in Determining the Equivalent Monthly Regional Minimum Wage Rates. Without prejudice to existing company practices, agreements or policies, the following formulae may be used in determining the Estimated Equivalent Monthly Rates (EEMR) of the employees:

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

$$\frac{\text{Applicable Daily Rate} \times 393.50}{12}$$

| | | |
|--------------------|-------------|--|
| where 393.50 days: | 298 | ordinary working days |
| | 67.60 | 52 rest days x 130% |
| | 24 | 12 regular holidays x 200% |
| | <u>3.90</u> | 3 special days x 130% |
| | 393.50 | Total equivalent no. of days in a year |

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

$$\frac{\text{Applicable Daily Rate} \times 365}{12}$$

| | | |
|-----------------|----------|--|
| Where 365 days: | 298 | ordinary working days |
| | 52 | rest days |
| | 12 | regular holidays |
| | <u>3</u> | special days |
| | 365 | Total equivalent no. of days in a year |

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

$$\frac{\text{Applicable Daily Rate} \times 313}{12}$$

| | | |
|------------------|----------|--|
| where 313 days = | 298 | ordinary working days |
| | 12 | 12 regular holidays |
| | <u>3</u> | special days |
| | 313* | Total equivalent no. of days in a year |

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

$$\frac{\text{Applicable Daily Rate} \times 261}{12}$$

| | | |
|------------------|----------|--|
| where 261 days = | 246 | ordinary working days |
| | 12 | 12 regular holidays |
| | <u>3</u> | special days |
| | 261* | Total equivalent no. of days in a year |

*313 and 261 if the three special days are considered paid

Section 11. Wages of Special Groups of Workers. a) Wages of apprentices and learners shall in no case be less than seventy-five percent (75%) of the applicable minimum wage rates prescribed in the Order.

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

c) All qualified handicapped workers shall receive the full amount of increase in this Order pursuant to R.A. 7277.

Section 12. Appeal to the Commission. Any party aggrieved by the Wage Order may file an appeal with the Commission through the Board within ten (10) calendar days from the publication of the Order. The appeal shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support of the appeal.

Section 13. *Grounds for Appeal.* An appeal may be filed on the following grounds:

- a. Non-conformity with the prescribed guidelines and/or procedures
- b. Grave abuse of discretion
- c. Questions of law.

Section 14. *Effect of Appeal.* The filing of the appeal does not operate to stay the Order unless the party appealing such Order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for payment to employees affected by the Order of the corresponding increase, in the event such Order is affirmed.

Section 15. *Transmittal of Records.* Immediately upon receipt of the appeal, the Board Secretariat shall transmit to the Commission Secretariat the appeal and a copy of the subject Wage Order together with the complete records of the case and all relevant documents.

Rule III – Exemption

Section 1. *Exemptible Establishments.* 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
- b. New business enterprises (NBEs)
- c. Retail/Service establishments employing not more than ten (10) workers
- d. Establishments adversely affected by natural calamities

Section 2. *Period of Filing Application for Exemption.* Application for exemption from compliance with this Wage Order shall be filed with the Board within seventy five (75) days from date of publication of the Rules Implementing the Wage Order and that no further extension of filing and submission of required documents shall be allowed.

An application in three (3) typewritten copies may be filed 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. The application shall be under oath and accompanied by complete supporting documents as specified in the Rules.

Section 3. *Filing of Opposition.* Any worker or, if unionized, the union in the applicant establishment, may file with the 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.

Section 4. *Criteria for Exemption.* The following criteria shall be used to determine whether or not the applicant-establishment is qualified for exemption:

A. Distressed Establishments

1. For Corporations/Cooperatives

a. Full Exemption

- a.1 When the deficit as of the last full accounting period immediately preceding the effectivity of Wage 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 of the last full accounting period immediately preceding the effectivity 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 of the interim period immediately preceding the effectivity of the Wage 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
 - a.1. 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

- b.1 A bank or quasi-bank under controllership/ conservatorship may apply for exemption as a distressed establishment under Section 3 of the Amended Rules on Exemption (NWPC Guidelines No 02, Series of 2007)

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 (NBEs)

Those establishments including non-profit institutions established within two (2) years from effectivity of the Wage Order based on the latest registration with appropriate government agency such as SEC, DTI, CDA and Mayor's Office.

C. Retail/Service establishments 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 and 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 given 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, typhoon, 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 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 damage

Section 5. 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. Distressed Establishment

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 (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 (NBEs)

b.1 Affidavit from employer regarding the following:

- a. Principal economic activity
- b. Date of registration with appropriate government agency]
- c. Amount of total assets

b.2 Certificate of registration from the appropriate government agency

C. Retail/Service establishments employing not more than ten (10) workers

c.1 Affidavit executed by employer stating that it is a retail/service establishment and it is regularly employing not more than ten (10) workers for at least six (6) months in any calendar year

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

D. Establishments adversely affected by natural calamities

d.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
- d. For properties that are not insured, the statement that the same are not covered by insurance

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

d.3 Adjuster's report for insured properties

d.4 Audited financial statements (together with the Auditor's opinion and the notes thereto) for the last full accounting period preceding the effectivity of the Order filed with and stamped "received" by the appropriate government agency.

Section 6. Extent and Duration of Exemption.

a.) Full exemption of one (1) year from effectivity of the Order may be granted to establishments that meet the applicable criteria for exemption under Section 3 of Amended Rules on Exemption (NWPC Guidelines No. 2, Series of 2007).

b.) Partial exemption of 50% with respect to the amount or period of exemption shall also be granted.

c.) Conditional exemption of one (1) year from effectivity of this Wage Order may likewise be granted. The conditional exemption shall be confirmed, as follows:

c.1 For Corporations

When deficit 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 accounting periods immediately preceding the effectivity of Order amounts to 20% or more of fund balance/members' contribution at the beginning of the period.

Section 7. Adoption of Productivity Programs. Establishments granted exemption are required to adopt productivity improvement initiatives or schemes to improve business viability. The Board shall provide technical assistance in the development of a productivity improvement program in the establishment.

Section 8. Action on Application for Exemption. Upon receipt of an application with complete documents, the Board shall take 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 of the Board.
- b. Request 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 the processing of applications for exemption.

Section 9. 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 10. 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 11. *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 12. *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 receipt and shall state the particular grounds upon which the motion is based, copy furnished the other party and the Department.

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

Section 13. *Appeal to the Commission.* Any party aggrieved by the decision of the Board may file an appeal with the Commission through the Board within ten (10) calendar days receipt of decision. 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 14. *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.

Section 15. *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 16. *Transmittal of Records.* Within five (5) days upon receipt of the reply or opposition of the appellee or after the expiration of period to file the same, the entire records of the case which shall be consecutively numbered, shall be transmitted by the Board to the Commission.

Rule IV - Special Provisions

Section 1. *Effect on Existing Wage Structure.* Should any dispute arise as a result of wage distortion, the employer and the union shall negotiate to correct the distortions through the grievance procedure under their collective bargaining agreement, and if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, the voluntary arbitrator shall decide such dispute 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. Any dispute arising therefrom 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 a dispute arising from wage distortion shall not in any way delay the applicability of any increase prescribed in the Order.

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

Section 3. *Conduct of Inspection by the Department.* The Department shall conduct inspections of establishments, as often as necessary, to determine whether the workers are paid the prescribed wage rates and other benefits granted by law or any Wage Order.

In the conduct of inspection in unionized companies, Department inspectors shall always be accompanied by the president or other responsible officer of the recognized bargaining unit or of any interested union. In the case of non-unionized establishments, a worker representing the workers in the said company will accompany the inspector.

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

Section 4. *Non-diminution of Benefits.* Nothing in the Order and in this Rule shall be construed to reduce any existing wage rates, allowances and benefits of any form under existing laws, decrees, issuances, executive orders, and/or under any contract or agreement between the workers and the employers.

Section 5. *Productivity-Based Wages.* In order to sustain rising level of wages and enhance competitiveness, businesses are strongly encouraged to adopt productivity improvement schemes, such as time and motion studies, good housekeeping, quality circles, labor-management cooperation, as well as implement gain sharing programs.

Section 6. *Two-Tiered Wage System.* In preparation for the implementation of the new wage policy, the Board shall conduct orientation and advocacy to stakeholders on the new wage system;

Section 7. *Penal Provision.* Any entity that refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with this Order shall be punished in accordance with the provisions of Sec. 12, Art 127 of RA 6727 as amended by RA 8188, which provides as follows:

"Sec. 12. Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with this Act shall be punished by a fine not less than Twenty-five thousand pesos (₱25,000) nor more than One hundred thousand pesos (₱100,000) or imprisonment of not less than two (2) years nor more than four (4) years or both such fine and imprisonment at the discretion of the court: *Provided*, that any person convicted under this Act shall not be entitled to the benefits provided for under the Probation Law.

"The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees: *Provided*. That payment of indemnity shall not absolve the employer from the criminal liability imposed under this 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 7. *Prohibition Against Injunction.* No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against any proceedings before the Commission or Boards.

Section 8. *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.

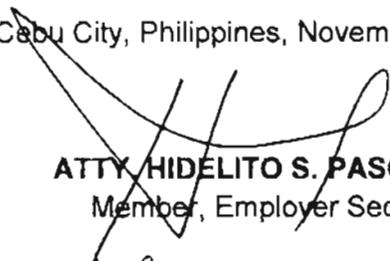
Section 9. *Reporting Requirements.* Any person, company, corporation, partnership or any entity engaged in business shall submit a verified itemized listing of their labor component to the Board not later than January 31, 2013 and every year thereafter in accordance with the form prescribed by the Commission.

Section 10. *Repealing Clause.* All orders, issuances, rules and regulations on wages, or parts thereof inconsistent with the provisions of the Wage Order and this Rules are hereby repealed, amended or modified accordingly.

Section 11. *Separability Clause.* If any provision or part of the Order and this Rule, or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of the Order and this Rules or the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

Section 12. Effectivity of Rules. This rule shall take effect on _____.

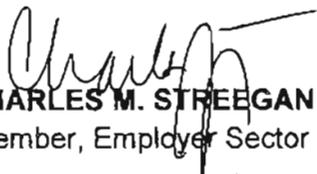
Cebu City, Philippines, November 9, 2012.



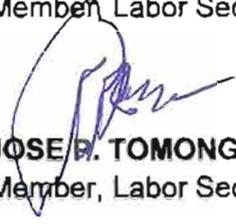
ATTY. HIDELITO S. PASCUAL
Member, Employer Sector



ATTY. ERNESTO F. CARREON
Member, Labor Sector



CHARLES M. STREEGAN
Member, Employer Sector

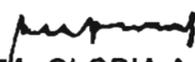


JOSE B. TOMONGHA
Member, Labor Sector



ATTY. BUENAVENTURA C. GO-SOCO JR.
Vice Chairperson

ASTERIA C. CABERTE
Vice Chairperson



ATTY. MA. GLORIA A. TANGO
Chairperson

Approved this 27th day of November 2012



ROSALINDA DIMAPILIS- BALDOZ
Secretary, Department of Labor and Employment
Chairman, National Wages and Productivity Commission

